

# Environmental Collaboration and Conflict Resolution (ECCR) Federal Forum

## Meeting Notes

Video/Phone Conference

Tuesday, February 1, 2022, 10:30 AM – 12:00 PM Eastern Time

### Welcome and Introductions

Steph Kavanaugh of the National Center for Environmental Conflict Resolution (National Center) welcomed everyone. Participants on the phone and Zoom introduced themselves by name and agency. See [Appendix 1](#) for a participant list.

### General Updates from CEQ

Tom Sharp, Council on Environmental Quality (CEQ), shared that CEQ is focused on updating the Greenhouse Gas Emissions Guidance and moving forward National Environmental Policy Act (NEPA) regulations. CEQ is considering how to incorporate Environmental Collaboration and Conflict Resolution (ECCR) into these regulations and is happy to serve as a partner to the National Center and other ECCR Forum participants in this area. If anyone has questions on the rulemaking, they can contact [Amy Coyle at CEQ](#).

### General Updates from the National Center

Brian Manwaring (National Center) updated everyone that a draft of the FY 2020 ECCR in the Federal Government Synthesis Report has been circulated via email. Steph Kavanaugh (National Center) encouraged everyone to review the draft report and send her any edits by February 18, 2022. She also thanked agencies that had submitted their FY 2021 agency reports and looks forward to receiving more in coming weeks.

The National Center recently hired a Program Associate (PA) for the Native American Alaska Native Service (NAAN) Area. This PA will be based in the Udall Foundation's DC Office and will also support the Native American Congressional Internship Program. The National Center is also in the process of hiring an additional PA to work on the Missouri River Recovery Implementation Committee (MRRIC) project. The University of Arizona's Udall Center for Studies in Public Policy has an open position for a post-doc focused on stakeholder engagement in environmental governance. Please feel free to share out the job posting available online [here](#).

On February 8, 2022, the National Center is offering a webinar with an overview of the findings from an assessment on ECCR in Support of Federal Climate Initiatives. The National Center has multiple open trainings led by Senior Project Manager, Dr. Marci DuPraw between March and July 2022, including several in-person DC trainings in June and July. Information about it and registration is available online [here](#).

Dr. Julie Minde, a Udall Center and National Center sponsored post-doctoral researcher, has been focused on GIS in environmental processes working with Maria Lantz at U.S. Army Corps of Engineers

(USACE). Dr. Minde is planning to conduct a workshop in DC in May 2022 to present her findings and provide a platform for discussion amongst Federal agencies.

## General Updates from Forum Members

U.S. Army Corps of Engineers (USACE)

USACE is creating a guide on the Paperwork Reduction Act (PRA), similar to the fact sheet and flowchart they created on Federal Advisory Committee Act (FACA) for ECCR processes. [Hal Cardwell \(USACE\)](#) asked any agencies that have resources on this or are interested in collaborating to please get in touch with him. The PRA can apply when information is collected from the public. Examples of this could include differences and potential requirements between formal surveys, asking stakeholders in a room how they want to participate, or getting input on a study or planning process.

The Department of Energy (DOE) and National Oceanic and Atmospheric Administration (NOAA) noted that they are not aware of any resources in their agencies but will follow-up. The Bureau of Land Management (BLM) has a guide that touches on the PRA and focuses on FACA. The guide is available online [here](#). This topic may be an area for more discussion in the ECCR Forum.

[Steph Kavanaugh](#) offered to collate any resources that individuals wanted to share back with the full ECCR Forum. Individuals can also directly reach out to [Hal Cardwell \(USACE\)](#) as well.

## Discussion Topic: Improving Government-to-Government (GTG) Consultation and Engagement with Native Nations

Presentation: Assessment Considerations and Guidance for Working with Native Nations

Stephanie Lucero, Native American and Alaska Natives (NAAN) Sr Program Manager (National Center), shared a presentation on common themes in assessments involving Native American and Alaska Native Tribes and community members. (See [Appendix 2](#) for slides.) These themes were shared to assist Forum participants in assessment design, implementation, and evaluation, and to ensure that assessments address specific issues involving Native Nations. Themes included:

1. *Concerns about environmental, natural, and Tribal cultural resource impacts during the entire lifespan of a project.* It is important to understand the basis and duration of these concerns upfront.
2. *Concerns regarding adequate involvement in and awareness of a proposed project or process.* It is important to understand the different levels at which a Native Nation or community may be involved. For example, different concerns may arise from Government-to-Government (GTG) processes with official Native Nation government representatives than from individual Native community member or Tribal organizations.
3. *Limited capacity as a barrier to engagement in agency processes.* Prescribed timetables for involvement, Tribal leader and staff capacity to engage, and the financial resources needed to respond to requests for input can all create barriers to participation in ECCR processes for Tribes.
4. *A desire for engagement early enough in the process that Tribal input and issue discussions have meaningful impacts on final decisions and project design.* When and where Tribal input will be used for decision-making is also important to understand early during projects. Additionally, Native Nations have communicated an interest for ongoing relationships beyond GTG Consultation which can be viewed as merely transactional and not meaningful or lasting.

5. *A desire to avoid disturbance of cultural resources and burial sites both in project scoping and for the duration of projects.*
6. *Value in facilitating discussions to understand and analyze the long-term consequences of a project, policy, or plan.* This analysis should include impacts to future generations from a resource (natural, cultural, communal) perspective. Agency project proposals do not always have a clear analysis of long-term impacts, making it difficult for Native Nations to identify those impacts. Early engagement is important for understanding these concerns.
7. *Data gathered from existing projects may not always apply to specific Native Nations or entities.* Reliance on data and analysis from past or existing projects should only be done in consultation with Native Nations. Additionally, Tribes may not be comfortable sharing their own data, depending on the project or potential impact.
8. *Native Nations may express concerns about the disruption of ground or sediment, as well as the disruption of or damage to cultural resources.* It is important to consider that even activities performed during a scoping study can cause soil disturbance that could be unacceptable to Tribes.

While not all assessments demonstrate these themes, many are prevalent in ECCR work involving Native Nations. When reviewing or utilizing assessments, each theme should be considered as a potential area for additional data collection or process intervention. In conducting such analysis, considerations may include:

1. Has the assessment incorporated Native American and Alaska Native considerations? If not, verify that the questions asked include the possibility of Native American and Alaska native perspectives and consider if procedural or relationship barriers may have prevented these concerns from arising during discussions. For example, are there issues with trust in sharing information with the facilitator or discussing the project? Did interviewees have sufficient information to discuss topics in more detail?
2. If the assessment does outline specific Native American and Alaska Native interests, are those interests explored beyond generalized statements? If not, analyze why and evaluate if and how these concerns can be identified and addressed through subsequent ECCR processes.

In closing, assessments best serve as a tool for ECCR process design when they go beyond baseline themes and seek to understand the specific needs of participants.

#### Follow-up Questions from Forum Members

*Question:* How do you incorporate solutions to thorny issues (i.e., capacity with a particular Tribe to engage in environmental analysis)?

*Response:* It depends on the project and resources available and further investigation on what the Native Nation is specifically interested in and needs in terms of capacity. One option may be a collaboration between Tribes to share staff for data analysis. Sometimes the solution for an issue may not be solved in the assessment, but it should still be flagged. An assessment is not just a tool for designing an ECCR process. It can also evaluate where parties are in a process and what is possible.

*Question:* Since it was suggested to use this material as a check-in, is there a proactive way to raise this in the project scoping process? For example, how do we engage early in a consultation on these items? Do you have a specific product to use?

*Response:* The National Center does not have an explicit checklist or product. Most facilitators are brought in at various times in a process. It is always best to bring in a facilitator early, but it

often happens only once issues or conflicts arise. The National Center is often brought in later in a process and we ask our partner, “When did GTG Consultation start? What has been the communication and dialogue so far?” We are very conscious of existing GTG Consultation processes that may or may not fit within the ECCR process we are working on. We then use that information to understand where processes and expectations line up. Some agencies have clear internal agency guidance for early engagement with Native Nations and we can gain valuable input from those interactions.

*Question:* Since research on a Native Nation’s history is a best practice, to what degree does this typically get done in your assessments, and where does this fit into engagement that you have seen through assessments?

*Response:* Typically, the scope of a project dictates how deeply agency staff may investigate this in advance. For example, if it is a national-level project, it is harder to get those specific details, but it can be a bit easier at a regional/community level. Overall, understanding the existing relationship with the Federal agency (background and history) helps with an informed approach. If there is a history of conflict between the ECCR participants and the Native Nations involved in a project, it is important to understand that, too. There can be cultural differences and varying views. Likewise, an agency needs to understand where or if a Treaty or other legal rights might come up in a process. If lawyers need to be in the room, that can impact how the process is designed. Early understanding of these factors can help identify potential themes. For example, for specific Tribes and communities in the Pacific Northwest, ocean issues, fishing, and whaling are a theme to anticipate based upon an understanding of the Native Nations in that region.

*Question:* How do situations play out where a Native Nation started in the northeast and now reside in Oklahoma, so that they have a history in both places?

*Response:* Generally, we try to identify Native Nations removed from their traditional homelands. They should be informed about ECCR processes of potential interest both where they reside and their traditional homelands. The Native Nations will need to decide on their capacity and interest to be engaged in such situations. This may vary from Nation to Nation. Inclusion of representatives from Native Nations that were removed from traditional territories in an assessment process is also important.

### Open Discussion

Will Hall (DOI) shared that the agency relationship with Native Nations is important and central to ECCR work at DOI. He encouraged Forum members to get to know their agency’s Tribal Consultation policy, as well as the Tribal liaison staff inside their agency. He noted that the DOI CADR office is referenced as a resource in DOI’s GTG policy. It serves as a resource on many of the best practices outlined in today’s presentation. DOI CADR has seen an increased interest in this work and DOI is working to be proactive. He encouraged Forum members to reach out within their agencies as a resource.

Marcia deChadenedes (BLM) asked if Stephanie Lucero could be a future resource on specific challenges, especially in Alaska. Stephanie shared that she is available as a resource through National Center. Marcia deChadenedes (BLM) also asked about any insight on navigating language barriers. Stephanie shared that legal responsibilities are the interpretation of the respective agency; however, facilitating opportunities for open conversations to the maximum extent possible is important. Sometimes Indigenous speakers can only present a concept in their own language and having a translator to think through what it means in different languages is important for achieving a shared understanding in ECCR processes. This is often why Indigenous speakers share information in their own

language. Preservation and use of language are also important. Stephanie suggested that the assessments should address language and translation needs and accommodate related requests to the fullest extent possible.

Carrie Greco (Army) asked if there were any lessons learned on addressing capacity and data concerns. Stephanie Lucero shared that it depends on the capacity issue, region, and existing relationships. Some Tribes could be looking for partners, such as universities, that have a trusted relationship with Native Nations. Inter-Tribal organizations that help pull together resources to help with capacity issues are another resource. The underlying issues are often related to funding and time. An assessment should identify the specific support needed (training, staffing, administration, etc.) and explore if others within the process can support the needs in a collaborative way.

Tom Sharp (CEQ) shared appreciation for all the work that went into the presentation. He wondered if Stephanie had any experience with sovereign to sovereign consultation? If tensions about sending program staff versus leadership are a factor? Stephanie noted that sometimes ECCR and GTG processes overlap and sometimes they run parallel. It is important to determine the right people to involve in both aspects. She often hears from Native Nations that they want agency decision-makers present in discussions, as well as the staff who can explain the data and project details. It is important that the decision-makers in a process hear their concerns directly, and not be filtered.

Tom Sharp (CEQ) asked how an agency should address Native Nations lacking certain substantive expertise needed for meaningful GTG Consultation? Stephanie offered that an assessment should provide a good understanding of both technical and substantive needs. Tom added that he has found it useful to note the specific questions underneath the themes and have agency staff use them as guides for early conversations. Stephanie agreed that this would be a good resource and that the National Center could add some of their own assessment questions. Other agencies may have questions and experience here that could be collated and shared.

Steph Kavanaugh shared that the National Center's *Collaboration with Native Nations and Tribal Consultation* training is a great resource for more support. It covers Federal Indian law, GTG Consultation, ECCR tools, and a practice Consultation. Registration is online [here](#) and syllabus [here](#).

Hal Cardwell (USACE) shared that USACE is developing a conflict transformation course. They are working to pilot regional level courses. This would support interagency work at the regional level.

## Closing Comments

Jason Eliaser (DOE) invited Forum Members to an Alternative Dispute Resolution session on 2/3/22 called "Belonging in a Virtual Space". He shared the information for the session available [here](#).

## Next Steps

- Please submit any edits for the FY2020 ECCR report to Steph Kavanaugh ([kavanaugh@udall.gov](mailto:kavanaugh@udall.gov)) by February 18, 2022.
- All ECCR Forum Members are encouraged to share Government-to-Government and Native Nation training resources with Stephanie Lucero ([lucero@udall.gov](mailto:lucero@udall.gov)). Stephanie can also be contacted with questions on her presentation today.

Appendix 1: Meeting Attendees

| <b>Name</b>                  | <b>Agency</b>                                      |
|------------------------------|--|
| <b>Amy Coyle</b>             | CEQ  |
| <b>Jomar Maldonado</b>       | CEQ, Associate Director for NEPA                   |
| <b>Thomas Sharp</b>          | CEQ  |
| <b>Portia Ross</b>           | CEQ  |
| <b>Carrie Greco</b>          | U.S. Army  |
| <b>David Howlett</b>         | U.S. Army  |
| <b>Paul Muething</b>         | U.S. Army  |
| <b>Veda Igbin</b>            | U.S. Army  |
| <b>Hal Cardwell</b>          | U.S. Army Corps of Engineers                       |
| <b>Marcia deChadenedes</b>   | Bureau of Land Management                          |
| <b>Tye Morgan</b>            | Bureau of Land Management                          |
| <b>Jason Eliaser</b>         | Department of Energy                               |
| <b>Steven Miller</b>         | Department of Energy                               |
| <b>Wendy Bonilla</b>         | Department of Energy                               |
| <b>William Hall</b>          | Department of the Interior                         |
| <b>Olivia Walker-Chaffin</b> | Office of the Secretary of Transportation, Advisor |
| <b>Gina Cerasani</b>         | Environmental Protection Agency                    |
| <b>Krystyna Bednarczyk</b>   | Federal Aviation Administration                    |
| <b>JD Hoyle</b>              | Federal Energy Regulatory Commission               |
| <b>Josh Hurwitz</b>          | Federal Energy Regulatory Commission               |
| <b>Heidi Hielsen</b>         | Federal Energy Regulatory Commission               |
| <b>Krista Sakallaris</b>     | Federal Energy Regulatory Commission               |
| <b>Frank Sptel</b>           | National Oceanic and Atmospheric Administration    |
| <b>Steve Leathery</b>        | National Oceanic and Atmospheric Administration    |
| <b>Ben Zukowski</b>          | Udall Foundation, NCECR                            |
| <b>Brian Manwaring</b>       | Udall Foundation, NCECR                            |
| <b>Lauren Nutter</b>         | Udall Foundation, NCECR                            |
| <b>Melanie Knapp</b>         | Udall Foundation, NCECR                            |
| <b>Steph Kavanaugh</b>       | Udall Foundation, NCECR                            |
| <b>Stephanie Lucero</b>      | Udall Foundation, NCECR                            |
| <b>Katherine Johnson</b>     | Veterans Affairs                                   |

## Appendix 2: Presentation Slides



# Assessment Considerations and Guidance for Working with Native Nations

Stephanie Lucero  
Senior Program Manager

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### COMMON THEMES IN ASSESSMENTS INVOLVING NATIVE NATIONS AND ALASKA NATIVES

1. Concern about environmental, natural and tribal cultural resources impacts exist throughout the entire lifespan of a project.
2. Concern regarding adequate involvement in a process and awareness of a project or process.
3. Capacity to engage in a project or process based on proscribed timetables for involvement, capacity to engage, and Tribal resources to respond to inquiries.
4. Desire for engagement, early enough in the process that Tribal input and issue discussions have meaningful impacts on the final decision and design of projects.

## COMMON THEMES IN ASSESSMENTS INVOLVING NATIVE NATIONS AND ALASKA NATIVES

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5. A desire to avoid cultural resources and burial sites in project scoping and duration of projects.
6. Value in facilitating discussions with project proponents to understand and analyze the long-term consequences of a project, policy, or plan. This analysis includes impacts to future generations from a natural resource and cultural resource perspective.
7. Data/studies gathered from existing projects may not apply to specific Native Nations or entities.
8. Native Nations may express concerns about the disruption of ground, sediment, etc., and the disruption and/or damage of cultural resources or funerary items.

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## WHEN REVIEWING ASSESSMENTS

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- ✓ If the assessment does outline specific NAAN interests, are those interests explored beyond the generalized statements?
  - If not, analyze if and how these concerns can be identified and addressed through the subsequent ECCR process.

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