

# FY 2016 TEMPLATE

## Environmental Collaboration and Conflict Resolution (ECCR)<sup>1</sup> Policy Report to OMB-CEQ

Name of Department/Agency responding:	<u>The Department of the Interior</u>
Name and Title/Position of person responding:	<u>William Hall, Director</u>
Division/Office of person responding:	Office of Collaborative Action and Dispute Resolution (CADR)
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Date this report is being submitted:	_____
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- 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 2016, 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.]

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

The Department of the Interior (DOI) continues to build programmatic/institutional capacity to encourage the broadest possible appropriate and effective use of ECCR processes. Within DOI the directives in the OBM/CEQ Memorandum on ECCR are operationalized through the following structures:

- The Office of Collaborative Action and Dispute Resolution (CADR) in the Office of the Secretary, which serves as an impartial source of collaborative problem solving and alternative dispute resolution (ADR) expertise and services. Established in 2001, CADR supports all Bureaus and Offices for both ECCR and workplace matters. CADR oversees implementation of the Administrative Dispute Resolution Act of 1996, other relevant laws, regulations, directives and guidance, and the Department’s policy on the use of collaborative processes and problem-solving, ADR, ECCR, consensus-building, and related training. CADR provides Departmental decision-makers with analysis and advice about when to use ECCR and how the Department can effectively engage its stakeholders. Moreover, CADR is strategically positioned within the Department to help address inter-Bureau natural resource, cultural resource, and land management issues, as well as to assist individual Bureaus and Offices in reaching unified decisions.
- The Interior Dispute Resolution Council (IDRC) and the Bureau Dispute Resolution Specialist (BDRS) positions. The IDRC, comprised of designated BDRSs from each Bureau, is the lead partner in ensuring a coordinated effort to integrate effective conflict management practices and collaborative problem solving as routine business practices throughout DOI.
- The Bureau of Land Management CADR Office resides within the Washington Office Resources and Planning Directorate; Division of Decision Support, Planning and NEPA. Established in 1997 (as the Natural Resource Alternative Dispute Resolution program), BLM CADR provides leadership, guidance, and assistance in collaborative implementation of the BLM’s mission “to sustain the health, diversity, and productivity of America’s public lands for the use and enjoyment of present and future generations.”

Collectively, there are 16 FTEs in DOI (Office of the Secretary, Indian Affairs, BLM, and USGS) supporting ECCR services and programs. Collateral duty BDRSs carry out ECCR-related responsibilities in many of the other DOI Bureaus, such as the Bureau of Reclamation, Fish and Wildlife Service, National Park Service, and an additional 15 collateral duty CADR coordinators work in the BLM state or center offices to provide ECCR support, guidance, and capacity building to BLM employees and stakeholders in the field and district offices. In May 2016, a field-based BLM-CADR specialist was hired to provide on-the-ground collaborative planning and external engagement support to the field tied to the BLM’s newly developed planning regulations.

Importantly, the use of ECCR is driven by the missions of DOI Bureaus/Offices. For example, the mission of the Office of Natural Resources Revenue (ONRR) is to collect, account for, and verify natural resource and energy revenues due to states, American Indians, and the U.S. Treasury. ONRR has a process and a program for using ECCR to address royalty compliance issues.

### Building Capacity

CADR staff, IDRC members, and BLM-CADR work collectively to build awareness and capacity to use ECCR at all levels of DOI to build organizational capacity so that DOI's employees can:

- Recognize and manage conflict early,
- Identify opportunities and access resources and assistance to engage interested stakeholders in non-adversarial problem-solving processes to produce durable policies, decisions and solutions, and
- Utilize conflict resolution tools whenever possible to achieve goals without unnecessary delays and costs.

Examples of coordinated capacity-building efforts during FY 2016 included, among other things:

1. Providing consultation services to individuals, offices, teams, and Bureaus on ECCR including education and support for DOI managers on when and how to work with a third-party neutral and education and support for external third-party neutrals about DOI and Bureau organizational structures, culture, and coordination needs;
2. Providing leadership education and training as well as basic public participation, collaboration, conflict management, ECCR, and negotiation skills training for managers and employees throughout DOI;
3. Assisting parties within and outside DOI in identifying and acquiring timely, skilled third-party neutral services acceptable to all parties to conduct assessments, assist with process design, and facilitate selected ECCR processes; and
4. Managing an internal facilitation roster that supports ECCR and other efforts.

The Solicitor's Office Division of General Law provides general legal guidance and addressed questions raised about collaboration and ECCR processes such as FACA, FOIA, administrative law or confidentiality issues, or on specific processes or negotiation challenges. CADR staff members also continue to represent DOI on several interagency groups and participated in a variety of interagency efforts to build common understanding and jointly advance collaboration and ECCR. Examples include the ECCR forum led by OMB/CEQ.

Training remains a cornerstone of DOI's effort to build capacity for effective conflict management and collaborative problem solving. DOI is committed to building conflict management skills and collaboration competency to improve internal and external communication, stakeholder engagement in planning and decision-making, collaborative problem-solving and conflict resolution in all areas of the Department's work. In short, good conflict management in the workplace leads to good conflict management with external parties and issues. During FY 2016, the CADR office and its cadre of in-house trainers delivered 44 conflict management skills training sessions to 1166 employees from all Bureaus and offices in eight geographic regions of the U.S. and online. The foundational course on "Getting to the CORE of Conflict", was designed to improve performance in the following key areas:

- Recognizing conflict and its root causes;
- Strategically responding to conflict;
- Efficiently managing and resolving conflict;
- Convening conflict management processes;
- Interest-Based Negotiations; and
- Identifying conflict as an opportunity to create change and build relationships.

Selected examples of DOI Bureau/Office capacity building efforts in FY 2016 include:

**The Assistant Secretary- Indian Affairs (IA), including the Bureau of Indian Affairs and Bureau of Indian Education**, developed and delivered five training sessions on emotional intelligence and mindfulness, a key element to managing and resolving conflict, for 75 employees in FY16. In addition, the IA office of Regulatory Affairs and Collaborative Action (RACA), continued to regularly engage with the CADR to coach and advise parties about mediation for matters on appeal before the Board of Indian Appeals.

Indian Affairs engages in meaningful tribal consultation on issues directly impacting Tribes and individuals. The RACA office continues to work with the Department on assistance and questions regarding consultation, especially as it pertains to cultural customs and communication styles.

Building on its successful development of a strategic plan in FY15, in FY16, **BLM CADR** worked primarily on the first two goals of its strategic plan, *Transforming Collaborative Action and Dispute Resolution in the BLM: A Strategic Plan* (December 2015). The goals are: Championing a Collaborative Culture and Creating a Common Understanding. This was done through a communication blitz that consisted of six BLM Daily news stories, weekly emails describing the seven principles of effective collaboration, and a program overview webinar. The strategic plan provides a framework for BLM CADR to develop annual work priorities and implementation actions centered around collaboration and dispute resolution, periodically evaluate whether strategic goals are being met, and adjust as necessary.

BLM CADR hosts Community of Practice webinars to help employees and practitioners interested in collaboration and dispute resolution connect and share lessons learned. Five webinars were held in FY 16 on topics such as Old Spanish National Historic Trail, Desert Renewable Energy Conservation Plan, Greater Sage Grouse Plan, Introduction to CADR, and Missoula Resource Management Plan envisioning.

The **Bureau of Reclamation** has developed and is implementing Collaborative Competency Training to help employees anticipate, prevent, and better manage or resolve conflicts associated with environmental issues or natural resources management. With funding from multiple internal sources within Reclamation, its Technical Service Center (TSC) and Upper Colorado Region have collaborated with Dr. Aaron Wolf of Oregon State University for more than five years on water conflict management research. During that time, a training manual and a set of teaching modules to provide collaborative competency training were developed for Reclamation employees. The training is unique in that it draws from Reclamation staff experiences; specifically with water resource conflicts.

This training asks, “How can we move debates about water resource issues beyond entrenched positions? What are some less confrontational approaches that bring conflicting interests and institutions together to craft workable solutions; ones that build community rather than disrupt it? Can we find solutions that work across different scales of both time and space? What are some ways we ourselves can work more peacefully within contentious situations?” Through this training, Reclamation water managers are provided with resources and tools to enhance consensus building and relationship building skills. This set of specialized tools and teaching modules has been designed to aid managers in detecting, preventing, and mitigating water related conflicts, and fostering collaboration. Trainers provide students with the capacity to address conflict at several different levels: interpersonal, interagency, interregional,

and international. They also provide suggestions for helping better prepare Reclamation staff to proactively monitor and plan for change; to detect and resolve unforeseen conflict; and to create agency-wide incentives for conflict management and prevention.

**NPS Collaboration Clinics** are an emerging model for helping NPS staff, stakeholders, and partners develop the specialized skills they need to work collaboratively for more effective planning, decision-making and resource management. Many aspects of existing NPS policy and guidance speak to the value of developing integrated, collaborative approaches to accomplishing our mission and getting our collective work done. Collaboration Clinics provide planners, superintendents, park staff and other decision-makers practical training, coaching, and practice in using collaborative approaches and processes.

Collaboration Clinic trainers work with parks and other clinic sites to increase the in-house collaborative capacity in a way that is tailored to a park's particular needs or situation. Clinic content combines elements of many different disciplines including communication, conflict resolution, consensus building, designing collaborative processes, facilitation, mediation, group dynamics, neuroscience, planning, interest-based negotiation, public participation, having difficult conversations, organizational development and more.

Clinic trainers are NPS and DOI staff (including CADR) who are trained and experienced in facilitation and collaborative problem solving. Coaches approach each Clinic site as an interdependent community of actors, some of whom are Federal employees, some of whom are business people or local officials, and some of whom are individuals or organizational partners.

### ECCR Tools

The CADR Office established and manages an ECCR contract as a Departmental strategic sourcing initiative a designation that enables all DOI Bureaus and offices to easily and expeditiously procure the services of conflict management professionals nation-wide to help manage and resolve environmental conflict in a cost effective manner. As a result of both easy access to third party neutrals and ECCR capacity building efforts, DOI Bureaus and Offices engaged in 98 ECCR cases in FY 2016. See response to Question 2 for more details about the use of the ECCR contract.

The increase in the reported use of ECCR from FY 2015 to FY 2016 reporting reflects the long-term benefits of the DOI ECCR infrastructure, institutionalized capacity-building efforts, including updated policies, guidance, and education that are beginning to bear fruit and change behavior in the field. While there remains room for improvement in the Department's use of ECCR and collaborative problem-solving, the sustained use of ECCR processes, as reflected by an average of 98 ECCR projects from six years of ECCR reports, shows that DOI agencies are seeking to manage conflicts before they reach a formal administrative or judicial adjudicative forum.

Within each of the Bureaus, the approach to using ECCR is geared toward the mission of the Bureau/Office. For example:

The **BLM CADR** coordinates issues and integrates programs across the agency, promoting ECCR in the implementation of existing national policies. In particular, the BLM's National Riparian Service Team (NRST) and the National Operations Center, Division of Resource Services (NOC

DRS), continue to expand on and provide high-level technical expertise and program support to BLM and its stakeholders. The NRST works directly with people on the land at their location, focusing on their issues and brings interested/affected parties together to create common understanding and build relationships and trust. Since 1996, the NRST has responded to numerous requests for multi-phase assistance from a diverse clientele, and addressed a range of bio-physical and socio-economic issues related to riparian resources across the western US. While currently focused on riparian-wetland issues, this place-based problem-solving approach is applicable to fostering collaborative adaptive management to address any number of resource issues that span multiple landscapes, ownerships, and jurisdictions.

The **Bureau of Ocean Energy Management (BOEM)** Marine Minerals Program (MMP) relies heavily on the CADR IDIQ contract to secure third party neutral ECCR services for outreach meetings with Federal, state, and local stakeholders concerning regional offshore sand management for coastal restoration projects. The BOEM Pacific Region and Headquarters utilize CADR staff and contracted neutrals from the CADR IDIQ to facilitate Tribal consultation, stakeholder outreach and taskforce meetings. BOEM's Environmental Programs both in headquarters and regions participated in an internal communications meeting (ACE – Annual Conference on the Environment) facilitated by CADR -- outcomes from this meeting improve assistance in program management and headquarters-regional conflict resolution.

In **Reclamation** ECCR has been institutionalized in several different ways. First, in large long-term operations, specifically the Glen Canyon Dam Adaptive Management Program (AMP), the use of a facilitator has been key to the group developing consensus operating recommendations. The operating recommendations developed by the entity are most often accepted and implemented by the Secretary of the Interior as Water Master for the Colorado River. The AMP, with its facilitated and collaborative process, has become the standard operating procedure for operation and management of the Colorado River. This basin, while not immune from conflict, has seen a dramatic decline in litigation in recent years. What is significant about that is that the Colorado River Basin has been experiencing such severe drought over the past five years -- making it ripe for litigation and intense conflict. Because of this process, that conflict is managed and has not become toxic.

Second, Reclamation has incorporated ECCR techniques into the way that it operates the projects that it owns. For example, Reclamation's Central Valley Project (CVP) - located in California - is one of the largest and most complicated multi-purpose water projects in the world. Reclamation coordinates the operations of the CVP with the State Water Project which is managed by the State of California. Because of the complicated and controversial nature of water management in the State of California, the Long Term Operations (LTO) of these two projects are subject to litigation and numerous court orders. In response, Reclamation initiated a facilitated effort to coordinate with the parties to the litigation.

Third, Reclamation utilizes ECCR in its work with Tribal nations regarding water rights settlements as well as Reclamation operations in areas involving endangered species. See the examples provided in response to Question 5.

Fourth, Reclamation uses ECCR techniques to avoid potential conflict associated with multi-party planning efforts to address complicated natural resources issues. One such example is the Desert Landscape Conservation Cooperatives (LCCs). The LCCs are a national network of partners, which include federal agencies, states, tribes, universities, non-governmental

organizations, landowners, and other stakeholders. These are established to form diverse partnerships to address transboundary natural resources issues or concerns that may arise from overlapping jurisdictions, Tribal Trust responsibilities or a lack of resources. The goals of the LCCs are to promote collaboration and address the long-term impacts of ecosystem stressors and management responses on a landscape-level basis. Knowing of the diverse nature of the membership, Reclamation and the US Fish and Wildlife Service engaged the services of third party neutrals to ensure greater communications and understanding with and among the stakeholders and partners to address issues before they become conflicts.

Fifth, Reclamation uses ECCR techniques for addressing compliance with environmental statutes such as the National Environmental Policy Act (NEPA) and the National Historic Preservation Act (NHPA). An example is where Reclamation used ECCR techniques to assist in the preparation of an Environmental Impact Statement for the Long Term Experimental and Management Plan for the Glen Canyon Dam. While the EIS for this was completed in 2016, the adaptive management program envisioned by the EIS will continue – as will the collaborative process. Another example of an environmental compliance ECCR project is the implementation of a Programmatic Agreement for the Navajo-Gallup Water Supply Project (NGWSP) in New Mexico.

#### Institutional Support for Unassisted Collaboration

Many of DOI's land management agencies (BLM, FWS, NPS) make use of resource advisory committees. While some of the larger more complex committees may be facilitated by a third party neutral, e.g., the NPS Air Tour Operator Advisory Committee, often times the smaller groups are self-facilitated by the convening Bureau or have a governance structure such as a chair that leads the group process.

Within **Reclamation**, the technical expertise of its Value Engineering (VE) Program staff has led to the program managers facilitating VE studies among federal and non-federal parties where Reclamation is also a participant in the process. These facilitated VE studies, which are conducted in the spirit of the principles contained in the ECCR policy memorandum, review the construction and project plans to help the stakeholders (both internal and external) to collaboratively evaluate the technical merits and find cost effective alternatives to address water management problems. This has resulted in developing consensus on alternative and sometimes innovative plans to meet water management challenges facing the Western United States. One example in 2016 is where Reclamation facilitated the technical development and analysis of projects to define and compare the various alternatives to identify the most cost effective option to address the water needs (current and future) of the Utah portion of the Navajo nation.

The majority of ECCR work done by the **BLM** is through unassisted collaboration, using partnerships, cooperative agreements, and negotiations with other agencies, stakeholders, tribes, and the public. The BLM National Operations Center (NOC), Division of Resource Services, (DRS) assists the field and state offices primarily through unassisted collaboration, such as cooperative agreements, conducting public meetings and open houses, and participating in negotiations, as requested. DRS's mission is to provide senior level technical expertise and program support to stakeholders as part of the BLM's overall mission of sustaining the health, diversity and productivity of public land. The DRS does not handle ECCR cases on its own, but does assist the Washington BLM Office, state and field offices with requested expertise. The DRS does, however, continue to build on existing national policies that promote unassisted

collaborative processes in the following programs:

- **Air Quality**

The BLM takes an interagency approach to address air quality issues. The DRS assisted state/field offices, along with other agencies in developing an agreement which establishes a common process to follow when analyzing air quality impacts of various actions taken on federally managed lands.

- **Land Use Planning and NEPA**

The DRS assists state and field offices by holding open houses, workshops, and public meetings as part of the collaborative process when developing Land Use Plans in accordance with the NEPA regulations.

- **Landscape Approach**

Data is compiled and assessed for a landscape planning approach. Large geographic areas are studied to identify critical ecological values and environmental changes. Analyzing this data allows management strategies to be developed in cooperation and collaboration with our stakeholders.

- **Land Use Planning and NEPA**

The DRS assists state and field offices by holding open houses, workshops, and public meetings as part of the collaborative process when developing Land Use Plans in accordance with the NEPA regulations.

- **Natural Resource Damage Assessment**

Making sure public land is free from contamination so that the public can enjoy public land, especially across the west, is an important goal. There are a significant number of environmental laws and regulations that must be followed to ensure public land is free from contamination. The DRS uses the natural resource damage assessment process to restore injured public resources lost due to contamination of hazardous substances. Being able to work cooperatively with other agencies, states, and the public is critical in investigating, analyzing, and developing restoration plans for implementation. Open houses and public meetings are frequently held to provide the public with a vehicle for participation during clean ups undertaken pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

- **Oil & Gas**

The DRS works cooperatively with Indian Tribes, the Office of the Inspector General, Office of Natural Resources revenue, and the oil & gas industry on non-compliance issues. Oversight functions also include proper reporting of production, storage, measurement, and volumes.

- **Renewable Energy**

To ensure a clean energy future, the DRS coordinates with other federal agencies, communities, state regulators and industry to develop environmentally sound practices related to renewable energy on public land. Stakeholder working groups are used to plan and implement wind and solar and geothermal projects.

## 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.

The Department tracks investments through the ECCR Report and other means. Through the ECCR Report, we have gathered data relating to investments in FTEs discussed more fully in Question 1. In addition, DOI Bureaus and Offices invested approximately \$4.5 million in ECCR services FY 2016 through the CADR ECCR contract. Thirty-two new task orders were issued in FY 2016 and twelve task orders continued from FY 2015 into FY2016 under the CADR ECCR contract in support of ECCR cases and programs. A few Bureaus make use of a 'menu driven' task order that enables the Bureau to use ECCR services listed in the task order for a range or projects. In FY 2016 there were 25 projects conducted under these menu task orders. Beyond presenting the investments in FTEs and through the CADR ECCR contract the Department does not currently have a formal process or guidance for tracking and reporting on Department-wide investments made in ECCR or the benefits realized when using ECCR, other than describing qualitative benefits via case study narratives.

Investments in human resources are tracked through performance plans. Conflict management and collaboration performance standards are included in the performance plans of all Senior Executive Service (SES) positions to encourage appropriate use of conflict management and collaborative problem-solving. The CADR office advocates and encourages inclusion of conflict management and collaborative problem-solving performance standards for all DOI employees.

In cooperation with US Environmental Protection Agency and the US Army Corps of Engineers Institute for Water Resources, CADR completed an effort to redesign new evaluation instruments in FY16. We anticipate the new evaluation instruments will result in better tracking of ECCR investments and benefits once ICR clearances are secured in FY17. We also anticipate the data that will be collected through the new instruments will be useful in improving process design, as well as evaluating both agency and individual performance and process outcomes.

The **BLM-CADR** does not currently have a formal process or guidance for generating ECCR cost-benefit analyses. Benefits tend to be more qualitative in nature and the method BLM currently uses to track this are case study narratives submitted by each state and center office for this report.

Quantitative investments are tracked, in part, by determining funding allocated to ECCR-related training, FTE salary costs, and task orders for facilitation and collaboration services procured under the DOI CADR ECCR contract used by BLM. Social and Economic methods could be practiced for better quantitative tracking, but that likely would require a part-time employee as an economist, which is not funded or budgeted.

**BOEM** invests resources for ECCR through the CADR ECCR contract. As a result of these investments BOEM is able to improve working relationships with stakeholders and further implement the Bureau's mission.

**Reclamation** Managers evaluate the decision about whether to use ECCR techniques on a case by case basis looking at the potential benefits in terms of improved relationships and more efficient processes and schedules.

Reclamation also evaluates the willingness of the parties to engage in a facilitated process. In some cases, Reclamation has had successful experiences with facilitated processes, so the parties are more likely to be willing and ready to initiate or continue to take a project to the next level. For example, because of the positive experiences associated with a facilitated process helping the parties to reach agreement on an agreement to change the operations of the Lewiston Orchards Project, the Nez Perce Tribe, and the Lewiston Orchards Irrigation District, along with Reclamation and the Bureau of Indian Affairs, are continuing to use the facilitator and the facilitated process to implement the terms of the Settlement Agreement.

For many Reclamation projects, the water users are partners in that they manage and operate the projects that are owned by the United States, through the Bureau of Reclamation, on a day to day basis and have long-term contractual relationships to deliver water and power. In some situations, the tone and tenor of the relationships has declined – to the point where it could potentially affect the operations of the facilities and the delivery of water and power to other contractors. For example, Grand Lake, in Eastern Colorado is part of Reclamation's Colorado Big Thompson Project and the issues surrounding the clarity of the lake became an area of controversy between the irrigation districts, nearby counties, the states, homeowner associations at or near the lake, and others. This conflict was seriously affecting relationships in the community and the ability of the Northern Colorado Water Conservancy District to manage and operate the facilities effectively. Establishing a facilitated collaborative process for identifying a solution gave the stakeholders an opportunity to have a say in how the problem would be addressed and in reaching an agreement, the relationships have improved.

It has been hard to calculate the investment that has been made in ECCR in terms of the cost associated with hiring facilitators and the internal resources – staff time, etc. Determining what is included or considered as ECCR costs vary widely per case. Furthermore, some costs are hard to differentiate between being dedicated to ECCR and in terms of project management and operations. In some cases ECCR techniques have been incorporated into how projects and facilities are managed, making the costs are hard to break out. Also, some travel and staff costs for project operations would have been incurred regardless of whether there was an ECCR process.

- b) Please report any (a) quantitative or qualitative investments your agency captured during FY 2016; and (b) quantitative or qualitative results (benefits) you have captured during FY 2016.

**Qualitative Investments**

The CADR Office's 11 FTEs are dedicated to supporting collaborative problem solving and conflict resolution in DOI, both within the Bureaus and with DOI's external stakeholders. The CADR Office established and implements the ECCR IDIQ contract available to all ECCR needs across the Department. Approximately four CADR staff members allocate a portion of their time providing direct ECCR neutral service to Bureaus/Offices and stakeholders.

Approximately six CADR staff members assist Bureaus/Offices in determining their ECCR needs and help the parties secure contracted neutral services through the CADR ECCR contract.

**Benefits**

Experience over many years has shown that effective ECCR processes facilitated by CADR staff or contracted neutrals help parties reach high quality agreements that take everyone's interests into consideration, address the key issues, and improve working relations even in complex cases with multiple parties having diverse and often conflicting interests.<sup>1</sup>

<sup>1</sup>See "Environmental Conflict Resolution: Evaluating Performance Outcomes and Contributing Factors". K. Emerson, P.J. Orr, D.L. Keyes, and K.M. McKnight. Conflict Resolution Quarterly. Vol. 27, no 1, Fall 2009. Pp. 27-64.

**BLM-CADR****Qualitative Investments**

The 15 BLM CADR Coordinators provide general program support and advice to field units, and participate in a 1-hour conference call each month to share information and discuss issues.

BLM State and Field offices regularly engage collaboratively with the public and other agencies in project development and NEPA analysis. Stakeholders participate in ECCR and, more often, unassisted collaborative activities throughout BLM's major planning efforts. Stakeholders can track their recommendations as they are reflected in the draft and final planning documents and records of decision. The BLM's ePlanning effort is helping to make this participation easier and more accessible while making information tracking more transparent and readily available.

**Benefits**

Results are mostly qualitative in nature, such as better working relationships with a wide variety of stakeholders and partners – Tribal, governmental, and non-governmental– better understanding of local community concerns, and the ability to avoid protests, appeals, or litigation which ultimately saves time and money.

**BOEM**

FY2016 expenditures were approximately \$1.6 million across seven different task orders under the CADR ECCR contract. 00,000. The qualitative benefits are furtherance of agency mission and improved working relationships with stakeholders.

**Reclamation****Qualitative investments**

Reclamation is able to clearly identify the ECCR costs that are associated with facilitator contracts plus some staff time and travel. In FY 2016 total costs associated with the Lewiston Orchards Project Water Exchange and Title Transfer are estimated to be \$168,000 for the facilitator. For the Glen Canyon Adaptive Management Program (AMP), total funding for the AMP in FY 2016 in was approximately \$10,800,000. The professional facilitator is paid \$80,000. The estimated ECCR costs for development of a Programmatic Agreement for the Navajo-Gallup Water Supply Project are \$250,000. This includes contractor costs, staff time and travel costs. The estimated costs for conducting the Structured Decision-Making Workshops to Assist in Preparation of an Environmental Impact Statement (EIS) for a Long-Term Experimental and Management Plan (LTEMP) for Glen Canyon Dam was an estimated \$185,000. The estimated cost for the facilitated process associated Klamath Project Operations Coordinated ESA Section 7 consultation in FY 2016 was approximately \$250,000.

### **Benefits**

Although benefits are difficult to quantify, positive outcomes are those where conflict has been minimized, staff time dedicated to litigation and conflict management have been redirected to project management and operations. This has enabled the water projects to be operated efficiently without disputes over water release and other decision-making and litigation, which was previously on the horizon. In the case of the Programmatic Agreement for the Navajo-Gallup Water Supply Project, delays that come as a result of litigation or disputes over the management of cultural resources would result in additional construction costs, but those have not been quantified.

A benefit that the facilitated Value Engineering (VE) Program brings is in developing consensus among the stakeholders of the project on technical designs and construction plans which can save time and money. Where Reclamation is a sponsoring a process, although it does not technically qualify as ECCR, Reclamation's VE Program facilitates consensus to objectively review construction designs or technical plans. This process can ensure that project designers explore all the options to address water and power issues in the west. This has resulted in cost savings, projects that enhance or mitigate environmental impacts and "outside of the Box" thinking on technical, engineering issues being faced by water and power managers across the western United States.

Use of the Value Engineering Program, where Reclamation is not a participant in the process and is serving as a neutral, the facilitated process enables the technical experts to look outside of the box to reach consensus on potentially alternative project designs that can save time and money and improve the efficiency of water and power systems. This can save construction costs, but also could identify options that will reduce the long-term operation and maintenance costs as well.

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

Tracking cost data on a DOI-wide basis is difficult due to the decentralized nature of the Department. Although the CADR ECCR IDIQ contract is a strategic sourcing contract, Bureaus and Offices may expend funds on ECCR using other contract vehicles. Costs relating to labor performed by government personnel, on the other hand, are harder to assess, as DOI agencies do not require their personnel to break down their time into ECCR and non-ECCR time units. We have found that it is much easier to generate qualitative information regarding the benefits of these processes. Qualitatively, managers may conclude that without the services of a skilled third party neutral, they would not have achieved a successful result. Although subjective, we view these opinions as support for the value of ECCR processes.

Often it is difficult for Bureaus to separate “environmental collaboration and conflict resolution” from regular natural resource management planning. Bureaus routinely practice ECCR principles and methods during other planning and program work, such as Resource Management Plan development and NEPA analysis and document preparation. In addition the absence of dedicated funding, the need for a program lead to track information, and competing collateral duties limit many DOI Bureaus in reaching their maximum potential use of ECCR.

For some Bureaus, such as Reclamation, ECCR is incorporated into how the projects are managed making it difficult to track cost information. Furthermore, the cost of a neutral is but one component of the cost of an ECCR process and while it can be identified it may not be the entirety of the costs of the ECCR process. Additional costs may be staff time for participation, travel and so on, but capturing those costs is complicated because of the structure of our budget and who pays which costs since some operational costs are reimbursable by water and power customers and some are paid for by Federal appropriations. Breaking out some costs further would be a complicated and expensive process that would bear little operational benefits to Reclamation.

The following mechanisms have been suggested to assist all the Federal environment and natural resource agencies to report ECCR costs and benefits consistently:

- Develop an OMB approved form for capturing the time and costs incurred by other Federal, state, local, and tribal government partners in these efforts and well as private individuals;
- Develop a mechanism for comparing combined costs of ECCR process to combined costs associated with litigation;
- Clarify whether Bureaus should be tracking and reporting costs and benefits related to only to formal ECCR cases (involving third-party neutral assistance) or all ‘environmental collaboration’ occurrences;
- Develop a cost code to allow for staff investments in ECCR process to be compiled including use of in-house neutrals;
- Implement OMB-approved evaluation instruments to assess and track short and long-term benefits of ECCR assistance; and
- Develop a mechanism for comparing combined costs of ECCR process to combined costs associated with litigation.

3. **ECCR Use:** Describe the level of ECCR use within your department/agency in FY 2016 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 2016 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	Administrati ve proceeding s/appeals	Judicial proceedings	Other (specify)	Federal only			Including non federal participants	
<i>Context for ECCR Applications:</i>										
Policy development	__21__	__6__	_____	_____	_15_	intergo verme ntal forums, engage ment with tribes	__9__	__21__	__2__	__12__
Planning	__38__	__25__	_____	_____	_13_	mix of informa tion sharing and g- t-g commu nicatio ns	__19__	__36__	__1__	__17__
Siting and construction	__13__	_11__	_____	__1__	__1__	implem entatio	__1__	__4__	_____	__13__

<sup>2</sup> An “ECCR case” is a case in which a third-party neutral was active in a particular matter during FY 2016.

<sup>3</sup> A “completed case” means that neutral third party involvement in a particular ECCR case ended during FY 2016. 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 2016 cases it should equal total ongoing cases. If you subtract sponsored ECCR cases from Total FY 2016 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 2016 cases it should equal total cases that involved only your agency or department with no other federal agency involvement.

						n of Indian Water Rights Settle ment				
Rulemaking	<u>  2  </u>	<u>  2  </u>	<u>    </u>	<u>    </u>	<u>  0  </u>		<u>  2  </u>	<u>  2  </u>	<u>    </u>	<u>  0  </u>
License and permit issuance	<u>  2  </u>	<u>  1  </u>	<u>    </u>	<u>    </u>	<u>  1  </u>	Gather ing of stake holders to obtain informa tion on the nature of the proble m	<u>    </u>	<u>  2  </u>	<u>    </u>	<u>  1  </u>
Compliance and enforcement action	<u>  3  </u>	<u>  3  </u>	<u>    </u>	<u>    </u>	<u>  0  </u>		<u>    </u>	<u>  2  </u>	<u>    </u>	<u>  0  </u>
Implementation/monitoring agreements	<u>  8  </u>	<u>  6  </u>	<u>    </u>	<u>    </u>	<u>  2  </u>		<u>  3  </u>	<u>  7  </u>	<u>    </u>	<u>  4  </u>
Other (specify): Program (4) Misc. (7)	<u> 11  </u>	<u>  5  </u>	<u>    </u>	<u>  1  </u>	<u>  5  </u>		<u>  5  </u>	<u>10  </u>	<u>  2  </u>	<u>  5  </u>
<b>TOTAL</b>	<b><u> 98  </u></b>	<b><u> 59  </u></b>	<b><u>  0  </u></b>	<b><u>  2  </u></b>	<b><u> 37  </u></b>		<b><u> 39  </u></b>	<b><u> 84  </u></b>	<b><u>  5  </u></b>	<b><u> 52  </u></b>
		(the sum of the Decision Making Forums should equal <b>Total FY 2016 ECCR Cases</b> )								

#### 4. ECCR Case Example

Using the template below, provide a description of an ECCR case (preferably completed in FY 2016). Please limit the length to no more than 2 pages.

Name/Identification of Problem/Conflict
<p>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</p>
<p>Fort Hancock, part of the National Park Service’s Gateway National Recreation Area (Gateway), is a former U.S. Army fort located on the Sandy Hook Peninsula overlooking Manhattan. The Fort provided defense for New York Harbor and New Jersey from attack by sea starting in 1895 and was decommissioned in 1974. Between 1954 and 1974 the Fort housed Nike nuclear missiles that were part of the defense of New York City from attack by air. The Fort was recognized as a National Historic Landmark in 1982.</p> <p>Faced with crumbling buildings and infrastructure and a large maintenance backlog, the NPS in 1999 issued a request for proposals for leasing and rehabilitation of historic structures. The NPS entered into a 60-year lease agreement in 2004 with a private developer to lease up to 44 of the 100 buildings to be used as research, office, commercial, and educational facilities. Also in 2004 a group opposed to commercial development in the Park commenced a lawsuit to stop and cancel the lease. In 2009, the NPS cancelled the lease because of the lessee’s insufficient financing. In January 2011, the Superintendent held an informal, closed meeting that was widely criticized.</p> <p>In 2012, still faced with deteriorating buildings and infrastructure and the maintenance backlog, the NPS established the Gateway National Recreation Area Fort Hancock 21st Century Advisory Committee (the “Advisory Committee”) under the Federal Advisory Committee Act of 1972 (FACA). The Advisory Committee was chartered to provide advice to the Secretary of the Interior, through the Director of the National Park Service, on the development of a reuse plan and on matters relating to future uses of the Fort Hancock Historic District. The Advisory Committee consists of members drawn from the scientific, educational, recreational, business, real estate and hospitality communities as well as local elected officials.</p> <p>Neutral facilitators from the DOI Office of Collaborative Action and Dispute Resolution (CADR) worked with the Advisory Committee from the first meeting through 2014. An external neutral facilitator has been working with the Advisory Committee since the end of 2015. Gateway has funded the ECCR costs, including costs associated with the Advisory Committee, labor and travel costs of the external facilitator, and travel costs for the internal DOI facilitators. The DOI CADR Office provided facilitation support at no charge to the NPS.</p>
<p>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</p>
<p>The Advisory Committee has met 26 times through 2016. From 2013 – 2014 nine meetings were facilitated by neutral facilitators from the DOI Office of Collaborative Action and Dispute Resolution (CADR). Starting in 2014 and through most of 2015 the Superintendent, who also serves as the Designated Federal Official for the Advisory Committee, facilitated nine meetings. At the end of 2015 an external neutral facilitator once again began working with the Advisory Committee and has facilitated eight meetings through 2016. Meeting agendas and minutes can be found on the Advisory Committee’s website -- <a href="https://forthancock21.org/">https://forthancock21.org/</a></p>

Gateway has followed all of the ECCR principles outlined the policy memo with the exception of conducting an assessment or determining whether to use a Federal Advisory Committee. However, the Advisory Committee did follow the Group Autonomy principle by developing its own Operating Procedures including choosing a consensus decision rule. In part, using a Federal Advisory Committee and following the FACA requirements has enabled Gateway and the Advisory Committee to continue to follow the ECCR principles.

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

The NPS' overall impression is that Committee members and the general public want this project to succeed. Other beneficial outcomes of this ECCR process include:

- Visibility has increased in the local communities for the NPS and Fort Hancock, the problems affecting the Historic District, and the efforts to address those problems;
- Improving local perspectives on the Park since discussing the problems and potential solutions publically with the Advisory Committee;
- Greater understanding about the NPS's constraints in addressing a maintenance backlog;
- Increased understanding by stakeholders and the public about leasing and that leasing can be a useful management tool for addressing the maintenance backlog;
- Shifting from negative to positive media reports about efforts to address the problems affecting the Historic District and using leasing to address those problems;
- Being a more active part of the community;
- Using a neutral facilitator who works for everyone on the Advisory Committee as well as the NPS participants;
- Assisting with marketing and outreach in the local community, developing the reuse plan, and identifying potential lessees for the historic buildings;
- Becoming a model leasing program (both short-term and long-term) for other parks' efforts to address the maintenance backlog and historic preservation; and
- One executed lease, letters of intent for eight buildings, and one proposal under review.

Use of an alternative forum might have resulted in:

- Continued opposition to using leasing in general and negative media reports
- Mischaracterizing the Park's efforts to address the maintenance backlog and reuse of the Historic District as privatizing the park;
- Misconceptions and misunderstandings about the NPS' intentions or motives; and
- Never realizing the benefits of leasing or being able to use leasing as a management tool.

Reflections on the lessons learned from the use of ECCR

Using a public forum and the Committee has brought the Park and its constituents closer together and has been more beneficial than using the NPS' usual civic engagement process.

A neutral facilitator has improved communications amongst the participants.

Managing a Federal Advisory Committee is a huge investment and a lot of work, including assisting the Committee with working in a public forum. Membership changes slow momentum and result in a steep learning curve. Committee members participate actively and contribute during meetings, yet many are not involved in follow up activities or actions outside of meetings. Rotating committee chairs is not necessary or helpful. Additionally, while some Committee members are dedicated, attending most or all meetings, others have not participated at all.

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

**Indian Affairs**

In FY 2016 RACA and CADR worked together to support the use of ECCR with BIA, DOJ and two Tribes in an ongoing lawsuit and try to resolve outstanding issues between the tribes and BIA before trial. The DOI offices provided convening and process design assistance to DOJ, BIA, and the tribes. RACA also provided financial support for the initial phase of the process to evaluate feasibility of mediation.

**BLM-CADR**

**BLM NV Wilson Creek Allotment:** A facilitator is assisting with ongoing conflicts between grazing groups (cattle and sheep) with BLM permitting overlay complexity. In FY 2016 the contracted neutral provided impartial facilitation and process support for an on-site situation assessment and approximately four joint BLM/stakeholder workshops in the requesting district. The neutral assists in establishing sideboards, negotiation parameters, and definition of agreement; diffusing attempts to distract from the meeting agenda and its outreach purpose; and coaching BLM staff on their roles and tasks for the meetings.

**Northern Plains Tribal Summit:** In May 2014, the Advisory Council on Historic Preservation (ACPH) convened a Northern Plains Tribal Summit in Ft. Yates, South Dakota to improve consultation, communication, and collaboration among the Northern Plains tribes and federal agencies. The conclusion of the summit highlighted a need for the **BLM MT/DK** to undertake an effort to provide the opportunity to build and sustain relationships, openness, and trust with tribal partners in the region.

The **BLM MT/DK and BLM Wyoming** solicited the professional assistance of the DOI CADR with the intent of taking a hard look at existing tribal consultation efforts and establishing a more thoughtful, integrated tribal consultation approach that is more importantly “fair, firm, and consistent” for all participants. The BLM adopted a phased approach to address the ongoing situation. Phase 1 consisted of an internal assessment to help explore whether and how there is an internal, organizational alignment within the BLM on a variety of tribal engagement issues. A third-party neutral conducted the assessment. Phase 2 (underway) will consist of working with other Federal and State agencies and industry representatives to identify similarities and differences, as well as best practices and lessons learned in their tribal consultation efforts. Phase 3 (yet to occur) will likely consist of conducting an external assessment with the Northern Plains Tribes to understand their needs and to potentially discuss and receive feedback. Third-party neutral(s) are facilitating and managing all three phases. Implementation occurred in FY 2016 and will continue into FY 2017 as well.

**Bureau of Reclamation**

**Glen Canyon Dam Adaptive Management Program (AMP).** In this facilitated process,

long term operational recommendations are being developed by consensus of a diverse set of stakeholders of the Colorado River including power customers, conservationists, recreational interests, States and water customers (such as farmers and cities). The operating recommendations developed by the AMP are most often accepted and implemented by the Secretary of the Interior as Water Master for the Colorado River. This Program, with its facilitated and collaborative process, has become the standard operating procedure for operation and management of the Colorado River. This basin, while not immune from conflict, has seen a dramatic decline in litigation in recent years. What is significant about that is that the Colorado River Basin has been experiencing such severe drought over the past five years -- making it ripe for litigation and intense conflict. Because of this process, that conflict is managed and has not become toxic.

Reclamation's **Central Valley Project (CVP)** - located in California - is one of the largest and most complicated multi-purpose water projects in the world. Reclamation coordinates the operations of the CVP with the State Water Project which is managed by the State of California. Because of the complicated and controversial nature of water management in the State of California, the Long Term Operations (LTO) of these two projects are subject to litigation and numerous court orders. In response, Reclamation initiated a facilitated effort to coordinate with the parties to the litigation. More specifically, Reclamation was under a court-ordered deadline to complete a NEPA review on the Reasonable and Prudent Alternatives (RPAs) of the 2008 U.S. Fish and Wildlife Service (USFWS) Biological Opinion (BO) and the 2009 National Marine Fisheries (NMFS) BO on the LTO. Also, at the time that facilitation started, NMFS and USFWS (also defendants in the litigation) were under court-ordered deadline to revise their Biological Opinions (BO), for which they needed a Biological Assessment from Reclamation. Therefore, it was deemed appropriate and necessary to obtain the services of a neutral third party to facilitate discussions that would lead to rapid progress towards completing the deliverables under the fast approaching deadlines.

With assistance of the facilitator, Reclamation began to coordinate every other week with USFWS and NMFS in developing accepted assumptions for the analysis in the Biological Assessment necessary for the Endangered Species Act (ESA) consultation. The facilitator also coordinated bimonthly meetings with the California Department of Water Resources (DWR), our applicant, and plaintiffs-intervenors in the litigation. These meetings proved productive as the two agencies were able to reach compromise in various contentious issues. The facilitator continues to assist in monthly meeting coordination between the three Federal Agencies and DWR. Although the BOs were eventually upheld, and the ongoing Section 7 consultation was no longer necessary, the agencies involved were able to produce good work that is likely to be used in future Section 7 consultations on the LTO.

**Lewiston Orchards Project in Idaho.** After many years of dispute and litigation, the Nez Perce Tribe, NOAA Fisheries, and Reclamation reached a settlement agreement in 2014 to administratively stay ESA litigation concerning the effects of operations and maintenance of the Lewiston Orchards Project in Idaho on listed steelhead populations. The primary purpose of the 2014 Agreement is to continue efforts to

complete a full water exchange and title transfer of the Project as a comprehensive solution to ESA and Tribal Trust issues. Thanks in part to the work of the neutral facilitator, significant progress has been made, the relationship between the parties has significantly improved, and the parties are making progress towards implementation of the terms of the settlement agreement.

**Implementation of the Aamodt Indian Water Rights Settlement**, which was authorized in 2010 (PL 111-291). The Settlement Agreement has created controversy in the Pojoaque Basin over private property rights, including continuing use of private wells and access to private property located within the exterior boundaries of land owned by the four Settlement Pueblos. Individual water rights owners have an opportunity to either (1) sign up to be part of the settlement and choose to continue using their existing well, (2) hook up to the Rural Water System (RWS), or (3) have the next owner of the property hook up to the RWS. Approximately 800 water rights holders have filed objections to the proposed Partial Final Judgment and Decree and the Settlement Agreement.

Eleven entities are acting as cooperating agencies for the Pojoaque Basin Regional Water System Environmental Impact Statement (EIS): the four Settlement Pueblos, Bureau of Indian Affairs, U.S. Fish and Wildlife Service, Indian Health Service, U.S. Army Corps of Engineers, New Mexico Department of Transportation, Santa Fe County, and City of Santa Fe. An ombudsman to the Aamodt water rights litigation, was hired to develop public education materials and facilitate the lively, and sometimes hostile, public outreach and education meetings. The resolution of the objections to the Settlement Agreement is ongoing but because the EIS process is a facilitated collaborative process, the EIS effort is moving forward.

**The Middle Rio Grande Endangered Species Collaborative Program** (Collaborative Program) has been in place since 2002. It is a multi-stakeholder effort located in New Mexico consisting of 16 Federal, state and local governmental entities; Indian Tribes and Pueblos; and non-governmental organizations representing diverse interests. The Collaborative Program is intended to serve as the vehicle and mechanism to maintain compliance with the US Fish and Wildlife Service's (Service) 2003 Biological Opinion on the Middle Rio Grande. The objectives of the participants are to prevent extinction, preserve reproductive integrity, improve habitat, support scientific analysis, and promote recovery of listed species in the basin. Collaborative Program activities include water acquisition and management, habitat restoration, endangered species monitoring and Rio Grande Silvery Minnow propagation.

**Desert Landscape Conservation Cooperatives (LCCs).** The LCCs are a national network of partners, which include Federal agencies, States, Tribes, universities, non-governmental organizations, landowners and other stakeholders. These are established to form diverse partnerships to address transboundary natural resources issues or concerns that may arise from overlapping jurisdictions, Tribal Trust responsibilities, or a lack of resources. The goals of the LCCs are to promote collaboration and address the long-term impacts of ecosystem stressors and management responses on a landscape-level basis. Knowing of the diverse nature of the membership, Reclamation, and the US Fish and Wildlife Service engaged the

services of third party neutrals in FY 2016 to ensure greater communications and understanding with and among the stakeholders and partners to address issues before they become conflicts.

**Programmatic Agreement for the Navajo-Gallup Water Supply Project (NGWSP)** in New Mexico. To resolve concerns regarding adverse effects from project undertakings and to avoid construction delays, Reclamation contracted for a cultural resource firm to act as a facilitator for workgroup consultation meetings and to assist in a collaborative process for implementation of a Programmatic Agreement (PA), which is required to comply with Section 106 of the National Historic Preservation Act (NHPA). The PA covers all tribal-related actions and other agency consultations concerning construction of the project. Cultural resource issues are a source of ongoing disagreement among tribes, agencies, and stakeholders during construction of large projects. The signatories and concurring parties to the NGWSP PA represent a diverse, often polarized group of stakeholders associated with the project area. It is expected that continuation of this facilitated, collaborative process will yield beneficial results throughout the life of the project. Without facilitation, the consultation process was expected to cause costly delays to the NGWSP.

## 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.

At a programmatic level a key priority for the CADR office is implementing process evaluation tools and building a foundation of lessons learned and practice improvements that can be integrated across DOI ECCR processes as appropriate. In FY 2017, we will build on existing efforts within CADR and in the broader federal ADR community to develop a system to evaluate CADR's contracted and direct services.

### **Reclamation**

Based upon our experiences with ECCR, there are four priority areas where we have seen ECCR used successfully.

The first is in project operations – aiding in decision making related to water and power releases and operations and maintenance. Such examples include the Glen Canyon Adaptive Management Work Group, which guides the operations of Glen Canyon Dam and operations of the Central Valley Project in coordination with the State Water Project in CA, implementation of the San Joaquin River Restoration Program (SJRRP) including the Reach 4B Eastside Bypass and Mariposa Bypass Low Flow Channel and

Structural Improvement Project in California, and the Lewiston Orchards Project in Idaho.

The second priority area is related to facilitating the compliance with Federal environmental laws such as the National Environmental Policy Act (NEPA), Section 106 of the National Historic Preservation Act (NHPA) –and the Endangered Species Act. Case examples include development of a Programmatic Agreement for the Navajo-Gallup Water Supply Project (NGWSP); the Middle Rio Grande Endangered Species Collaborative Program; Structured Decision-Making Workshops to Assist in Preparation of an Environmental Impact Statement (EIS) for a Long-Term Experimental and Management Plan (LTEMP) for Glen Canyon Dam; the San Joaquin River Restoration Program in California; and the Klamath Project ESA Consultation in CA and OR.

The third priority area is using a facilitated process to address technical, engineering or design issues. Through the Value Engineering Program, where Reclamation is not a participant, Reclamation facilitates collaborative efforts to review technical designs with an eye toward improving the cost effectiveness of engineering or technical solutions to water and power management issues. Reclamation is able to improve the effectiveness and efficiency of a proposed water and/or hydro power project – either for contractors, customers or the taxpayers of the United States. It also encourages “outside of the box” thinking to identify design alternatives that may meet needs but which may not have been explored previously.

The fourth area is in dealing with Tribal issues – most specifically working with Tribes, states, other federal agencies and other non-Federal stakeholders to address Indian Water Rights claims – using a facilitated process to avoid litigation and more rapidly towards resolution. Some examples include the Aamodt Water rights settlement (New Mexico) and the Value Engineering process for the Utah- Navajo water settlement

**7. Non-Third-Party-assisted Collaboration Processes:** Briefly describe other significant uses of environmental collaboration that your agency has undertaken in FY 2016 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.*

For many of the land management Bureaus and Offices in DOI, collaboration with stakeholders and other Bureaus or Federal agencies without the use of a third party neutral is a common occurrence. Below are selected examples from the Bureaus and Offices.

#### **Indian Affairs**

Indian Affairs was the lead with DOI on Tribal Consultation for Infrastructure Development in Indian Country partnering with multiple Agencies to hear Indian Country's concerns. This national multi-agency effort was initiated in late FY16 culminated in a report available on the Indian Affairs Regulatory Affairs and Collaborative Action website:

<https://www.indianaffairs.gov/cs/groups/public/documents/document/idc2-060030.pdf>

Indian Affairs engages in meaningful tribal consultation on issues directly impacting Tribes and individuals and continues to work with the Department on questions regarding consultation, especially as it pertains to cultural customs and communication styles.

#### **BLM CADR**

##### **National Effort with Regional Applications**

In the BLM planning process, the new Planning Rule has several opportunities for enhanced public engagement prior to release of Draft Plan and Environmental Impact Statements in FY 2016. These methods have been initiated or used for several land use plans, such as:

- Basin and Range National Monument in Nevada
- Browns Canyon National Monument in Colorado
- Sand to Snow National Monument in California
- Mojave Trails National Monument in California
- Organ Mountains-Desert Ridge National Monument in New Mexico
- East Colorado Resource Management Plan
- Missoula Resource Management Plan in Montana
- Northwest California Integrated Plan

##### **Contaminated public land clean-up pursuant to CERCLA Rand Historic Mining Complex Site (RHMC) - Ridgecrest Field Office, CA**

The RHMC contains several hundred acres of arsenic bearing mine and mill tailings located on public land in and around Randsburg and Red Mountain, CA. This area has been extensively investigated and because of those findings, the BLM has implemented several Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) removal and remedial actions necessary to protect public health or welfare or the environment from risks associated

with releases of hazardous substances.

The DRS, in coordination with the DOI Office of the Solicitor (SOL), provides the BLM CA State Office and the Ridgecrest Field Office with technical and legal support for the CERCLA clean-up at the RHMC. The DRS also assists the field office in holding public meetings and open houses. These forums provide information to our stakeholders, CA state regulators, and the U.S. Fish & Wildlife about our on-going CERCLA clean-up progress. Millions of dollars have been spent by the BLM in addressing contamination at the RHMC and it is BLM policy that those responsible for causing or contributing to contamination should pay. Therefore, the DRS works with SOL in tracking costs spent for clean-up as this information is critical in our on-going negotiations with the responsible parties.

### **Bureau of Reclamation**

**The Middle Rio Grande Endangered Species Collaborative Program** (Collaborative Program) In fiscal year 2016, thanks to the Collaborative Program's rising comfort level with facilitation and the improved relationships among the parties, Reclamation served as the mediator/facilitator among the non-federal ESA, Section 7 consultation parties, the State of New Mexico, and the Middle Rio Grande Conservancy District to update the biological assessment (BA) on Middle Rio Grande water management and operations.

### **Office of Surface Mining Reclamation and Enforcement**

OSMRE's interaction with state and federal agencies to resolve developing conflicts or avoid potential conflicts embodies the principles of environmental conflict resolution and collaborative problem solving. OSMRE regional and field office managers recognized opportunities to engage with state and federal agency counterparts to better understand agencies' missions and processes, and to coordinate those processes where possible to reach decisions based on shared data and analysis. Some examples of non-assisted collaborative problem solving efforts:

#### Permitting Decisions/Public Participation

Public participation is required for coal mine permit processing for new permits, significant permit revisions, and permit renewals. When an administratively complete application is received, the applicant must place an advertisement in a local newspaper of general circulation in the locality of the proposed coal mine as required by regulation. Public entities and any person having an interest which is or may be adversely affected may submit written comments or objections on permit applications. They may also request, in writing, an informal conference. The purpose of the public participation is to allow persons to let their comments and objections to the permits be known and to allow OSMRE to consider situations or views that may not have previously been considered before making its decision on the permit application. To ensure the participation of tribal members in the Southwest, OSMRE ensures that notification of all permitting actions and the opportunity to comment is done using radio announcements in either the Navajo or Hopi language. In addition, during all public meetings OSMRE ensures that the meetings are held in locations easily accessible to tribal members and that Navajo and Hopi translators are available to ensure that all questions

from the public are understood and can be answered and that any comments the public may have are entered into the record.

OSMRE has worked closely with the Tribes and other State and Federal bureaus to develop Programmatic Agreements under section 106 of the National Historic Preservation Act. This involves significant negotiation and collaboration with all parties to ensure the Programmatic Agreements meet all signatory parties' needs. In FY 2016, OSMRE involved Tó Nizhoni Ani and Black Mesa Water Coalition in the NHPA Section 106 process, by meeting with their members to discuss their concerns. OSMRE also utilized public meetings for the EIS to meet with Tó Nizhoni Ani and Black Mesa Water Coalition to consult with them about cultural resources in the project area. The issues were resolved in face-face meetings to identify outstanding issues, establish the applicable legal framework, and discuss potential solutions to sensitive issues of cultural concern.

Administrative or Judicial Complaints:

With the assistance of the Solicitors Office, OSMRE has engaged in settlement negotiations with local citizen groups that have filed administrative or judicial complaints. These negotiations can result in the resolution of the complaint and win-win for both parties. OSMRE has also met with local citizen groups to discuss any concerns they may have with a Federal or State program. The goal of these discussions is to try to resolve any concerns the citizens may have before they result in administrative or judicial complaints.

In FY16, the OSMRE Western Region implemented significant enhancements to their NEPA public participation process including, conducting external scoping, providing opportunities for public comment on draft documents, as well as conducting public outreach meetings during the preparation of environmental assessments before recommending the mining of federal coal or issuing decisions approving the mining of coal where OSMRE is the regulatory authority. OSMRE often partners with other federal and state resource management agencies through execution of a memorandum of understanding to best inform their decision. Where endangered species may likely be affected by the project, OSMRE has worked collaboratively with the project proponent and the United States Fish and Wildlife Service to develop appropriate conservation measures.

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.

Reporting difficulties remain challenge to DOI for a number of reasons, including the following:

- a clear linkage of the value to each Bureau or Office by providing the information requested for the report in a timely way;
- lack of internal resources and communication challenges in some Bureaus and Offices (including CADR) to categorize, collect, or analyze the data required for the report which could result in a less than comprehensive report;
- the Departmental structure is diverse and its component parts are responsible for preparing underlying information for the report, consequently the CADR office faces challenges in gathering comprehensive information.
- a high degree of variation in reporting within and across Bureaus and Offices – some regions reported activities that likely are carried out in other regions and not reported – this issue is compounded by staffing changes and gaps in institutional memory;
- continued confusion about terms in the report causing some reporting units to interpret terms more narrowly than others even though more detailed instructions are provided each year;
- small, discrete processes that could be funded under a micro-purchase, i.e, less than \$3500 are not tracked or reported; and
- facilitated processes with other Federal, state, or non-governmental entities may not have been reported that did not involve funding or sponsorship.

The CADR Office plans to review the reporting structure and process in FY 2017 with a view towards improving both the reporting and coordination with the Bureaus and Offices in preparing the report.

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

Report due February 24, 2017.

Submit report electronically to: [kavanaugh@udall.gov](mailto:kavanaugh@udall.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