

SUPPORTING STATEMENT

INFORMATION COLLECTION REQUEST

for the

Application for National Roster of Environmental Dispute Resolution and  
Consensus Building Professionals  
(Control Number 3320-0008, Expiring 01/31/2009)

The U.S. Institute for Environmental Conflict Resolution

October 22, 2008

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## **A. Abstract**

The U.S. Institute for Environmental Conflict Resolution (the U.S. Institute) plans to continue collecting information from environmental conflict resolution neutral professionals who desire to become members of the National Roster of Environmental Dispute Resolution and Consensus Building Professionals (National ECR Roster), from which those involved in environmental, natural resource, or public lands disputes can locate and may select providers of neutral services. Responses to the collection of information (the application) are voluntary but required to obtain a benefit: listing on the National ECR Roster.

## **B. Justification**

### **1. Need and Authority for Collection**

#### *1a. Background: U.S. Institute for Environmental Conflict Resolution*

The U.S. Institute was created in 1998 by the Environmental Policy and Conflict Resolution Act (P.L. 105-156). It is a federal program established by the U. S. Congress to assist parties in resolving environmental, natural resource, and public lands conflicts. The U.S. Institute is part of the Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation, an independent federal agency of the executive branch, and is overseen by a board of trustees appointed by the President.

The U.S. Institute was created to assist the Federal Government in implementing Section 101 of the National Environmental Policy Act (NEPA) (42 U.S.C. 4331) by providing assessment, mediation, training, and other related services to resolve environmental conflicts involving federal agencies. The U.S. Institute accomplishes most of its work by partnering or contracting with, or referrals to, experienced practitioners. By statutory mandate, the U.S. Institute works with conflict resolution providers within the geographic area of the conflict whenever practicable (20 U.S.C. Sec. 5605, P.L. 105-156.)

The U.S. Institute serves as an impartial, non-partisan institution providing professional expertise, services, and resources to all parties involved in such disputes, regardless of who initiates or pays for assistance. It helps parties determine whether collaborative problem solving is appropriate for specific environmental conflicts, how and when to bring all the parties to the table, and whether a third-party facilitator or mediator might be helpful in assisting the parties in their efforts to reach consensus or to resolve the conflict. In addition, the U.S. Institute maintains the National ECR Roster, a roster of qualified facilitators and mediators with substantial experience in environmental conflict resolution, and can help parties in selecting an appropriate neutral.

#### *1b. Background: National ECR Roster and Application*

The application for the National ECR Roster is being used pursuant to OMB Control No. 3320-0008, clearance approved October 25, 2005, and scheduled to expire January 31, 2009 (extended

from previous expiration date of October 31, 2008).

The information collected in the application for the National ECR Roster is the basis for an online searchable database, used to locate appropriate practitioners by matching desired characteristics with the information in the application. The application was first available in September 1999 and remains available on a continuous basis. The National ECR Roster first became operational in February 2000 with 60 members and currently includes more than 287 members from 41 states, the District of Columbia, and two Canadian provinces. They represent a broad cross-section of professional backgrounds and case experience. Each member has documented experience which meets the roster entry criteria, and each has experience as a neutral in some or all of the following: mediation, facilitation, consensus building, process design, conflict assessment, system design, neutral evaluation/fact finding, superfund allocation, and/or regulatory negotiation. The application information for roster members, in the format of a Practitioner Profile, is directly available online and also available through the U.S. Institute to those requesting referral services.

#### *1c. Entry Criteria*

The specific entry criteria and applicable definitions are available from the U.S. Institute's web site: [www.ecr.gov](http://www.ecr.gov). Generally stated, the entry criteria require that an applicant have:

- (1) Served as the lead neutral in a collaborative process (e.g., mediation, consensus building, conflict assessment) for at least 200 case hours in two to ten environmental cases, and
- (2) Accumulated a total of 60 points across three categories: additional case experience and complex case experience; experience as a trainer or trainee; and substantive work/volunteer/educational experience in fields related to Alternative Dispute Resolution (ADR)/Environmental Conflict Resolution (ECR), such as law, science, public administration.

#### *1d. The Application Form*

The application can be viewed online at the U.S. Institute's Web site: [www.ecr.gov](http://www.ecr.gov) (review a hard copy sample application or simply register in the roster application system to access the online application). A hard copy sample application may also be obtained from the U.S. Institute for those without Web access. (Contact: Kathleen Docherty, Roster Manager, U.S. Institute for Environmental Conflict Resolution, 130 South Scott Ave., Tucson, Arizona 85701. Fax: 520-670-5530. Phone: 520-901-8501. E-mail: [docherty@ecr.gov](mailto:docherty@ecr.gov)).

#### *1e. Development and Need for the National ECR Roster*

The roster was developed with the support of the U.S. Environmental Protection Agency (EPA). Based on a 1997 study concerning the potential of a national roster of qualified practitioners, EPA decided to support the development of such a roster through the U.S. Institute.

To develop the project, the EPA and the U.S. Institute brought together a work group consisting of EPA dispute resolution professionals and contracting officers, state dispute resolution officials, private dispute resolution practitioners and academics. Informed in part by ideas from the individuals in this group, the EPA and the U.S. Institute proposed roster entry qualifications and a draft application, which were published in the Federal Register in November 1998 (63 FR 64699-64713.) Before the entry criteria and application were finalized, the comments received in response to the Federal Register notice were reviewed. Outreach continued through meetings and newsletter articles, as well as individual communications to professional associations, state and federal government agencies, dispute resolution firms, individual practitioners, professional associations of attorneys, and environmental and citizen groups. In September 1999, the U.S. Institute began accepting applications.

The roster was created, and continues to be needed, for several reasons. The use of ADR in the environmental and public policy arena has grown markedly over the last two decades. In this context, ADR processes now include techniques ranging from conflict prevention, such as consensus building and facilitation of public policy dialogues, to specific dispute resolution through assisted negotiations and mediation. The number of ECR practitioners has grown as the field has gained prominence.

An essential step in any dispute resolution process occurs when parties select a practitioner. Parties making the selection rightfully expect that the practitioner will be qualified to provide the service sought and has experience and style matched well to the nature of the issues and to the parties. The National ECR Roster is designed to advance the interests of the growing field of dispute resolution, reflect the evolving standards of best practice, and help direct the expenditure of public funds for quality services.

The U.S. Institute's enabling legislation directs the Institute to work with practitioners located near the conflict whenever practical. Consistent with this mandate, the U.S. Institute must be able to identify appropriate, experienced dispute resolution and consensus building professionals in an efficient manner. The National Roster of ECR Practitioners is necessary for the proper performance of the U.S. Institute's goals, including resolving Federal environmental disputes, improving the ability of Federal agencies and other interested parties to engage in ECR effectively, and promoting collaborative problem-solving and consensus building.

Finally, the Administrative Dispute Resolution Act (ADR Act) of 1996 (5 U.S.C. 571 et seq.) authorizes the Federal government to contract with dispute resolution professionals (e.g., facilitators or mediators) to assist it and other parties to disputes in reaching an agreement, settlement, or consensus. The ADR Act authorizes the government to take steps to make identifying and contracting with neutrals easier (cf. 5 U.S.C. 573(c)).

The goal of the National ECR Roster is to improve access to qualified environmental dispute resolution and consensus building professionals for the U.S. Institute and others sponsoring or engaging in environmental conflict resolution processes. The roster expedites the identification of appropriate professionals, shortens the time needed to complete contracting documents, and helps refer parties to practitioners, particularly practitioners in the locale of the dispute.

The roster provides users with detailed Practitioner Profiles, derived directly from information contained in the application, to be used as a first step in the process of selecting an appropriate neutral. The application form provides the basis for the Practitioner Profile, to which the online search categories are connected and allows easy access and review of information for online searchers and referral requestors. In addition, the use of a form to collect specific information regarding the practitioner's experience standardizes the responses and applicant information. Use of a standard form allows U.S. Institute personnel to review applications for eligibility more quickly and fairly than if the information were submitted in a nonstandard format.

## **2. Use of the Information**

Each application is submitted to the U.S. Institute (all applications in the last three years have been submitted electronically from the Web-based application system). Each application is reviewed by the U.S. Institute's referral services manager, Joan Calcagno, for compliance with the entry criteria. The applicant is contacted where application information is ambiguous, in order to clarify and assist the applicant in revising and re-submitting the application. References have been contacted for approximately 15% of the applications; some are randomly selected for general confirmation and others are checked because of questions specific to the application. All applicants whose application information meets the entry criteria are so informed. Each new roster member is sent a copy of his or her application/Practitioner Profile. Each member's information then becomes available as part of the online searchable database. Applicants who do not meet the criteria are informed and encouraged to apply again when they have gained the necessary experience.

The U.S. Institute uses the roster (specifically the information collected in the application) as a resource when making referrals to those searching for neutral ECR professionals with specific experience, backgrounds, or expertise (external referrals). The Institute also uses the roster as a resource when locating appropriate ECR neutral professionals with whom to partner/sub-contract for projects in which the Institute is involved (internal referrals). The roster referral system is enhanced through cooperation with existing programs and networks of environmental dispute-resolution and consensus-building practitioners familiar with the issues in their respective states and regions.

The online roster search system, which was launched in 2000, originally enabled select government employees to access roster member Profiles. EPA Conflict Prevention and Dispute Resolution Center, and Regional EPAADR personnel have had direct access to the search since February 2000. The administrators of the EPA prime contract gained direct access in May 2003. The DOI Office of Collaborative Action and Dispute Resolution (CADR) and several members of the DOI Dispute Resolution Council (IDRC: ADR personnel from various DOI bureaus) have been searchers since November 2002. Many roster members have also become searchers. In October 2004, the roster became directly available on the Web to anyone interested in locating ECR practitioners. During Federal fiscal years 2006, 2007 and 2008, more than 400 people have registered to search the roster, bringing total searcher registration to nearly 700. The number of online/direct searches conducted

averages approximately 20 per month. In addition, the U.S. Institute continues to rely on the roster in order to identify appropriate neutrals for cases managed by the U.S. Institute and to provide referrals to requestors seeking third-party practitioners.

Federal agencies are not required to select from the roster. Professionals not on the roster remain fully eligible to serve as ECR practitioners in disputes involving federal agencies. Finally, being listed on the roster does not guarantee additional work for the practitioner.

### **3. Use of Automated, Electronic, Mechanical, or Other Technological Collection Techniques**

The application is available online to any Web user, through a simple user registration system. Hard copy applications are available from the U.S. Institute by request for those without access to the Web. An application, upon approval for listing on the roster, is converted to the roster member's Web-based Profile, which the roster member can access and update online.

### **4. Nonduplication**

Related rosters and directories of consensus building and dispute resolution professionals were reviewed as part of the development for the National Roster of ECR Practitioners. None were found to contain the requisite information on environmental conflict resolution and consensus building professionals. Although the EPA operates a national service contract that manages major cases through a list of experienced providers, it is limited in scope and membership, and as a consequence it can be burdensome to use to identify neutrals for small or localized cases. Most other Federal agencies have no vehicle or information available to assist in this important first step to conducting a good dispute resolution process. The National ECR Roster is the only roster of its kind.

### **5. Minimizing Collection of Information Impacts on Small Businesses**

This is not applicable to this ICR.

### **6. Consequences to Federal Program or Policy Activities if Collection is Not Conducted or is Conducted Less Frequently**

Using the roster standardized application, which is the means for adding new members and is the foundation for keeping existing members' information current, provides an efficient and effective way to continue, and to increase, easy access to appropriate mediators and facilitators. It is critical that the U.S. Institute continues to have an up-to-date, efficient, and equitable means to access appropriate, qualified neutrals with whom to partner/contract in order to fulfill its statutory requirement to work with practitioners in the locale of the dispute. In addition, more than 700 people have registered in the roster search system (with more registering every week). All would lose access to a valuable resource were the application discontinued.

Information for membership on the roster is collected only once, on the initial application. Voluntary updating of member information is done online. Roster members are periodically

reminded to update, and are encouraged to do an annual review of data in their Profile. Less frequent updates would deprive roster users of reasonably current information.

## **7. Special Circumstances**

This information collection does not require respondents to:

- report information to the Agency more often than quarterly,
- prepare a written response to a collection of information in fewer than 30 days after receipt of a request,
- submit more than an original and two copies of any document, or
- retain records, other than health, medical, government contract, grant-in-aid or tax records, for more than three years.

This information collection does not collect information in a manner:

- connected with a statistical survey,
- requiring use of a statistical data classification that has not been reviewed and approved by OMB,
- that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use or,
- requiring the respondent to submit proprietary, trade secret or other confidential information unless the Agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.

## **8. Public Notice Required Prior to ICR Submission to OMB and Consultations**

A Federal Register Notice was published on July 30, 2008 (Vol. 73, No. 147, 44289-44290). It opened a 60-day public comment period. The notice described in detail the continuing need for the roster, its use, and the qualifications for entry. The notice also contained information about how to access an application. The U.S. Institute received no comments. Thus no changes were made to the application. A second Federal Notice was published on October 20, 2008 (Vol. 73, No. 203, 62339-62340). It opened a 30-day public comment period. As of October 22, 2008, one comment has been received (*see Appendix C*). The comment does not specifically address the application that is the subject of this ICR. Thus, no changes were made to the application.

Extensive consultations took place in the initial development of the roster and the application. In addition, comments from roster members have been invited in continuing communications with them. All publicly disseminated roster information invites comments from applicants and roster member communications invite feedback. In February 2002, the U.S. Institute reconvened the roster working group, which includes roster members and users, for the purpose of reviewing the management of the roster and receiving individual input. The application, application process, and updating process were topics of discussion. The vast majority of comments from all sources have supported continuation of the current application and processes.

## **9. Provision of Gift or Payment to Respondents**

The collection of information does not provide any payment or gift to respondents.

## **10. Confidentiality**

The information submitted in the information collection (the application) will not be confidential. No assurances of confidentiality have been provided to respondents. Social Security numbers, company tax identifiers or other personal or organizational identifiers are not requested. If such information is required for the user's contracting purposes, the users will collect the information themselves as a part of their contracting effort. The application requests references for two of the qualifying cases. These references, however, are not made available to roster searchers and are used only by the U.S. Institute to verify representations made by applicants. As noted above, roster members are able to access their own Profiles for viewing and modification. Each Profile is password-protected, so members are not able to alter the contents of any Profile other than their own. Roster users with direct electronic access are able to view and sort information contained on the database (the roster member Profiles) but not modify any of the information. Data entry and removal to the U.S. Institute's electronic systems is restricted to U.S. Institute personnel and its contractors.

Other than the information on the application form, the only other information that is maintained, is data regarding referral and selection of roster members (i.e., the record of when and to whom a referral of a member's name was provided by the U.S. Institute as a result of an inquiry, which roster members were referred for a particular case, and which members were retained, where that information is available).

## **11. Sensitive Questions**

The only data collected that could be considered potentially sensitive is the roster member's hourly fee. However, individuals on the original workgroup reported they do not consider that the hourly fee they would enter onto the application would be sensitive information because it will be a loaded labor rate, not broken down into salary, benefits, fees, and profit. These individuals have also indicated that a set hourly fee is usually a negotiated rate on specific cases and may vary. To accommodate any concerns, the form allows applicants and roster members to choose to leave the fee amount field blank and to provide explanatory text, e.g. "rates are variable."

## **12. Estimated Total Annual Time Burden to Respondents**

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information and transmitting information. The

customary and usual business practices of locating a resume and references are not included in the burden estimate because ECR neutral professionals customarily provide potential clients with resumes that include education information, employment history, examples of cases handled, and reference contact information.

The time estimate for the update is based on experience administering the National ECR Roster, including test updates of sample application/Profile and comments received from existing roster members. It is expected that up to 30 practitioners per year will apply for inclusion on the roster in each of the three years of the ICR extension. This number is extrapolated from the number of applicants per year since the application ICR approval. The estimated number of annual updates is based on experience administering the roster, which indicates that some roster members update more, some less. There are currently 287 roster members, and it is anticipated that approximately 125 existing respondents/roster members will update their information in each of the three years.

#### *12a. Respondent Time Burden Estimates*

First year:

New applicants/respondents:

Estimated number of new respondents:	30 respondents
Frequency of response:	1
Estimated time per one-time, initial response:	2.5 hours
Estimated total time burden:	75 hours (2.5 hours x 30 respondents)

Existing Respondents (roster members), Updates:

Estimated number of existing respondents (updates):	125 respondents
Frequency of response:	1
Estimated time:	0.25 hour
Estimated total time burden:	31 hours (0.25 hour x 125 updates)

Subsequent years:

New applicants/respondents:

Estimated number of new respondents:	30 respondents
Frequency of response:	1
Estimated time per one-time, initial response:	2.5 hours
Estimated total time burden:	75 hours (2.5 hours x 30 respondents)

Existing Respondents (roster members), Updates:

Estimated number of existing respondents (updates):	125 respondents
Frequency of response:	1
Estimated time:	0.25 hour
Estimated total time burden:	31 hours (0.25 hour x 125 updates)

Estimated Total Annual Time Burden:

Each year:                   **106 hours**  
                                      75 hours for 30 new applicants/respondents  
                                      31 hours for 125 updates

#### *12b. Valuation of Respondent Time Burden*

The valuation of time burden is based on \$44.78 per hour in accordance with the current Bureau of Labor Statistics reports for valuing time (civilian workers category of “professionals and related occupations”), rather than estimated contractor rate.

#### Individual Respondent Burden Over Three-year Life of ICR

Three-year total for each <u>new</u> applicant/respondent:	
(2.5 hrs initial application + .25 hr update + .25 hr update) = 3.0 hours	\$134
Annualized average for each new applicant/respondent:	\$45 per year
Three-year total for each existing/updating respondent: 0.75 hours	\$33
Annualized average for each existing/updating respondent:	\$11 per year

For additional information, *see Appendix B: Burden and Cost Tables.*

### **13. Estimated Total Annual Cost Burden to Respondents**

There are no capital or start-up costs. Existing respondents will use the same computer equipment to access the application for updates as was used to submit their application. New respondents can access an application using an existing business computer. A hard copy application can be requested by phone or mail and can be submitted through the mail, if the applicant has no access to computer equipment or Internet service.

### **14. Estimated Annualized Cost to the Federal Government**

The estimated annualized cost to the Federal government totals \$44,733 (*see Appendix B: Burden and Cost Tables*). The time and cost burden is based on the U.S. Institute’s experience in developing and administering the application/information collection for the National ECR Roster since August 1999. Additionally, the U.S. Institute recently converted its Web site ([www.ecr.gov](http://www.ecr.gov)) to the ASP.NET platform. The roster Web-based operations (roster online search system) will be converted from the current programming language to the ASP.NET platform during the first year of the information collection. Thus, computer programming time and costs are projected to be slightly higher during the first year compared with subsequent years. The programming effort is not expected to disrupt information collection activities (roster members will still be able to update their Profiles and applicants will still be able to submit applications electronically).

### **15. Reasons for Any Program Changes/Adjustments**

No material program changes/adjustments were made.

## **16. Tabulation and Publication of Information**

This is not applicable

## **LIST OF APPENDICES**

Appendix A. Statutory Authority Authorizing the Collection of Information

Appendix B. Burden and Cost Tables

Appendix C. Public Comments in Response to Federal Register Notices

## **Appendix A. Statutory Authority Authorizing the Collection of Information**

- Environmental Policy and Conflict Resolution Act

[DOCID: f:publ156.105]

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ENVIRONMENTAL POLICY AND CONFLICT RESOLUTION ACT OF 1998

[[Page 112 STAT. 9]]

Public Law 105-156  
105th Congress

An Act

To amend the Morris K. Udall Scholarship and Excellence in National Environmental and Native American Public Policy Act of 1992 to establish the United States Institute for Environmental Conflict Resolution to conduct environmental conflict resolution and training, and for other purposes. <<NOTE: Feb. 11, 1998 - [H.R. 3042]>>

Be it enacted by the Senate and House of Representatives of the United States of America in Congress <<NOTE: Environmental Policy and Conflict Resolution Act of 1998.>> assembled,

SECTION 1. SHORT <<NOTE: 20 USC 5601 note.>> TITLE.

This Act may be cited as the ``Environmental Policy and Conflict Resolution Act of 1998''.

SEC. 2. DEFINITIONS.

Section 4 of the Morris K. Udall Scholarship and Excellence in National Environmental and Native American Public Policy Act of 1992 (20 U.S.C. 5602) is amended--

(1) by redesignating paragraphs (4), (5), (6), and (7) as paragraphs (5), (9), (7), and (8), respectively;

(2) by inserting after paragraph (3) the following:

``(4) the term `environmental dispute' means a dispute or conflict relating to the environment, public lands, or natural resources;''

(3) by inserting after paragraph (5) (as redesignated by paragraph (1)) the following:

``(6) the term `Institute' means the United States Institute for Environmental Conflict Resolution established pursuant to section 7(a)(1)(D);''

(4) in paragraph (7) (as redesignated by paragraph (1)), by striking ``and'' at the end;

(5) in paragraph (8) (as redesignated by paragraph (1)), by striking the period at the end and inserting ``; and''; and

(6) in paragraph (9) (as redesignated by paragraph (1))--

(A) by striking ``fund'' and inserting ``Trust Fund''; and

(B) by striking the semicolon at the end and inserting a period.

SEC. 3. BOARD OF TRUSTEES.

Section 5(b) of the Morris K. Udall Scholarship and Excellence in

National Environmental and Native American Public Policy Act of 1992 (20 U.S.C. 5603(b)) is amended--

- (1) in the matter preceding paragraph (1) of the second sentence, by striking ``twelve'' and inserting ``thirteen''; and
- (2) by adding at the end the following:

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``(7) The chairperson of the President's Council on Environmental Quality, who shall serve as a nonvoting, ex officio member and shall not be eligible to serve as chairperson.''.

#### SEC. 4. PURPOSE.

Section 6 of the Morris K. Udall Scholarship and Excellence in National Environmental and Native American Public Policy Act of 1992 (20 U.S.C. 5604) is amended--

- (1) in paragraph (4), by striking ``an Environmental Conflict Resolution'' and inserting ``Environmental Conflict Resolution and Training'';
- (2) in paragraph (6), by striking ``and'' at the end;
- (3) in paragraph (7), by striking the period at the end and inserting a semicolon; and
- (4) by adding at the end the following:

``(8) establish as part of the Foundation the United States Institute for Environmental Conflict Resolution to assist the Federal Government in implementing section 101 of the National Environmental Policy Act of 1969 (42 U.S.C. 4331) by providing assessment, mediation, and other related services to resolve environmental disputes involving agencies and instrumentalities of the United States; and

``(9) complement the direction established by the President in Executive Order No. 12988 (61 Fed. Reg. 4729; relating to civil justice reform).''.

#### SEC. 5. AUTHORITY.

Section 7(a) of the Morris K. Udall Scholarship and Excellence in National Environmental and Native American Public Policy Act of 1992 (20 U.S.C. 5605(a)) is amended--

- (1) in paragraph (1), by adding at the end the following:

``(D) Institute for environmental conflict resolution.--

``(i) In general.--The Foundation shall--

``(I) establish the United States Institute for Environmental Conflict Resolution as part of the Foundation; and

``(II) identify and conduct such programs, activities, and services as the Foundation determines appropriate to permit the Foundation to provide assessment, mediation, training, and other related services to resolve environmental disputes.

``(ii) Geographic proximity of conflict resolution provision.--In providing assessment, mediation, training, and other related services under clause (i)(II) to resolve environmental disputes, the Foundation shall consider, to the

maximum extent practicable, conflict resolution providers within the geographic proximity of the conflict.''; and  
(2) in paragraph (7), by inserting ``and Training '' after ``Conflict Resolution''.

SEC. 6. ENVIRONMENTAL DISPUTE RESOLUTION FUND.

(a) Redesignation.--Sections 10 and 11 of the Morris K. Udall Scholarship and Excellence in National Environmental and Native American Public Policy Act of 1992 (20 U.S.C. 5608, 5609) are redesignated as sections 12 and 13 of the Act, respectively.

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(b) Environmental Dispute Resolution Fund.--The Morris K. Udall Scholarship and Excellence in National Environmental and Native American Public Policy Act of 1992 (20 U.S.C. 5601 et seq.) (as amended by subsection (a)) is amended by inserting after section 9 the following:

``SEC. 10. ENVIRONMENTAL DISPUTE RESOLUTION <<NOTE: 20 USC 5608a.>>  
FUND.

``(a) Establishment.--There is established in the Treasury of the United States an Environmental Dispute Resolution Fund to be administered by the Foundation. The Fund shall consist of amounts appropriated to the Fund under section 13(b) and amounts paid into the Fund under section 11.

``(b) Expenditures.--The Foundation shall expend from the Fund such sums as the Board determines are necessary to establish and operate the Institute, including such amounts as are necessary for salaries, administration, the provision of mediation and other services, and such other expenses as the Board determines are necessary.

``(c) Distinction From Trust Fund.--The Fund shall be maintained separately from the Trust Fund established under section 8.

``(d) Investment of Amounts.--

``(1) In general.--The Secretary of the Treasury shall invest such portion of the Fund as is not, in the judgment of the Secretary, required to meet current withdrawals.

``(2) Interest-bearing obligations.--Investments may be made only in interest-bearing obligations of the United States.

``(3) Acquisition of obligations.--For the purpose of investments under paragraph (1), obligations may be acquired--

``(A) on original issue at the issue price; or

``(B) by purchase of outstanding obligations at the market price.

``(4) Sale of obligations.--Any obligation acquired by the Fund may be sold by the Secretary of the Treasury at the market price.

``(5) Credits to fund.--The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to and form a part of the Fund.''.

SEC. 7. USE OF THE INSTITUTE BY A FEDERAL AGENCY.

The Morris K. Udall Scholarship and Excellence in National Environmental and Native American Policy Act of 1992 (20 U.S.C. 5601 et seq.) (as amended by section 6) is amended by inserting after section 10 the following:

``SEC. 11. USE OF THE INSTITUTE BY A FEDERAL <<NOTE: 20 USC 5608b.>>

AGENCY.

((a) Authorization.--A Federal agency may use the Foundation and the Institute to provide assessment, mediation, or other related services in connection with a dispute or conflict related to the environment, public lands, or natural resources.

((b) Payment.--

((1) In general.--A Federal agency may enter into a contract and expend funds to obtain the services of the Institute.

((2) Payment into environmental dispute resolution fund.--A payment from an executive agency on a contract entered into under paragraph (1) shall be paid into the Environmental Dispute Resolution Fund established under section 10.

((c) Notification and Concurrence.--

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((1) Notification.--An agency or instrumentality of the Federal Government shall notify the chairperson of the President's Council on Environmental Quality when using the Foundation or the Institute to provide the services described in subsection (a).

((2) Notification descriptions.--In a matter involving two or more agencies or instrumentalities of the Federal Government, notification under paragraph (1) shall include a written description of--

((A) the issues and parties involved;

((B) prior efforts, if any, undertaken by the agency to resolve or address the issue or issues;

((C) all Federal agencies or instrumentalities with a direct interest or involvement in the matter and a statement that all Federal agencies or instrumentalities agree to dispute resolution; and

((D) other relevant information.

((3) Concurrence.--

((A) In general.--In a matter that involves two or more agencies or instrumentalities of the Federal Government (including branches or divisions of a single agency or instrumentality), the agencies or instrumentalities of the Federal Government shall obtain the concurrence of the chairperson of the President's Council on Environmental Quality before using the Foundation or Institute to provide the services described in subsection (a).

((B) Indication of concurrence or nonconcurrence.--The chairperson of the President's Council on Environmental Quality shall indicate concurrence or nonconcurrence under subparagraph (A) not later than 20 days after receiving notice under paragraph (2).

((d) Exceptions.--

((1) Legal issues and enforcement.--

((A) In general.--A dispute or conflict involving agencies or instrumentalities of the Federal Government (including branches or divisions of a single agency or instrumentality) that concern purely legal issues or matters, interpretation or determination of law, or enforcement of law by one agency against another agency shall not be submitted to the Foundation or Institute.

``(B) Applicability.--Subparagraph (A) does not apply to a dispute or conflict concerning--  
``(i) agency implementation of a program or project;  
``(ii) a matter involving two or more agencies with parallel authority requiring facilitation and coordination of the various Government agencies; or  
``(iii) a nonlegal policy or decisionmaking matter that involves two or more agencies that are jointly operating a project.

``(2) Other mandated mechanisms or avenues.--A dispute or conflict involving agencies or instrumentalities of the Federal Government (including branches or divisions of a single agency or instrumentality) for which Congress by law has mandated another dispute resolution mechanism or avenue to address or resolve shall not be submitted to the Foundation or Institute.''

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#### SEC. 8. AUTHORIZATION OF APPROPRIATIONS.

(a) In General.--Section 13 of the Morris K. Udall Scholarship and Excellence in National Environmental and Native American Public Policy Act of 1992 (as redesignated by section 6(a)) is amended--

(1) by striking ``There are authorized to be appropriated to the Fund'' and inserting the following:

``(a) Trust Fund.--There is authorized to be appropriated to the Trust Fund''; and

(2) by adding at the end the following:

``(b) Environmental Dispute Resolution Fund.--There are authorized to be appropriated to the Environmental Dispute Resolution Fund established under section 10--

``(1) \$4,250,000 for fiscal year 1998, of which--

``(A) \$3,000,000 shall be for capitalization; and

``(B) \$1,250,000 shall be for operation costs; and

``(2) \$1,250,000 for each of the fiscal years 1999 through 2002 for operation costs.''

#### SEC. 9. CONFORMING AMENDMENTS.

(a) The second sentence of section 8(a) of the Morris K. Udall Scholarship and Excellence in National Environmental and Native American Public Policy Act of 1992 (20 U.S.C. 5606) is amended--

(1) by striking ``fund'' and inserting ``Trust Fund''; and

(2) by striking ``section 11'' and inserting ``section 13(a)''.

(b) Sections 7(a)(6), 8(b), and 9(a) of the Morris K. Udall Scholarship and Excellence in National Environmental and Native American Public Policy Act of 1992 (20 U.S.C. 5605(a)(6), 5606(b), and 5607(a)) are each amended by striking ``Fund'' and inserting ``Trust Fund'' each place it appears.

Approved February 11, 1998.

LEGISLATIVE HISTORY--H.R. 3042 (S. 399):

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CONGRESSIONAL RECORD:

Vol. 143 (1997):  
Nov. 13, considered and passed  
House.

Vol. 144 (1998):  
Jan. 29, considered and passed  
Senate.

<all>

## **Appendix B. Burden and Cost Tables**

- Table 1. Respondent Burden and Cost
- Table 2. Agency Burden and Cost

Table 1.  
Respondent Burden and Cost

Collection Activity	Hours per respondent per year	Number of respondents per year	Total Hours per year	Cost per hour (\$)	Total labor costs		
					first year	second year	third year
Review instructions and resume information, fill out application form (new respondents)	2.5	30	75	44.78	\$3,359	\$3,359	\$3,359
Updates (existing respondents)	0.25	125	31.25	44.78	\$1,399	\$1,399	\$1,399
Each year total:					\$4,758	\$4,758	\$4,758
					3-year aggregate:		\$14,274
					<b>Annualized average:</b>		<b>\$4,758</b>

**Note: Respondents do not incur capital or start up costs.**

Table 2. Agency Burden and Cost

Collection Activity	Cost for salary/benefits, per hour (\$)	Approximate number of hours to perform			Cost* estimate (\$)			Cost subtotals (\$)	Total Costs (\$)
		first year	second year	third year	first year	second year	third year		
Prepare Federal Register Notices and Supplemental Information for information collection renewal request									
roster manager	50	10	0	0	500	0	0	500	
senior staff	75	2	0	0	150	0	0	150	650
Prepare ICR submission for information collection renewal request									
roster manager	50	20	0	0	1000	0	0	1000	
senior staff	75	2	0	0	150	0	0	150	1150
Operations, to include Web and computer system planning, implementation and maintenance related to application and approved member Profiles (information collection)									
roster manager	50	800	700	700	40000	35000	35000	110000	
contract programmer (estimated contractor rate)	150	15	6	6	2250	900	900	4050	
senior in-house programmer	75	30	15	15	2250	1125	1125	4500	
in-house programming assistant	35	20	20	20	700	700	700	2100	120650
Application processing and application/Profile communications (e.g., review and evaluate applications, communicate with applicants and roster member regarding applications/Profile updates)									
roster manager	50	40	30	30	2000	1500	1500	5000	
senior staff	75	30	30	30	2250	2250	2250	6750	11750
							3-year aggregate:	\$ 134,200	
							<b>Annualized:</b>	<b>\$ 44,733</b>	

## **Appendix C. Public Comments in Response to Federal Register Notices**

30-Day Federal Register Notice published October 20, 2008

One comment has been received to date:

Comment received October 21, 2008

THIS AGENCY IS LOSING COMMENTS FROM THE PUBLIC ON THEIR WORK. CAN YOU PLEASE HAVE AN INVESTIGATOR INVESTIGATE THIS AGENCY. I BELIEVE THE ENVIRONMENT IS LOSING OUT EVERY DAY IN DISPUTES SO THE PUBLIC IS BEING HORNSWOGGLED. THE AGENCY IS INEFFECTIVE.

B. SACHAU

15 ELM ST

FLORHAM PARK NJ 07932