

Environmental Collaboration and Conflict Resolution Federal Forum

Meeting Notes

Video/Phone Conference
Wednesday, September 22, 2021
1:00 PM – 2:30 PM Eastern

Welcome, Agenda Review, and Brief Introductions

Steph Kavanaugh (NCECR) welcomed everyone and reviewed the agenda. Participants on the phone and Zoom introduced themselves by name and agency. See [Appendix 1](#) for a participant list.

General Updates from CEQ

The Council on Environmental Quality (CEQ) is bringing renewed attention to robust NEPA analyses, in an efficient manner, that allows for participation in a meaningful way. In Phase 1, CEQ will propose changes to the 2020 NEPA regulation updates. Phase 2 will include a broader suite of NEPA regulation change recommendations.

In line with NEPA regulation review, CEQ will host a Tribal Consultation meeting on September 30, 2021, to explore input from Tribal leaders on CEQ NEPA review generally.

CEQ will also be working on its own update to the 2016 Greenhouse Gas Emissions Guidance following the rescinding of the [“Draft National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions”](#) consistent with recent [Executive Order \(E.O.\) 13990, “Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis.”](#) Until this update is complete, agencies should use of the 2016 Guidance.

General Updates from NCECR

All data has been received for the ECCR FY 2020 Reports and the 2021 data collection template will be available soon.

The Udall Foundation’s DC office is now officially inside the [University of Arizona’s Washington DC Center for Outreach & Collaboration](#), 1301 Pennsylvania Avenue, NW Suite 500 Washington, DC 20004.

The National Center for Environmental Conflict Resolution (NCECR) hired Seth Cohen as a Senior Program Manager. NCECR is also hiring a new GS-9 or GS-11 position that will be part support for the Native American Alaska Native service area and part support for the Udall Foundation’s Tribal Internship program. The job posting can be found [here](#) and will be posted to USA Jobs soon.

Udall Foundation leadership will be consolidated to Tucson headquarters; Steph Kavanaugh will relocate to Tucson soon but will be back in DC often for ECCR Forums and other events.

NCECR released an assessment report on the use of environmental collaboration and conflict resolution in federal climate initiative in August. The report can be downloaded [here](#). NCECR plans to create a more focused service area around this work.

NCECR is hosting a series of dialogues for “NEPA at 50” in conjunction with the University of Arizona’s Udall Center for Public Policy Studies on October 20-21, 2021. The keynote speaker for October 20th – *Engaging Stakeholders and the Public in the NEPA Process* – is CEQ Chair, Brenda Mallory. The keynote

speaker for October 21st – *Engaging Native Nations and Incorporating Government-to-Government Consultation in the NEPA Process* – is Assistant Secretary of the Army of Civil Works, Jamie Pinkham. More information on these events and registration is available [here](#).

The NCECR Training Program announced available trainings through the middle of 2022. Course descriptions, trainings dates, and registration is available [here](#).

General Updates from Forum Members

Steph Kavanaugh invited agencies to share recent ECCR cases and/or developments:

Department of Energy (DOE)

Department of Energy (DOE) is hosting their annual environmental lawyers training on October 6, 2021 via Webex. The training will feature a session on Tribal successes and issues by Dana Goodson. Any federal attorney who's interested in attending can email steven.miller@hq.doe.gov. There is a possibility of earning CLE credits for this training.

DOE is also planning a CLE panel on the many uses of alternative dispute resolution for environmental and other technical conflicts. Anyone interested in speaking at this event or who wants more information can email steven.miller@hq.doe.gov.

DOE is developing training for senior leadership and those who work with Tribes on how to improve relationships with Tribes. Departments and agencies that are willing to share any guidance or internal materials on Tribal relations trainings, please email steven.miller@hq.doe.gov.

Effective Elevation Procedures in NEPA Discussion

CEQ is looking broadly at how to improve the NEPA process and wants insight from the ECCR Forum participants general and specifically around interagency processes; where conflicts arise because of different missions, objectives, constituents, etc. The conversation does not need to be limited to NEPA; they would also be interested in hearing about other inter-agency processes with conflicts and where CEQ can focus their attention.

Stephanie Kavanaugh opened the discussion with these focused questions:

1. What challenges have you encountered during any stage of interagency collaboration (either as a lead or cooperating agency) during a NEPA process that led to or could have led to formal elevation under 40 C.F.R Part 1504?
2. How could these challenges be addressed?

Forum member comments included the following key points, grouped by themes created by the National Center:

Resource Issues

Hunter Merritt from U.S. Army Corps of Engineers shared that from his field-level view, interagency collaboration challenges are tied to insufficient time and money resources. There often are no resources allocated for inter-agency coordination early in the process.

Leadership

William Hall (DOI) shared that in his experience strong leadership showing that collaboration is the best way forward is what brings people to the table. That leadership from within agencies is critical. If agencies see appealing alternatives to collaboration, such as an appeal process to CEQ, it could undermine the collaborative process. Agencies ultimately must be incentivized to collaborate early. Several ECCR Forum members echoed these sentiments.

Third Party Neutrals for Interagency Disputes

CEQ asked if/when the National Center is brought in to mediate interagency disputes. Brian Manwaring sees this as a very valuable space for the National Center because of the National Center's institutional independence. He added that independence is becoming less important in the ECCR field generally, but it is still important in more contentious situations. It was also noted that the Federal Mediation and Conciliation Service (FMCS) is another neutral federal agency that can serve in this unique role as well.

The National Center, along with other ECCR Forum members, hope to eventually create a course/training on effective inter-agency collaboration. There are reoccurring themes within inter-agency conflicts that could be addressed well within a training. One of these themes is misunderstanding or lack of understanding of another agency's culture, mission, structure, etc.

Differing Agency Requirements

Frank Sprtel (NOAA) shared that he sees inter-agency conflict mostly around competing agency timelines. Many of the timelines are set by statute, and many are compressed timeframes that inherently create tension.

Elevation Procedures

Brian Manwaring shared that agency elevation procedures are often viewed negatively, but the elevation process is a necessary part of the conflict resolution spectrum for some situations and does not mean failure. Conversely, that negative perspective may drive more collaboration in hopes of avoiding elevation procedures.

CEQ Referral Process

CEQ asked whether their referral process should be restructured. ECCR forum members expressed that the sooner these inter-agency disagreements can be worked out, the better, to provide one voice later in the NEPA process. CEQ plays a unique role, often furthering policy objectives and sometime mediating between agencies, when CEQ doesn't have a policy preference on a topic.

One forum member highlighted that ACHP Section 106 discusses elevation processes that ACHP will involve themselves in and that that might be a good example for CEQ as they consider amending the NEPA regulations, and specifically in considering when CEQ would play a role in elevation processes.

CEQ currently has a role in the referral process and mediating disputes on who the lead agency will be. CEQ currently does not have a role in schedule, purpose and need, and alternatives topics. CEQ will consider involvement at these stages.

How the ECCR Community Can Help with Interagency Collaboration

The ECCR Community can continue to advocate for better partnership development from the earliest stages possible. The advocacy comes through capacity building training and project opportunities. Each

organization can remind parties of the dispute resolution centers that exist within their own agencies and throughout the federal government to ensure the resources are used well.

Tribal Consultation

CEQ expressed concern about resource and workload challenges that Tribes face and is looking for ideas on how to best engage Tribes in the NEPA and Section 106 processes. There may be significant funding in policy areas such as renewable energy that will soon require even more Tribal consultation.

The National Center strongly recommends that agencies compensate Tribes for their time and expertise and their travel. Expansion of 638 authority would allow agencies to compensate Tribal participation more easily through sole source contracting with federally recognized Tribes. More generally, the National Center recommends reaching out to each Tribe and learning about their unique capacity and engagement preferences and tailoring resources accordingly. To the degree agencies can support Tribal participation, the better off all processes will be.

Next Steps

- Departments and agencies that are willing to share any guidance or internal materials on Tribal relations trainings, please email steven.miller@hq.doe.gov.

Next Forum Meeting

CEQ and NCECR will identify a date for the next forum meeting in Spring 2022 and send a calendar invite.

Appendix 1

Meeting Attendees

Name	Agency
Amy Coyle	CEQ
Jayni Hein	CEQ
Jomar Maldonado Vazquez	CEQ
Kevin Bowman	CEQ
Thomas Sharp	CEQ
Carrie Greco	U.S. Army
Corey Lawton	U.S. Army Corps of Engineers
Hal Cardwell	U.S. Army Corps of Engineers
Hunter Merritt	U.S. Army Corps of Engineers
Steve Miller	Department of Energy
William Hall	Department of the Interior
Gina Cerasani	Environmental Protection Agency
JD Hoyle	Federal Energy Regulatory Commission
David Moora	Federal Mediation and Conciliation Service
Megan Blum	Federal Transit Administration
Sharon Timko	U.S. Forest Service
Frank Sprtel	National Oceanic and Atmospheric Administration
Alyssa Bonini	Udall Foundation, NCECR

Brian Manwaring	Udall Foundation, NCECR
Melanie Knapp	Udall Foundation, NCECR
Monique Mullenau	Udall Foundation, NCECR
Seth Cohen	Udall Foundation, NCECR
Stephanie Kavanaugh	Udall Foundation, NCECR
Chris Gamache	Office of Management and Budget
Leslie Coker	EPA