

**2nd ANNUAL REPORT (2007)
ON ENVIRONMENTAL CONFLICT RESOLUTION**

**FOR THE
COUNCIL ON ENVIRONMENTAL QUALITY**

**OFFICE OF THE ASSISTANT SECRETARY OF THE ARMY
(CIVIL WORKS)**

JANUARY 25, 2008

Name of Department/Agency responding:	U.S. Army Corps of Engineers (USACE)
Name and Title/Position of person responding:	Mr. Chip Smith, Assistant for Environment, Tribal and Regulatory Affairs, Office of the Assistant Secretary of the Army (Civil Works); Dr. Jerome Delli Priscoli, ECR Senior Team Leader, Institute for Water Resources, USACE
Division/Office of person responding:	U.S. Army Civil Works
Contact information (phone/email):	Mr. Chip Smith (703) 693-3655 chip.smith@hqda.army.mil Dr. J. Delli Priscoli 703-428-6372 jerome.dellipriscoli@us.army.mil
Date this report is being submitted:	25 January 08

**U.S. ARMY CIVIL WORKS – 2nd ANNUAL REPORT ON
ENVIRONMENTAL CONFLICT RESOLUTION
FOR THE
COUNCIL ON ENVIRONMENTAL QUALITY**

Introduction

This 2nd Annual Environmental Conflict Resolution (ECR) Report on the activities of the U.S. Army Corps of Engineers (USACE) is organized in accord with the 2008 ECR Questionnaire and accompanying guidance from the Council on Environmental Quality (CEQ). The report content is largely based on the responses to the questionnaire as result of a survey of USACE division and district offices.

During 2007 the USACE leadership took multiple steps to strengthen and further agency guidance which had already been in the process of being re-oriented to emphasize collaboration, partnerships and consensus-based decision making based on the active participation of a wide range of stakeholders and constituencies. This commitment to conflict resolution spanned the life-cycle of USACE programs and projects, ranging from the use of anticipatory collaborative planning to avoid, mitigate or reduce conflict from the beginning of an activity, to the application of a wide variety of alternative dispute resolution (ADR) and mediation techniques, including extending the access to/and encouraging the use of ECR throughout the agency.

In particular, the USACE has proactively moved towards the full integration of collaborative planning approaches across all business areas, founded on a “systems” or “watershed” perspective consistent with the contemporary concept of integrated water resources management (IWRM). Within this context, mechanisms for conflict resolution are intended as fundamental elements of such intergovernmental collaborations. This planning paradigm is intended to be facilitated through transparent stakeholder participation and consensus-based, risk-informed decision-making techniques which include the active use and communication of multi-criteria trade-off analysis, the examination of multiple future scenarios, cumulative impact assessments, and, for especially complex problems, the use of computer assisted visualization and communication instruments to both inform stakeholders and decision-makers alike, and to assist in minimizing or resolving conflict.

Although the USACE organization, as a whole, is at the beginning of the journey to fully institutionalize and operationalize this paradigm, the commitment to a collaborative-based, systems approach is already documented as an integral part of the *Civil Works Strategic Plan*, the *USACE Campaign Plan*, and the post-Katrina *Actions for Change* initiative which is intended to accelerate this transformation.

However, as reflected in the survey results that follows below, information gaps and challenges to the optimum use of ECR remain, including (1) inconsistent levels of knowledge of ECR processes by senior leaders and project managers, which manifest gaps in situational

25 January 2008
U.S. Army Civil Works

awareness of the implications of emerging conflicts or a lack of recognition of early pre-conflict conditions or indicators which signal the need for ECR intervention; (2) the absence of agency-wide guidance, performance metrics, and monitoring of the use of ECR and its benefits, which also has constrained the corporate understanding of the value of ECR; (3) limited training opportunities, including the need for additional ECR training at the Command and senior civilian leader levels, which is particularly important because relatively few current senior leaders have received training; and (4) the need for an effective means to evaluate case studies, to compile, evaluate and share lessons learned throughout the organization, and to further incorporate ECR into doctrine and guidance.

As described in the report, to address these challenges the USACE has established an ECR expertise center at its Institute for Water Resources and has provided initial funding (2008) to initiate an ECR program similar to the Institute's legacy program on Alternative Dispute Resolution (ADR). In turn, the Institute has also expanded beyond its in-house ECR capacity by executing partnership agreements, including a key Memorandum of Understanding (MOU) with the U.S. Institute for ECR at the Udall Center, University of Arizona, and with other institutions, in order to broaden the range of ECR technical services available to USACE field offices across the Nation.

The remainder of the report presents a summary of the agency responses to the 2008 ECR Questionnaire, and is accompanied by three appendices which provide relevant supporting documentation.

Section 1: Capacity and Progress

1. *Describe steps taken by your department/agency to build programmatic/institutional capacity for ECR in 2007, including progress made since 2006. If no steps were taken, please indicate why not.*

USACE Headquarters and the U.S. Army Institute for Water Resources (IWR)

a. Overview. The goal of fully integrating a USACE programmatic/institutional capacity for ECR and related contemporary dispute resolution processes are in full accord with the corporate strategy reflected in the USACE Campaign Plan, the *Civil Works Strategic Plan*, and an emerging agency initiative, Actions for Change, particularly its *Risk Communication* theme. This strategic direction reflects an explicit Army and USACE acknowledgement that it is an imperative for the Corps to work collaboratively with its Federal, State, local and NGO partners in developing consensus-based solutions to increasingly complex problems within an integrated, systems context.

In this regard, the Assistant Secretary of the Army for Civil Works, the Honorable John Paul Woodley, has stated: "*We will broaden our collaboration with others to enhance the chances of balancing water uses and making wise investments and trade-offs decisions.*"

25 January 2008
U.S. Army Civil Works

b. Guidance and Doctrine. Engineer Circular 1105-2-409, "Planning in a Collaborative Environment" remains in force, and in fulfilling the agency commitment to collaboration, the USACE Director of Civil Works, MG Don T. Riley, promulgated a new directive to Corps field commanders which emphasized the use of ECR, partnering and shared vision planning in Civil Works (CW) programs and projects (See Appendix 3). USACE-CW has also established an expertise center for ECR, Consensus Building and Public Participation at the U.S. Army Institute of Water Resources (IWR), including a program known as CADRe – Computer Assisted Dispute Resolution. IWR has a long history in furthering the intellectual foundation and improving the practice of alternative dispute resolution techniques, [collaboration and citizen participation](#) within the USACE and USG.

In addition to assisting HQUSACE by serving as the agency's institutional clearinghouse for gathering and analyzing ECR data from across the Corps in response to the ECR questionnaire, IWR's role is to: promote the use of ECR and related collaborative planning processes; provide advice and technical assistance to Corps field offices in designing and applying ECR processes; to consolidate and make available information on various ECR related methods, tools, and other research, on alternative dispute resolution (ADR), 3rd party mediation and consensus-based decision making, Shared Vision Planning (SVP) and other Computer Assisted Dispute Resolution (CADRe) techniques, the design of open, transparent public involvement processes; and enhancing the institutional capacity for ECR through the development of new tools and the delivery of ECR training.

c. ECR Partnerships. At the same time, IWR expanded its in-house capacity in ECR by executing several partnership agreements, including a key Memorandum of Understanding (MOU) with the U.S. Institute for ECR at the Udall Center, University of Arizona (See Appendix 4), as well as other well known organizations/Universities providing ECR services in order to broaden the supporting ECR technical services available to the USACE and its various field offices across the Nation. A another significant partnership agreement was executed with the State of California (CA) Department of Water Resources (DWR), for which IWR is assisting DWR in the adaptation of a Shared Vision Planning (SVP) process to minimize conflict during the upcoming update of the State's Comprehensive Water Plan.

d. Collaborative Planning. The USACE advanced the practice of collaborative planning through the successful application of SVP as a central component of the just completed re-regulation study for Lake Ontario and St. Lawrence River on behalf of the International Joint Commission (IJC), and the initiation of a SVP process for the IJC on the Upper Great Lakes Study. IWR also partnered with USACE districts on several intergovernmental pilot studies, including with the Virginia Department of Environmental Quality (DEQ) and other Federal natural resource agencies; on the Willamette River with the State of Oregon and a wide range of other agencies; with local water purveyors and governments and the Western States Water Council on the Cache la Poudre River in Colorado; and on the Upper Rio Grande in New Mexico with Federal and State agencies and other Federal agencies. Also in 2007, USACE published a practical handbook aimed at supporting Engineer Circular 1105-2-409, "Planning in a Collaborative Environment" The handbook is titled: "Project Planning in Collaboration with Government Entities" (IWR 07-R-2) and can be downloaded from the IWR web site.

25 January 2008
U.S. Army Civil Works

e. Computer Aided Dispute Resolution. On behalf of USACE, IWR initiated a national specialty conference on the use of processes and tools for technically informing negotiations, ranging from those broadly encompassing collaborative planning to those directly emphasizing mediation and related conflict resolution processes, all under the acronym CADRe, for “Computer Aided Dispute Resolution”. This conference, held in Albuquerque, NM in partnership with the U.S. Institute for Environmental Conflict Resolution and the Sandia National Laboratory, brought together a diverse cross section of conflict mitigation process practitioners and collaborative planning technical experts/model builders. The conference manifested a series of professional and technical actions, including the establishment of a new professional network, and several others which are specifically ECR.

f. Training and Capacity Building. The USACE also continues to deliver the USACE PROSPECT training (short) courses relevant to ECR, including a foundational week-long session on “Conflict Resolution, Participation and Consensus Building for Planners”, which was delivered three times in 2007 and attended by approximately 100 students. This course is also being regionally offered three times in 2008. Two other related courses, are also offered again in 2008 as part of the PROSPECT program: “Public Involvement and Team Planning”, and “Public Involvement- Communication” (one session each).

USACE Field Offices

(A listing of acronyms including those for USACE offices is included as Appendix 3.)

g. The USACE field is divided into eight Divisions and 41 Districts. Seven of the eight Divisions answered all or part of the questionnaire. At both levels, most said they had relatively little advanced knowledge of ECR (as defined in this exercise) and formal reporting requirements. However, some expressed interest in ECR and could see the potential benefits of formal ECR such as with this example from the western U.S.:

“Many, however, would agree that such a program, provided support from upper management, could accrue in short- and long-term savings and encourage more proactive, productive negotiations, notably, on mitigation and endangered species related issues.” [USACE South Pacific Division]

“... experience is that conflicts can be avoided if significant efforts are taken early in the process to involve stakeholders in developing projects. Collaborative working groups, facilitated by third party consultants, with the active participation and buy-in of stakeholders has been very effective in preventing conflict and the eventual need for ECR.” [USACE South Pacific Division]

h. While all not formal ECR (as defined here) many examples of collaborative planning and cooperative interagency efforts were cited as integral, routine elements of contemporary USACE water resources planning and management processes which reflect an integration of collaborative planning and partnering mechanisms into agency doctrine and business practices. These include the use of: regular regional councils such as for the Chesapeake Bay, the Comprehensive Everglades Restoration Program (CERP), and a wide range of other

25 January 2008
U.S. Army Civil Works

special areas of concerns: active Tribal Nations participation in several parts of the country; cooperation on major fish and wildlife (F&W) mitigation initiatives such as the extensive intergovernmental collaboration on the Columbia River system, and including a model transboundary cooperation as part of the Columbia River treaty between the U.S. and Canada; and the use of ADR, mediated consultations in some pre-application regulatory program activities. Such programs sometimes use third parties and fall somewhere between collaborative planning and formal ECR. One response from the west noted:

“Some of processes similar to those described in ECR have been used in the resolution of complex issues of the Missouri River Recovery program to balance all authorized project purposes and to serve the public.” [USACE Northwest Division]

i. Two of the most prominent ECR (third party) efforts initiated were renewed efforts on negotiating new operating plans and manuals for the Missouri River and the naming of substantive expert third party to facilitate conflict resolution processes between the Federal government, the States of Alabama, Florida and Georgia and other stakeholders during a renewed attempt to rewrite the operating manual for the system of reservoirs within the ACT-ACF river basins. Both efforts stemmed from the need to meet new conditions of water variability during extreme events (drought, floods) which has been complicated by uncertainty amidst changing patterns of water use demands. Other cases are mentioned in later questions.

Section 2: Challenges

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

Resources, generally, were seen as the key barrier. However, travel funds for non Federal entities (F) were cited as the most important barrier. This was followed by lack of funds for Federal staff (K); for facilitators and mediators (D). Perceptions of time necessary to do ECR and its intensity (O) and staff ability and expertise (A,B) were seen by about half of the respondents as a problem.

The USACE Northwest Division noted numerous “other” barriers and their quote is instructive as parts of it are likewise reflected in similar responses by others:

“Mistrust in federally sponsored collaborative processes, perceived failures of previous interagency cooperative efforts, lack of collaborative training for non-federal and federal parties, long-held highly entrenched and polarized positions, resistance to change, agency cultures with a limited view of the value of stakeholder collaboration, no highly visible champion for collaboration in the Corps of Engineers, limited participation in collaborative processes by senior level executives..” [USACE Northwest Division].

Some noted that proactive efforts to avoid disputes have paid off and thus limited the need for formal ECR, while other respondents noted that in their recent experience fewer stakeholders see litigation as a productive means to achieve program goals.

25 January 2008
U.S. Army Civil Works

Section 3: ECR Use

3. *Describe the level of ECR use within your department/agency in FY 2007 by completing the table below. [Please refer to the definition of ECR from the OMB-CEQ memo as presented on page one of this template. An ECR “case or project” is an instance of neutral third party involvement to assist parties in reaching agreement or resolving a dispute for a particular matter. In order not to double count processes, please select one category per case for decision making forums and for ECR applications.]*

The USACE field had trouble answering this question. Two Corps district offices (in two different regional divisions) were able to provide data - the Great Lakes and Ohio River Division (LRD) noted 244 ECR cases, the Northwest Division noted 1 case and the other Corps Divisions did not provide a response to the question. It is likely that the questions were not fully understood by the USACE field offices and they had trouble relating it to their programs. It is suggested that in the coming year IWR conduct outreach and ECR education with the Corps field offices, and also engage with the U.S. Institute for ECR in Tucson, AZ on the formulation of supplemental material to the questionnaire which would facilitate more informed responses to the questions.

Some ECR examples, however, were mentioned. In addition to the renewed interest in renegotiating the reservoir operating rules mentioned above for the ACT-ACF, the Comprehensive Everglades Restoration Program (CERP) mitigation plan was also cited as an instance of applying ECR.

4. *Is your department/agency using ECR in any of the priority areas you listed in your FY 2006 ECR Report (if submitted)? (Refer to your response to question 2 in your FY 2006 report.) Please also list any additional priority areas identified by your department/agency during FY 2007, and indicate if ECR is being used in any of these areas.*

Yes, ECR is being used to some extent in the priority areas listed in the 2006 ECR Report: Civil Works planning and operations, including the regulatory programs; and other CW business areas such as ecosystem restoration, navigation, recreation and hydropower. However, the lack of funding resources, and training were again cited as limiting factors. Most field offices did not identify new areas for the use of ECR. One field office LRD mentioned ECR activity in each of its primary business areas of navigation, flood risk management and ecosystem restoration programs. In addition, since USACE field offices do not have formal ECR plans or reporting metrics, this question also received few responses.

5. *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.*

25 January 2008
U.S. Army Civil Works

There was little indication of the current use of any metrics for measuring progress or tracking ECR outcomes in the aggregate by most respondents. As noted in the 2006 report, in the past (1980-1995) USACE had cited a 50 percent reduction in construction contract claims (~ \$500 million annually) which was attributed to the use of ADR. However, as ADR became a routine part of the construction contract management process, this metric was no longer tracked. In this regard, most respondents also indicated that they thought performance measure monitoring would best be accomplished as a centralized function of HQUSACE. Some Corps districts who have used ECR noted that the benefits, although real, are difficult to measure or have not been realized. Reduced litigation costs were mentioned as one metric. However, some suggestions were made on metrics, for example;

“A metric should be developed to track cost, savings and outputs. The successes and challenges of ECR implementation should be shared on common web page to learn from each other to improve the processes to enhance serve to the public.” [USACE Northwest Division, Alaska District]

6. *Does your agency have a system for making the decision to initiate and/or participate in an ECR process? If so, please describe.*

No formal systems for using ECR were mentioned. However, many individual cases of decisions to utilize ECR, some on rather large projects, were cited. Those districts with these experiences indicate that the decision to use ECR happens as a result of the level of controversy or the emergence of conflict, and that usually the senior staff or the district or division commander ultimately makes the determination to use ECR. This underlines the importance of ECR orientation training/education for USACE senior leaders and USACE military commanders to ensure their situational awareness of the conditions warranting consideration of ECR, the availability of advice and technical assistance on the design and use of ECR processes, and the benefits associated with using it.

7. *Describe other significant efforts your agency has taken 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.*

Respondents offered many examples of the use of ECR. They mostly dealt with, collaborative working groups especially for addressing fish and wildlife (F&W), ecosystem restoration, and tribal participation and for interagency coordination on actions requiring multi-lateral agreements. As mentioned earlier, many examples focused on the early intervention or upfront prevention and avoidance of conflict and fall within the ADR spectrum somewhere between collaborative planning and formal ECR, but many examples do reflect the use of third parties to avoid, mitigate or resolve environmental conflicts. However, most applications were not the result of a systematic top-down ECR program, but rather were practical responses to recognized instances of potential controversy or conflict associated with specific USACE program and project needs.

25 January 2008
U.S. Army Civil Works

The USACE South Atlantic Division (SAD) mentioned a few specific noteworthy efforts:

a. Creating a new tool, using a third party, called multi vision integration - "Vision to Action - Multi-Vision Integration" for use on the USACE environmental stewardship of military installations.

"The tool is an innovative interview and visualizing technique for capturing and integrating individual and community visions; utilizing impartial professional artists and facilitators who have people draw/color their visions. "

b. New joint training with Tribal Nations - the "Mastery of the Environmental Operating Principles through Native American Environmental and Cultural Resource Training".

"The objective is to apply and institutionalize those principles found in Native America experiences to current programs and projects. The training has four goals: (1) to develop a better understanding of indigenous cultural, spiritual and environmental beliefs, (2) to share the knowledge and experience of sustainable living, (3) to develop the principles and values necessary to evaluate Federal agency action sustainability and environmental concerns, and (4) to find synergy in the sharing of ideas among Federal agencies in the protection and preservation of the land and natural environment."

c. Creation of a Southeast Natural Resource Leaders Group (SENRLG)

"SENRLG was established in 1984 as a forum by which regional leaders of Federal natural resource agencies in the Southeast could address issues of mutual interest and concern. SENRLG has grown from four agencies to ten and has pursued a number of collaborative initiatives. Member agencies include USACE, EPA, U.S. Fish and Wildlife Service, National Park Service, Tennessee Valley Authority, US Forest Service, U.S. Geological Survey, Natural Resource Conservation Service, National Marine Fisheries Service, Federal Highway Administration, and an ad hoc DOD representative. One of the members serves as Chair of the group, rotating on an annual basis."

d. Creation of the SE Regional Water Resource Council.

"...this is a state-led, federally-supported southeast regional water resource council to the Governors and senior state agency leaders as well as Federal partners in the southeastern states, initiated by USACE. This regional council would create a forum for the states to collaboratively address existing and emerging regional water resource challenges in the region. A regional water resource forum in the Southeast would provide a means to: (1) maintain ongoing multi-state regional dialogue on water resource issues and priorities; (2) develop regional strategies and establish regional priorities for water resource management and investments; (3) provide for regional advocacy with the Administration, Congress, interest groups, business and industry, and others on Federal water resource legislation, policy, and funding priorities; and (4) promote creation of innovative interstate partnerships to address critical water resource issues."

USACE Districts within the South Pacific Division (SPD) mentioned special uses of third party mediated and facilitated groups such as;

"Truckee Meadows working group, Lower American River Task Force, CALFED, Sacramento River Bank Stabilization Interagency working group, Guadalupe River Flood Control Project Collaborative, Folsom Dam Corps-Bureau joint federal project partnership, Comprehensive Study stakeholder working groups. [USACE Sacramento District (SPK)]"

25 January 2008
U.S. Army Civil Works

“Partnering sessions with contractors and sponsors at the agency’s executive level are utilized as a proactive approach to building trust and resolving issues before they lead to conflict. These quarterly partnering sessions engage a facilitator to most effectively communicate and deal with any issues of concern. [USACE San Francisco District (SPN)]”

“The Delta Long Term Management Strategy (Delta-LTMS) program also engages a neutral, third party facilitator for the monthly executive strategy meetings, as well as for weekly working group meetings, involving our agency, other regulatory and resource agencies, the dredging community, and other stakeholders in the planning and management of the Sacramento-San Joaquin Delta waterways. This program works on issues and addresses concerns in a collaborative forum. [USACE San Francisco District (SPN)]”

8. *Briefly describe your departments’/agency’s most notable achievements or advances in using ECR in this past year.*

This question mirrors question 7 and also question 9. The responses, once again, indicate that the ECR experiences in USACE are to be found in specific cases. For examples, from the USACE Northwest Division (NWD):

“In establishing a Missouri River Recovery Implementation Committee representing multi States, Special Interest Groups and Stakeholders, ECR has been highly successful in the resolution of stalemate among these representatives. This was accomplished by our higher HQ, Northwestern Division and will be included in their survey report.”

“...working groups that collaboratively resolved and continue to resolve environmental issues without litigation:

- Local Sediment Management Group
- Federal Highways and State Transportation NEPA 4040 Merger Process
- Systems Configuration Team
- Fish Facilities Design Work Group
- McNary Lakeshore Management Plan [USACE Walla Walla District (NWW)]

From the USACE South Atlantic Division (SAD):

“The level of interest in multi-vision integration among agencies..”

“Southeast regional water resource council....” (see response 7d above)

And, from the USACE South Pacific Division (SPD):

“... used a third party mediator for the ESA Collaborative Program. Conservation Breeding Specialist Group facilitated a symposium on the Population Viability Assessment (PVA) and Population and Habitat Viability Assessment (PHVA) for the Rio Grande Silvery Minnow along the Rio Grande among Federal, state, local agencies, non-profit groups, local businesses and tribes..”

9. ECR Case Example

Provide a description of an ECR case (preferably completed in FY 2007) summarizing the presenting problem or conflict, how it was addressed through the

25 January 2008
U.S. Army Civil Works

use of the principles for engagement in ECR (Appendix A of the Policy Memo, attached), and what outcome was achieved. Please include a discussion on the extent to which this was an effective use of ECR, including reference to the likely alternative decision making forum and how the outcomes differed, how resources were expended, and what comparative benefits or drawbacks occurred as a result of the ECR process.

Generally, the ECR Case examples here mirror responses in earlier questions.

a. From the USACE Great Lakes and Ohio River Division:

“The Great Lakes and Ohio River Division has an extremely controversial project at Wolf Creek Dam (Cumberland Lake). The dam impounding this lake has been identified to have safety issues. The lake is upstream of Nashville and many smaller municipalities. Prior to initiating work on the dam the Nashville District embarked on a very integrated program of public awareness. The approach towards educating the public and avoiding ECR involved public meetings, news releases, TV spots, radio announcements and just about every other form of media transmission of information. The District did and outstanding job of dealing with conflict resolution by demonstrating a high degree of sensitivity to the fear of the public and reaching out to them to educate in every manner conceivable.”

b. From the USACE Northwest Division (NWD):

“Numerous milestones associated with the development of the Missouri River Recovery Implementation (MRRIC) were met in 2007 although establishment of the actual MRRIC will be completed in 2008. These milestones include:

Effective direct facilitation of the Federal Working Group (FWG) throughout the MRRIC development process

Development of a process for development of the MRRIC Charter with the full range of Basin Tribes and stakeholders

Facilitation of development of the recommended charter for the MRRIC with range of Tribes and stakeholders over the past year. This included numerous meetings of the drafting and review teams across the Basin as well as public review process for the draft charter. A **consensus** recommended charter is anticipated to be provided by Basin Tribes and stakeholders to the ASA (CW) in January of 2008.”

“.....conflict resolution process for the Baker Dam relicensing effort by Puget Sound Energy (PSE). PSE agreed to a negotiated settlement of mitigation for their relicense. They engaged over 20 representatives of Federal, state, and local resource agencies, local governments, tribal nations, and NGOs over 5 years to develop a plan that was acceptable to all parties. PSE hired excellent facilitators (not PSE employees) who were able over time gain the trust and respect of participants. Without the facilitators, this process could never have been successful. The Negotiated plan was signed early in 2007. (The Corps did not have authority to sign).

“Using a negotiated settlement process required considerable time and support from PSE and participants. It was costly, exhausting, and resulted in a large mitigation plan. However, PSE was ultimately able to avoid going to court over the relicense effort, and has good relationships with basin stakeholders. Signers have agreed they will not pull out of the settlement agreement and sue PSE”

25 January 2008
U.S. Army Civil Works

c. From the USACE South Atlantic Division (SAD):

“..... SAJ initiated an arrangement with the Florida Conflict Resolution Consortium (Dr. Tom Taylor) to facilitate resolution of environmental issues stemming from an ongoing feasibility study for navigation improvements at Port Everglades (Fort Lauderdale), Florida. Various navigation improvement scenarios could have significant impacts highly valued coral reef/hardbottom resources in the project area. There are significant differences between USACE and Federal and state resource agencies, as well as with scientists in the academic community, in regard to the quantification of impacts on these resources and potential measures to mitigate these impacts. The differences have been as fundamental as the appropriate methodologies for analyzing the impacts and mitigation options ranging to the basic assumptions (e.g., coral recovery rates) used in the methodology. The complex issues associated with this project were broken down into a set of manageable elements. A series of meetings, facilitated by Dr. Taylor, were set up to address each element, with each subsequent meeting building upon the progress and accomplishments from the previous meeting. The process is still underway as of early 2008, but it has already helped to significantly narrow the technical gaps and facilitated less hostile, more productive, interaction among the parties. [USACE Jacksonville District (SAJ)]”

“..... the late stages of a feasibility-level study for channel improvements at Miami Harbor. At that time, SAJ successfully used the Florida Conflict Resolution Consortium to resolve differences relative to appropriate mitigation requirements for the project”.

d. From the USACE South Pacific Division (SPD):

“... use of a third party mediator for the ESA Collaborative Program. Conservation Breeding Specialist Group facilitated a symposium on the Population Viability Assessment (PVA) and Population and Habitat Viability Assessment (PHVA) for the Rio Grande Silvery Minnow along the Rio Grande among Federal, state, local agencies, non-profit groups, local businesses and tribes. Information collected was unbiased and not based on agencies’ agendas or missions. [USACE Albuquerque District (SPK)]”

“The Guadalupe River flood control project in Downtown San Jose, California has been the only notable example where ECR was used to resolve an environmental dispute to allow project construction to continue. An agreement was reached through an alternative dispute resolution process between 1997-1999. The agreement avoided litigation raised over concerns about the adequacy of the project mitigation plan, which has been raised in Notices of Intent to Sue under the Clean Water Act filed by private environmental interests.

10. *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 major comments ranged from no problems to problems such as: data is not routinely collected; lack of standard format, and; suspense time was too short. In addition, please also refer to the previous response regarding the difficulty USACE field offices encountered with answering questions Nos. 3 & 4.

25 January 2008
U.S. Army Civil Works