

FY 2008 ECR Policy Report to OMB-CEQ

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| Name of Department/Agency responding: | OSJA, Fort Knox |
| Name and Title/Position of person responding: | CPT Mike S. Ni, Military Law & Ethics Attorney |
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| Date this report is being submitted: | 18 November 2008 |

Section 1: Capacity and Progress

1. Describe steps taken by your department/agency to build programmatic/institutional capacity for ECR in 2008, including progress made since 2007. If no steps were taken, please indicate why not.

[Please refer to the mechanisms and strategies presented in Section 5 of the OMB-CEQ ECR Policy Memo, including but not restricted to any efforts to a) integrate ECR objectives into agency mission statements, Government Performance and Results Act goals, and strategic planning; b) assure that your agency's infrastructure supports ECR; c) invest in support or programs; and d) focus on accountable performance and achievement. You are encouraged to attach policy statements, plans and other relevant documents.]

Fort Knox has a variety of installation management plans that provide measures in which to sufficiently resolve any environmental concern that may arise. Each plan includes triggers when review and resolution by relevant pre-determined parties is required. Our office works closely with the installation's Environmental Management Division and other relevant personnel to achieve reasonable and practical resolutions among the parties. If agreement cannot be achieved, however, escalation of resolution authority would occur before resorting to ECR. Accordingly, there has been no need for ECR or use of ECR in either FYs 2007 or 2008.

For example, regarding natural resources on Fort Knox (e.g., animals which are endangered, threatened, or viewed with special concern), the installation maintains an installation natural resources management plan agreement with our higher chain of command (i.e., Installation Management Command, Southeast), the Kentucky Department of Fish & Wildlife Resources and the US Fish & Wildlife Service. The plan provides for the responsibilities of all parties as well the requirement to conduct annual meetings and workshops to note accomplishments or address and resolve concerns.

Another example is the Fort Knox's programmatic agreement addressing cultural resources found on the installation. In this agreement, Fort Knox cooperates with both the Kentucky State Historic Preservation Officer and the Federal Advisory Council on Historic Preservation to ensure compliance with the National Historic Preservation Act. The plan provides a resolution provision for parties to abide in the event of a dispute.

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.

| | Extent of challenge/barrier | | | |
|--|------------------------------|--------------------------|-------------------------------------|--------------------------|
| | Major | Minor | Not a challenge/ barrier | N/A |
| | <i>Check <u>only one</u></i> | | | |
| a) Lack of staff expertise to participate in ECR | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| b) Lack of staff availability to engage in ECR | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| c) Lack of party capacity to engage in ECR | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| d) Limited or no funds for facilitators and mediators | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| e) Lack of travel costs for your own or other federal agency staff | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| f) Lack of travel costs for non-federal parties | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| g) Reluctance of federal decision makers to support or participate | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| h) Reluctance of other federal agencies to participate | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| i) Reluctance of other non-federal parties to participate | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| j) Contracting barriers/inefficiencies | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| k) Lack of resources for staff capacity building | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| l) Lack of personnel incentives | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| m) Lack of budget incentives | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| n) Lack of access to qualified mediators and facilitators | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| o) Perception of time and resource intensive nature of ECR | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| p) Uncertainty about whether to engage in ECR | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| q) Uncertainty about the net benefits of ECR | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| r) Other(s) (please specify): _____ | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| s) No barriers (please explain): _____ | <input type="checkbox"/> | <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 2008 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.]

- **No ECR was used at Fort Knox during FY 2008.**

| | Cases or projects in progress ¹ | Completed Cases or projects ² | Total FY 2008 ECR Cases ³ | Decision making forum that was addressing the issues when ECR was initiated: | | | | Of the total FY 2008 ECR cases indicate how many your agency/department | |
|--------------------------------------|--|--|--------------------------------------|--|-------------------------------------|----------------------|-----------------|---|--|
| | | | | Federal agency decision | Administrative proceedings /appeals | Judicial proceedings | Other (specify) | Sponsored ⁴ | Participated in but did not sponsor ⁵ |
| <i>Context for ECR Applications:</i> | | | | | | | | | |
| Policy development | 0 | 0 | 0 | 0 | 0 | 0 | _____ | 0 | 0 |
| Planning | 0 | 0 | 0 | 0 | 0 | 0 | _____ | 0 | 0 |
| Siting and construction | 0 | 0 | 0 | 0 | 0 | 0 | _____ | 0 | 0 |
| Rulemaking | 0 | 0 | 0 | 0 | 0 | 0 | _____ | 0 | 0 |
| License and permit issuance | 0 | 0 | 0 | 0 | 0 | 0 | _____ | 0 | 0 |
| Compliance and enforcement action | 0 | 0 | 0 | 0 | 0 | 0 | _____ | 0 | 0 |
| Implementation/monitoring agreements | 0 | 0 | 0 | 0 | 0 | 0 | _____ | 0 | 0 |
| Other (specify): _____ | _____ | _____ | _____ | _____ | _____ | _____ | _____ | _____ | _____ |
| TOTAL | 0 | 0 | 0 | 0 | 0 | 0 | _____ | 0 | 0 |
| | (the sum should equal Total FY 2008 ECR Cases) | | | (the sum of the Decision Making Forums should equal Total FY 2008 ECR Cases) | | | | (the sum should equal Total FY 2008 ECR Cases) | |

¹ A “case in progress” is an ECR case in which neutral third party involvement began prior to or during FY 2008 and did not end during FY 2008.

² A “completed case” means that neutral third party involvement in a particular matter ended during FY 2008. The end of neutral third party involvement does not necessarily mean that the parties have concluded their collaboration/negotiation/dispute resolution process, that all issues are resolved, or that agreement has been reached.

³ “Cases in progress” and “completed cases” add up to “Total FY2008 ECR Cases”.

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

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

4. Is your department/agency using ECR in any of the substantive priority areas (i.e., NEPA, Superfund, land use, etc.) you listed in your FY 2007 ECR Report? Please also list any additional priority areas identified by your department/agency during FY 2008, and indicate if ECR is being used in any of these areas.

- **No ECR was used at Fort Knox during FY 2007.**
- **No ERC report was submitted by this agency in FY 2007**

| List of priority areas identified in your department/agency FY 2007 ECR Report | Check if using ECR | Check if use has increased since FY 2007 |
|--|--------------------------|--|
| N/A | <input type="checkbox"/> | <input type="checkbox"/> |
| _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| List of additional priority areas identified by your department/agency in FY 2008 | Check if using ECR | |
| Land Use – Contamination of drinking water wells due to natural gas drilling by private enterprise | <input type="checkbox"/> | |
| Land Use – Encroachment by private land developers | <input type="checkbox"/> | |
| NEPA – BRAC construction | <input type="checkbox"/> | |
| | <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?* [You are encouraged to attach examples or additional data]

N/A

6. Describe other significant efforts your agency has taken in FY 2008 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.

Our office ensures the legal services we provide are user friendly to the installation personnel responsible for environmental matters (e.g., provide a presence at meetings and forums, provide advisory comments, regular visits to various installation offices). In this manner, our office is current on any significant environment issue and the installation does not hesitate to resort to JAG before a concern proliferates into a much larger problem.

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.

N/A

8. ECR Case Example

- a. Using the template below, provide a description of an ECR case (preferably completed in FY 2008). Please limit the length to no more than 2 pages.

| Name/Identification of Problem/Conflict |
|---|
| Overview of problem/conflict and timeline, including reference to the nature and timing of the third-party assistance |
| N/A |
| Summary of how the problem or conflict was addressed using ECR, including details of how the principles for engagement in ECR were used (See Appendix A of the Policy Memo, attached) |
| N/A |
| Identify the key beneficial outcomes of this case, including references to likely alternative decision making forums and how the outcomes differed as a result of ECR |
| N/A |
| Reflections on the lessons learned from the use of ECR |
| N/A |

- 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:

| • N/A | Check <u>all</u> that apply | Check if | |
|--|--------------------------------|--------------------------|--------------------------|
| | | Not Applicable | Don't Know |
| Protracted and costly environmental litigation; | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Unnecessarily lengthy project and resource planning processes; | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Costly delays in implementing needed environmental protection measures; | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Foregone public and private investments when decisions are not timely or are appealed; | <input 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 type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Deep-seated antagonism and hostility repeatedly reinforced between stakeholders by unattended conflicts. | <input 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.

No difficulties. Our office has a close working relationship with Fort Knox's Environmental Management Division and is kept up to date with significant environmental matters.

Please attach any additional information as warranted.

Report due January 15, 2009.

Submit report electronically to: ECRReports@omb.eop.gov