

**FY 2013 TEMPLATE**  
**Environmental Collaboration and Conflict Resolution (ECCR)<sup>1</sup>**  
**Policy Report to OMB-CEQ**

On September 7, 2012, the Director of the Office of Management and Budget (OMB), and the Chairman of the President's Council on Environmental Quality (CEQ) issued a revised policy memorandum on environmental collaboration and conflict resolution (ECCR). This joint memo builds on, reinforces, and replaces the memo on ECR issued in 2005.

The memorandum requires annual reporting by departments and agencies to OMB and CEQ on progress made each year in implementing the ECCR policy direction to increase the effective use and institutional capacity for ECCR.

ECCR is defined in Section 2 of the 2012 memorandum as:

*“ . . . third-party assisted collaborative problem solving and conflict resolution in the context of environmental, public lands, or natural resources issues or conflicts, including matters related to energy, transportation, and water and land management.*

*The term Environmental Collaboration and Conflict Resolution encompasses a range of assisted collaboration, negotiation, and facilitated dialogue processes and applications. These processes directly engage affected interests and Federal department and agency decision makers in collaborative problem solving and conflict resolution.*

*Multi-issue, multi-party environmental disputes or controversies often take place in high conflict and low trust settings, where the assistance of impartial facilitators or mediators can be instrumental to reaching agreement and resolution. Such disputes range broadly from policy and regulatory disputes to administrative adjudicatory disputes, civil judicial disputes, intra- and interagency disputes, and disputes with non-Federal persons and entities.*

*Environmental Collaboration and Conflict Resolution can be applied during policy development or planning in the context of a rulemaking, administrative decision making, enforcement, or litigation with appropriate attention to the particular requirements of those processes. These contexts typically involve situations where a Federal department or agency has ultimate responsibility for decision making and there may be disagreement or conflict among Federal, Tribal, State and local governments and agencies, public interest organizations, citizens groups, and business and industry groups.*

*Although Environmental Collaboration and Conflict Resolution refers specifically to collaborative and conflict resolution processes aided by third-party neutrals, there is a broad array of partnerships, cooperative arrangements, and unassisted negotiations that Federal agencies may pursue with non-Federal entities to plan, manage, and implement department and agency programs and activities. The Basic Principles for Agency Engagement in Environmental Conflict Resolution and Collaborative Problem Solving are presented in Attachment B. The Basic Principles provide guidance that applies to both Environmental Collaboration and Conflict Resolution and unassisted collaborative problem solving and conflict resolution. This policy recognizes the importance and value of the appropriate use of all forms collaborative problem solving and conflict resolution.”*

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<sup>1</sup> The term ‘ECCR’ includes third-party neutral assistance in environmental collaboration and environmental conflict resolution

This annual report format below is provided for the seventh year of reporting in accordance with the memo for activities in FY 2013.

The report deadline is March 3, 2014.

We understand that collecting this information may be challenging; however, the departments and agencies are requested to collect this data to the best of their abilities. The 2013 report, along with previous reports, will establish a useful baseline for your department or agency, and collect some information that can be aggregated across agencies. Departments should submit a single report that includes ECCR information from the agencies and other entities within the department. The information in your report will become part of an analysis of all FY 2013 ECCR reports. You may be contacted for the purpose of clarifying information in your report. For your reference, prior year synthesis reports are available at <http://www.ecr.gov/Resources/FederalECRPolicy/AnnualECRReport.aspx>

## FY 13 ECCR Report Template

Name of Department/Agency responding:	United States Air Force
Name and Title/Position of person responding:	Joseph M. McDade Principal Deputy General Counsel
Division/Office of person responding:	Office of the General Counsel
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Date this report is being submitted:	February 13, 2014
Name of ECR Forum Representative	Patricia Collins

- ECCR Capacity Building Progress:** Describe steps taken by your department or agency to build programmatic and institutional capacity for environmental collaboration and conflict resolution in FY 2013, including progress made since FY 2012. Include any efforts to establish routine procedures for considering ECCR in specific situations or categories of cases. To the extent your organization wishes to report on any efforts to provide institutional support for non-assisted collaboration efforts include it here. If no steps were taken, please indicate why not.

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

ECCR is encompassed within the overall Air Force ADR Program that was established through AF Policy Directives. AF Policy Directive 51-12 specifically references the use of ADR in environmental disputes, in addition to disputes in other subject matter areas. The resources of the Air Force ADR program are, and have been, available to support the use of ECCR and to train Air Force personnel in negotiation and communication skills within the context of ECCR.

The Air Force will continue education and training in interest based conflict resolution skills through, inter alia, the following initiatives:

- The Air Force Negotiation Center of Excellence, based at Air University in Montgomery Alabama, has successfully imbedded negotiation and conflict management skills into every level of commissioned officer and non-commissioned officer Profession Military Education (PME). Additionally research projects and ongoing electives continually refresh the training with scenario-based learning to realistically reflect circumstances under which Air Force personnel will face in their duties.
- Training in ECCR has been institutionalized as a module at the yearly Negotiation and Dispute Resolution course given every year at the AF JAG School. (Budget and travel restrictions prevented offering this course in FY13 but it is scheduled for FY14.)
- The Dispute Resolution Division of the General Counsel's Office is continually improving and expanding training in basic negotiation, communication, and ADR skills, and supporting delivery to an ever-widening audience within the Air Force.
- In FY14, further initiatives are planned expanding on courses offered during FY12. Assuming available funding, the Installations, Energy & Environment Division (GCN), with the assistance of the Dispute Resolution Division (GCD) plans on providing one basic and one intermediate two-day training course on negotiation skills to engineers, program managers, and lawyers. In addition to providing interest based negotiation training, a multi-party two-stage negotiation scenario based upon a negotiation involving a land-use, environmental or real property issue is planned as a teaching tool. The Air Force is exploring ways of expanding negotiation training to the Air Force engineering community more broadly in FY14, including leveraging the experience of individuals who have already received training.

2. **ECCR Investments and Benefits**

- a) Please describe any methods your agency uses to identify the (a) investments made in ECCR, and (b) benefits realized when using ECCR.

Examples of investments may include ECCR programmatic FTEs, dedicated ECCR budgets, funds spent on contracts to support ECCR cases and programs, etc.

Examples of benefits may include cost savings, environmental and natural resource results, furtherance of agency mission, improved working relationship with stakeholders, litigation avoided, timely project progression, etc.

Senior leadership has long recognized the value of ADR and its contribution to mission accomplishment through its creative problem-solving attributes as well as savings in cost and time. ADR is treated by the Air Force as “budget neutral” with a positive impact on mission accomplishment. Air Force leadership fully supports the need for up-front investment in training in the use of collaborative processes and conflict resolution.

ECCR is fully integrated into Air Force and costs are not separated. The real savings from ECCR is the ability to accomplish mission without dispute-caused interruption. Air Force environmental conflicts and disputes tend to be small in number covering a wide range of issues. The volume is not as high as for agencies with licensing and enforcement as their primary mission.

- b) Please report any (a) quantitative or qualitative investments your agency captured during FY 2013; and (b) quantitative or qualitative results (benefits) you have captured during FY 2013.

(See above.)

- c) What difficulties have you encountered in generating cost and benefit information and how do you plan to address them?

(See above.)

3. **ECCR Use:** Describe the level of ECCR use within your department/agency in FY 2013 by completing the table below. [Please refer to the definition of ECCR from the OMB-CEQ memo as presented on page one of this template. An ECCR “case or project” is an instance of neutral third-party involvement to assist parties in a collaborative or conflict resolution process. In order not to double count processes, please select one category per case for decision making forums and for ECCR applications.

	Total FY 2013 ECCR Cases <sup>2</sup>	Decision making forum that was addressing the issues when ECCR was initiated:					ECCR Cases or projects completed <sup>3</sup>	ECCR Cases or Projects sponsored <sup>4</sup>	Interagency ECCR Cases and Projects	
		Federal agency decision	Administrative proceedings /appeals	Judicial proceedings	Other (specify)				Federal only	Including non federal participants
<i>Context for ECCR Applications:</i>										
Policy development	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____
Planning	13	13	_____	_____	_____	_____	13	_____	13	
Siting and construction	8	1	_____	7	_____	_____	3	_____	8	
Rulemaking	_____	_____	_____	_____	_____	_____	_____	_____	_____	
License and permit issuance	1	1	_____	_____	_____	_____	_____	_____	1	
Compliance and enforcement action	1	_____	1	_____	_____	_____	_____	_____	1	
Implementation/monitoring agreements	3	_____	_____	_____	3	pre-litigation	_____	_____	3	
Other (specify): Water Rights	1	_____	_____	1	_____	_____	_____	_____	1	
<b>TOTAL</b>	<b>27</b>	<b>15</b>	<b>1</b>	<b>8</b>	<b>3</b>		<b>16</b>		<b>27</b>	
		(the sum of the Decision Making Forums should equal Total FY 2013 ECCR Cases)								

<sup>2</sup> An “ECCR case” is a case in which a third-party neutral was active in a particular matter during FY 2013.

<sup>3</sup> A “completed case” means that neutral third party involvement in a particular ECCR case ended during FY 2013. 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.

<sup>4</sup> Sponsored - to be a sponsor of an ECCR 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 ECCR case.

Note: If you subtract completed ECCR cases from Total FY 2013 cases it should equal total ongoing cases. If you subtract sponsored ECCR cases from Total FY 2013 ECCR cases it should equal total cases in which your agency or department participated but did not sponsor. If you subtract the combined interagency ECCR cases from Total FY 2013 cases it should equal total cases that involved only your agency or department with no other federal agency involvement.

#### 4. ECCR Case Example

Using the template below, provide a description of an ECCR case (preferably completed in FY 2013). 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, and how the ECCR effort was funded

Kirtland Air Force Base in New Mexico had erected a fence along a resurveyed property line in 2006 and a property line dispute ensued with several owners along a one mile portion of the base boundary. The new township line location added 40 acres to Kirtland and the line had been identified in different locations based on conflicting surveys including a 2007 BLM dependent resurvey. The BLM resurvey was challenged at the Department of the Interior and BLM eventually withdrew the resurvey in 2009. The private parties filed suit against the U.S. in 2010 and a Federal Magistrate Judge was assigned to assist in settlement discussions.

Summary of how the problem or conflict was addressed using ECCR, including details of any innovative approaches to ECCR, and how the principles for engagement in ECCR outlined in the policy memo were used

In February 2011, four cadastral survey experts, hired by the parties, together with party representatives, met on-site to evaluate whether a newly discovered monument was the original monument from the 1858 survey. The experts were able to reach a consensus. The U.S. submitted documents to the Magistrate admitting the validity of the 2007 BLM resurvey that established the new township line in a position roughly bisecting the disputed 40 acres. The Magistrate assisted the nonfederal parties in resolving their separate issues and this allowed for a unified settlement position on the Federal proposal. Since the movement of the township line affected many parcels, the nonfederal party settlement agreement was more complicated and was greatly aided by the Magistrate's involvement and independent evaluation.

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 ECCR

Absent a successful settlement this case would have gone to trial in Federal Court at great expense to the parties with the outcome being determined by a Judge. The U.S. could have brought a condemnation action and the private parties could have claimed

damages for the period of time their lands were enclosed by the base fence. In the settlement, the parties not only agreed to the location of the township line, but there was a timing clause allowing the government several months to remove the fence and reseed the area. The parties all visited the site to evaluate the effectiveness of the reseeding and restoration efforts prior to signing off on a final settlement.

#### Reflections on the lessons learned from the use of ECCR

By being able to craft the terms of the settlement agreement, the parties were able to get more specific relief as to the ground cover and the federal government was given adequate time to get funding necessary to remove the fence. The expert reports support the new location of the township line and all parties have accepted less acreage than was asserted in the pleadings but more acreage than their potential worst case outcome. The numerous site visits with the property owners adjacent to the disputed fence line aided in reassuring all parties that the terms of the settlement agreement were being accomplished.

**5. Other ECCR Notable Cases:** Briefly describe any other notable ECCR cases in the past fiscal year. (Optional)

Unlike regulatory or licensing agencies, the Air Force does not have a large volume of cases and many of the cases span multiple years.

**6. Priority Uses of ECCR:**

Please describe your agency's efforts to address priority or emerging areas of conflict and cross-cutting challenges either individually or in coordination with other agencies. For example, consider the following areas: NEPA, ESA, CERCLA, energy development, energy transmission, CWA 404 permitting, tribal consultation, environmental justice, management of ocean resources, infrastructure development, National Historic Preservation Act, other priority areas.

Many of the ECCR cases reported continue to involve NEPA, CERCLA and land use. During FY13 the Air Force renewed focus on government to government relationships with Tribes and sought to encourage better communication between installation commanders and Tribes.

(See answer below.)

**7. Non-Third-Party-assisted Collaboration Processes:** Briefly describe other significant uses of environmental collaboration that your agency has undertaken in FY 2013 to anticipate, prevent, better manage, or resolve environmental issues and conflicts that do not include a third-party neutral. *Examples may include interagency MOUs, enhanced public engagement, and structural committees with the capacity to resolve disputes, etc.*

Throughout FY13, the Air Force participated on 87 Restoration Advisory Boards (RABs), the great majority of which do not utilize third party neutrals. These advisory boards include community and regulator representatives and employ collaborative decision making processes for many cleanup issues.

The Air Force also serves as the Regional Environmental Coordinator for DOD in EPA Regions 2, 3 & 10 and in that role has chaired partnering sessions and participated in working groups with Federal and State partners to address installation, regulatory and environmental compliance matters in NY & NJ and other States as well as on working groups for the Chesapeake Bay and for Federal Climate Partners. The Air Force is also active in the Western Regional Partnership focused on collaboration between Federal, State and Tribal leadership in AZ, CA, NV, NM, and UT to develop solutions that protect natural resources while promoting sustainability, homeland security and military readiness. Air Force Regional Environmental Offices also hold frequent partnering meetings in States with Air Force installations in order to address planning and compliance issues.

The Air Force participates in numerous partnering and collaborative groups including the California Desert Renewable Energy and Conservation Plan effort working with Federal, State and local stakeholders to resolve potential conflicting land use in the Mojave Desert as well as on the Southeastern Region Partnership for Planning and Sustainability. The Air Force works with BLM on many issues including renewable energy development and energy transmission line siting. The Air Force has signed an MOU as a cooperating agency with BLM on the development of the Resource Management Plan amendments and EIS for the Greater Sage-Grouse National Planning Strategy in Idaho and Southwestern Montana.

8. **Comments and Suggestions re: Reporting:** 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.

Previous years comments remain applicable. We strongly urge that next year this is done through a more simplified report format for agencies whose mission focus is not licensing, permitting, or environmental enforcement.

***Please attach any additional information as warranted.***

Report due March 3, 2014.

Submit report electronically to: [ECRReports@omb.eop.gov](mailto:ECRReports@omb.eop.gov)

**Basic Principles for Agency Engagement in  
Environmental Conflict Resolution and Collaborative Problem Solving**

<b>Informed Commitment</b>	Confirm willingness and availability of appropriate agency leadership and staff at all levels to commit to principles of engagement; ensure commitment to participate in good faith with open mindset to new perspectives
<b>Balanced, Voluntary Representation</b>	Ensure balanced inclusion of affected/concerned interests; all parties should be willing and able to participate and select their own representatives
<b>Group Autonomy</b>	Engage with all participants in developing and governing process; including choice of consensus-based decision rules; seek assistance as needed from impartial facilitator/mediator selected by and accountable to all parties
<b>Informed Process</b>	Seek agreement on how to share, test and apply relevant information (scientific, cultural, technical, etc.) among participants; ensure relevant information is accessible and understandable by all participants
<b>Accountability</b>	Participate in the process directly, fully, and in good faith; be accountable to all participants, as well as agency representatives and the public
<b>Openness</b>	Ensure all participants and public are fully informed in a timely manner of the purpose and objectives of process; communicate agency authorities, requirements and constraints; uphold confidentiality rules and agreements as required for particular proceedings
<b>Timeliness</b>	Ensure timely decisions and outcomes
<b>Implementation</b>	Ensure decisions are implementable consistent with federal law and policy; parties should commit to identify roles and responsibilities necessary to implement agreement; parties should agree in advance on the consequences of a party being unable to provide necessary resources or implement agreement; ensure parties will take steps to implement and obtain resources necessary to agreement