

# **ENVIRONMENTAL COLLABORATION AND CONFLICT RESOLUTION (ECCR) IN THE FEDERAL GOVERNMENT**

## **Synthesis of FY 2016 Reports**

Submitted by Federal Departments and Agencies

Pursuant to the OMB-CEQ Policy Memorandum on ECCR of September 7, 2012

This report provides an overview and synopsis of federal department and agency use of environmental collaboration and conflict resolution (ECCR) for FY 2016. ECCR is defined as third-party assisted collaboration and conflict resolution used to resolve problems and conflicts that arise in the context of environmental, public lands, or natural resource issues, including matters related to energy, transportation, and water and land management.<sup>1</sup> In FY 2016, agencies reported 368 active ECCR efforts. Analysis of the FY 2016 agency reports shows that the Environmental Protection Agency (EPA), Department of Defense (DoD), the Department of the Interior (DOI), and the Federal Energy Regulatory Commission (FERC) continue to have the highest-volume involvement in ECCR since formal reporting began in FY 2006. Appendix A shows the history of reporting agencies since the beginning of formal reporting in 2006, as well as brief summaries of trends in select areas of report content.

## **Background**

On September 7, 2012, the Office of Management and Budget (OMB) and the President's Council on Environmental Quality (CEQ) issued a joint policy memorandum on environmental collaboration and conflict resolution.<sup>2</sup> Building on 2005 OMB-CEQ guidance, the 2012 memo provides all executive branch agencies with the following direction:

*(I) Increase the appropriate and effective use of third-party assisted environmental collaboration as well as environmental conflict resolution to resolve problems and conflicts that arise in the context of environmental, public lands, or natural resource issues, including matters related to energy, transportation, and water and land management.<sup>3</sup>*

## **Reporting Requirement and FY 2016 Participation**

The 2012 joint policy memorandum on ECCR requires federal departments and agencies to report annually 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. Specifically, Section 4(g) of the 2012 memorandum establishes the following reporting requirement:

*Federal departments and agencies shall report at least every year to the Director of OMB and the Chair of CEQ on their use of Environmental Collaboration and Conflict Resolution for these purposes, and on the estimated cost savings and benefits realized through third-party assisted negotiation, mediation, or other processes designed to help parties achieve agreement. Costs savings and benefits realized should be reported using quantitative data to the extent possible. Departments and agencies are encouraged to work toward systematic collection of relevant*

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<sup>1</sup> Office of Management and Budget, & Council on Environmental Quality (2012). *Memorandum on Environmental Collaboration and Conflict Resolution*. Washington, D.C. The 2012 memorandum is available online here: [http://www.udall.gov/documents/Institute/OMB\\_CEQ\\_Memorandum\\_2012.pdf](http://www.udall.gov/documents/Institute/OMB_CEQ_Memorandum_2012.pdf).

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

*information that can be useful in on-going information exchange across departments and agencies as fostered by Section 4(e).*

The following departments and agencies submitted FY 2016 reports:

- Department of Energy (DOE)
- Department of the Interior (DOI)
- Department of the Navy
- Department of Transportation (DOT)
- Department of Veterans Affairs (VA)
- Federal Energy Regulatory Commission (FERC)
- National Guard Bureau
- National Oceanic and Atmospheric Administration (NOAA)
- U.S. Air Force
- U.S. Army
- U.S. Army Corps of Engineers (USACE)
- U.S. Army Reserve
- U.S. Environmental Protection Agency (EPA)

This synthesis summarizes the information in the FY 2016 reports. Individual department and agency reports are posted online at <http://www.udall.gov/OurPrograms/Institute/ECCRReport.aspx>.

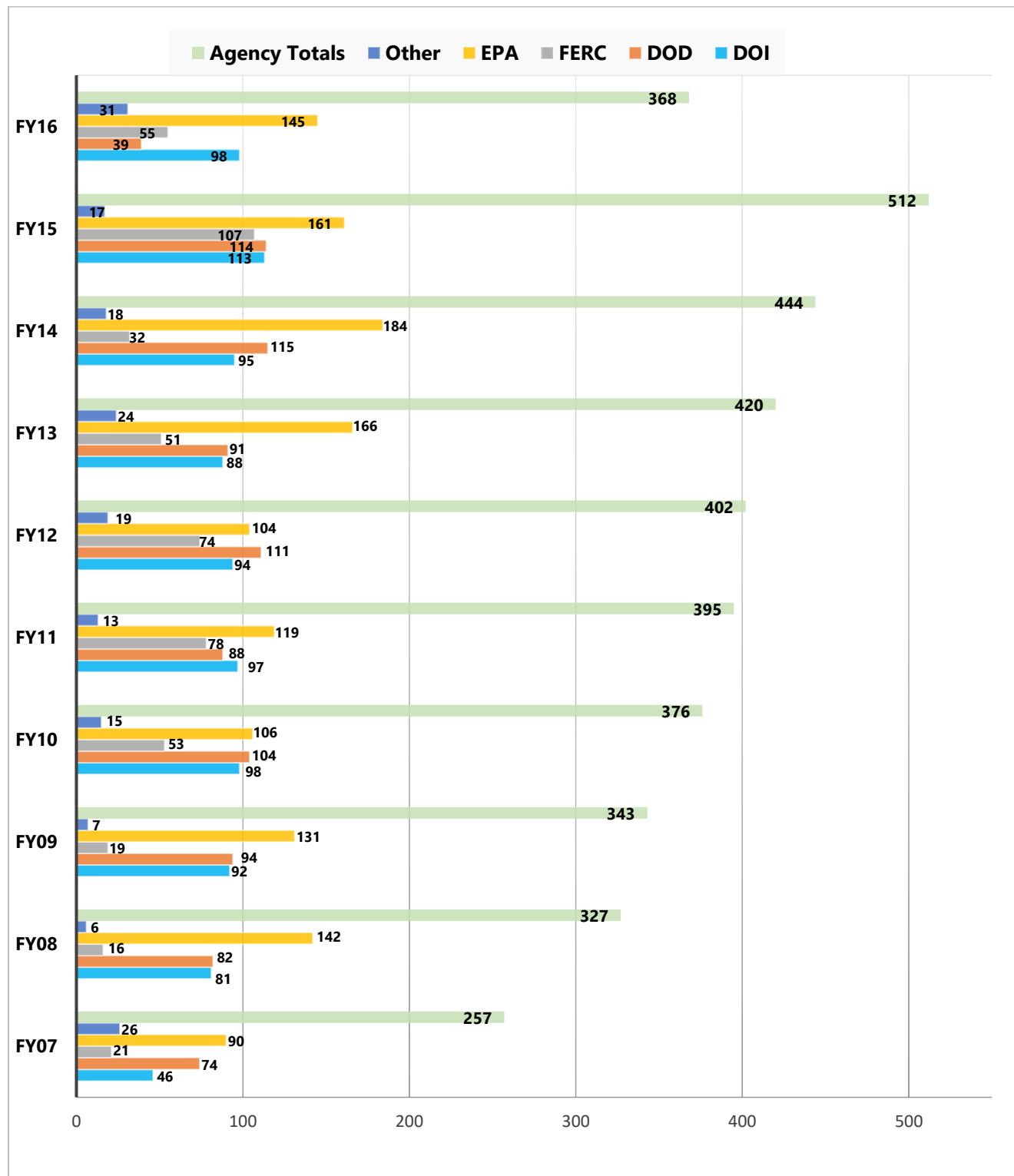
## ECCR Sponsorship, Participation, and Context

In FY 2016, federal departments and agencies reported 368 ECCR cases in which they either directly sponsored an ECCR process or participated in a process sponsored or convened by another agency or entity. Of the 368 active cases, 207 (56%) were completed, and the remaining projects continued into FY 2017. EPA, DoD, DOI, and FERC have consistently reported the highest-volume involvement in ECCR since formal case reporting began in FY 2006, and this trend continued in FY 2016 (Figure 1).

Overall, ECCR cases have decreased since FY 2015 (See Figure 1). This may be in part to the decrease in the amount of agencies reporting compared to previous years.

Federal departments and agencies also reported on the context in which ECCR was used most commonly in FY 2016. Figure 2 shows the most common contexts for both assisted and unassisted collaborative activities in FY 2016.

**Figure 1. Distribution of ongoing ECCR cases in the federal government, FY 2007 to FY 2016<sup>4</sup>**



<sup>4</sup> Agency totals include multi-agency cases that are reported individually by each of the departments and agencies involved, thus some cases may be double-counted. USIECR's ECCR cases are not included as most should be reported by other federal departments and agencies.

## Contexts for ECCR

**Figure 2. Five most commonly cited contexts for ECCR use, in both assisted and unassisted collaborative activities in FY 2016 (shown with example topics)**

Acts & Laws	Natural Resource Planning & Management	Regulatory & Administrative Rule Actions	Consultation & Coordination	Broad Environmental & Social Issues
<ul style="list-style-type: none"> <li>• National Environmental Policy Act (NEPA)</li> <li>• Endangered Species Act (ESA)</li> <li>• Clean Water Act (CWA)</li> <li>• National Historic Preservation Act (NHPA)</li> <li>• Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)</li> <li>• Resource Conservation and Recovery Act (RCRA)</li> </ul>	<ul style="list-style-type: none"> <li>• Forest Planning</li> <li>• Large Landscape Conservation and Collaboration</li> <li>• Regional Infrastructure Development</li> <li>• Water Resources (e.g., storm water, groundwater permitting; water releases, quality, and security; flood risk assessment and recovery)</li> </ul>	<ul style="list-style-type: none"> <li>• Energy Development and Transmission, including Renewable Energy; Offshore Development</li> <li>• Negotiated Rulemaking</li> <li>• Compliance and Enforcement Actions</li> <li>• Permitting Review</li> </ul>	<ul style="list-style-type: none"> <li>• Tribal Consultation</li> <li>• Joint Fact-Finding in Planning and Development</li> <li>• Multi-Agency, Multi-Scope Issues</li> <li>• Multi-Agency Programmatic Agreements</li> <li>• Stakeholder &amp; Community Engagement</li> <li>• Public Involvement</li> </ul>	<ul style="list-style-type: none"> <li>• Environmental Justice</li> <li>• Climate Change</li> <li>• Water Security</li> <li>• Energy Development</li> <li>• Endangered/critical species</li> </ul>

Federal departments and agencies carry out many activities in support of their missions. These activities include planning; rulemaking; policy development; licensing and permit issuance; siting and construction; compliance and enforcement; and implementation and monitoring. Some examples of specific agency activities in which ECCR was applied include the following:

- Clean up cost recovery under CERCLA (multiple);
- Site remediation, decontamination, and decommissioning under CERCLA and the Resource Conservation and Recovery Act [RCRA] (EPA, DOE);
- Site-wide RCRA permits (DOE);
- Siting transmission lines and research facilitates in compliance with NEPA (DOE);
- Planning hydropower projects under NEPA (FERC); natural gas and hydroelectric licensing and permitting (FERC);
- Public involvement and community engagement to increase communication and reduce conflict (Army, EPA);
- Planning and implementation under NEPA (EPA) and resource protection under ESA (DOI);
- Environmental justice (EPA);

- Requirements under CWA, NEPA, and ESA, including water resource protection (EPA, USACE);
- Designed Programmatic Agreements with the Advisory Council on Historic Preservation under the NHPA (DOT);
- Increased interagency cooperation and collaboration (multiple); and
- Expanded efforts in tribal consultation and engagement (multiple).

Figure 3 shows specific contexts and agency decision-making forums in which federal departments and agencies used ECCR as a tool in FY 2016.

**Figure 3. FY 2016 contexts and agency decision-making forums for ECCR application**

Contexts for ECCR Applications	Number and percent of cases by category	Agency Decision-Making Forums			
		Federal Agency Decision	Admin. Proceeding/Appeal	Judicial Proceeding	Other
Policy development	52 (14%)	20	0	0	32
Planning	90 (24%)	50	0	2	38
Siting and construction	79 (21%)	74	0	4	1
Rulemaking	10 (3%)	10	0	0	0
License and permit issuance	14 (4%)	9	1	0	4
Compliance and enforcement action	71 (19%)	23	39	8	2
Implementation/monitoring agreements	18 (5%)	12	0	0	6
Other	33 (9%)	9	0	2	22
<b>Total</b>	<b>368 (100%)</b>	<b>207</b>	<b>40</b>	<b>16</b>	<b>105</b>

## Investment in ECCR

Departments and agencies have invested in ECCR and reinforced those investments with ECCR-related policy changes. Many of these investments build overall ECCR capacity by leveraging federal dollars and employees with non-federal and non-governmental partnerships, including those with American Indian Tribes; local communities; states; academic institutions; and non-governmental, private-sector individuals and organizations. For FY 2016, departments and agencies reported the following investments in ECCR:

- **Promoting the use of ECCR through**
  - Proactively engaging sponsors, partners, and the public;
  - Integrating and institutionalizing ECCR principles into department and agency mission statements, operating principles, performance goals, strategic planning, and policy implementation;
  - Emphasizing leadership commitment to and support of ECCR use;
  - Continuing to develop internal agency ECCR support mechanisms and guidance, drawing on lessons learned from past ECCR use;
  - Incorporating procedures for the appropriate application of ECCR into department and agency regulations;

- Dedicating specific budget allocations for ECCR services, including contracting with third-party ECCR professionals;
  - Building support with management, and
  - Routinely encouraging parties to consider ECCR as an alternative to traditional dispute resolution mechanisms (e.g., hearings, appeals, litigation).
- **ECCR personnel and staff capacity** through
  - Encouraging and provision of resources and training to staff to implement ECCR processes;
  - Supporting ECCR through the creation of positions with specific mandates to promote ECCR principles, either exclusively or as part of their duties;
  - Establishing programs to support public involvement and collaborative activities;
  - Encouraging and supporting developmental assignments; and
  - Appointing ECCR coordinators with collateral duty positions in the field.
- **Inter-agency and intra-agency ECCR coordination** through
  - Fostering inter-agency ECCR partnerships, agreements, and communities of practice;
  - Funding inter-agency liaison positions to facilitate consultation and communication; and
  - Developing ECCR leadership and networks within departments and agencies, including peer-to-peer learning opportunities, webinars, and regular calls to identify ECCR needs.
- **ECCR skill-building efforts** through
  - Investing in federal ECCR personnel through training and professional development;
  - Offering in-house and external ECCR training and capacity building in the form of classes, workshops, and “clinics” in subject areas including conflict assessment, facilitation, negotiation, conflict management, collaboration, communication, public involvement, collaborative leadership, and dealing with difficult people;
  - Institutionalizing ECCR education through integration into regular agency curricula, certification programs, and career development training; and
  - Expanding ECCR capacity throughout agencies, including districts and regional offices.
- **ECCR capacity building and leveraging efforts** through
  - Increasing knowledge management and transparent communications;
  - Expanding and promoting rosters and IDIQ contracts for non-governmental ECCR professionals (DOI, EPA, DOT, USIECR);
  - Investing in federal in-house rosters of facilitators and ECCR professionals;
  - Supporting collaborative decision making with technical and scientific information and expertise;
  - Developing local, state, regional, and national teams promoting collaborative planning to anticipate problems and identify alternative solutions early to reduce the likelihood and severity of environmental conflict (USACE); and
  - Investing in internal programs and assistance centers that support ECCR and deliver a suite of ECCR-related services, including consultation, conflict assessment, process design, mediation, facilitation, training, centralized procurement of contracted ECCR services, and support for communities of practice. The following programs and centers are examples of these investments:
    - Public Involvement Specialists Program (USACE-CPCX);
    - Collaboration and Public Participation Community of Practice (USACE);
    - Tribal Nations Technical Center of Expertise (USACE-TNTCX);
    - Civil Works Transformation SMART Planning (USACE);
    - Conflict Prevention and Resolution Center (EPA);

- Collaborative Action and Dispute Resolution (DOI & BLM);
  - Pilot Program on Negotiation Skills (Air Force); and
  - Dispute Resolution Service (FERC).
- The NOAA Office of General Counsel is working to develop a more robust NOAA-wide ECCR program that will include a NOAA-wide ECCR policy to provide guidance to individual offices, an internal cadre of mediators and facilitators, and a training program.
- DOT FAA has updated its Community Involvement Manual, which identifies the use of facilitated conflict resolution as a means to address project issues.
- **ECCR partnership support** through
  - Committing in an ongoing way to developing effective working relationships with federal, local, tribal, and community partners;
  - Building capacity and incentives for stakeholders and partners to effectively engage in ECCR, including through outreach to stakeholders, joint training opportunities, assistance in acquiring third-party neutral services, and partner recognition programs; and
  - Launching a stakeholder helpline service to offer early response to dispute-related calls (FERC).
- **Evaluation of ECCR processes** through
  - Developing and improving methods and metrics for tracking and evaluating the use of ECCR processes; and
  - Documenting the performance of ECCR processes through case studies and lessons learned.

## Benefits of ECCR

In FY 2016, the majority of departments and agencies reported on the benefits of ECCR based on observations and recorded qualitative outcomes, while a select number of agencies tracked this data through formal methods that included both quantitative and qualitative data. Those agencies that tracked benefits quantitatively (EPA, FERC) reported that ECCR processes saved staff time and travel costs compared to alternative processes, such as litigation and unassisted negotiation.

EPA conducted a study comparing ECCR to alternative decision-making processes. The findings from this study found that “ECCR processes required 45% fewer weeks to reach a decision than litigation.” This results in lower costs for the Agency. The study also found that “ECCR processes required 30% fewer staff members than litigation.” FERC reported that their Commission has a track record for timely closure and resolution of ECCR cases, closing the majority of cases within 6 months.

The suite of qualitative ECCR benefits identified by departments and agencies in FY 2016 included the following:

- **Better relationships:** Increased trust and improved long-term working relationships among agencies and stakeholders;
- **More efficient operations:** Efficiencies in process and reduction in process time in activity areas such as planning, permitting, licensing, and remediation; expedited reviews; increased knowledge sharing between agencies and stakeholders; reduction in duplicative efforts;
- **Resource savings:** Resource savings from better coordination, streamlined processes, and more timely dispute resolution, particularly in enforcement actions;
- **Cost savings:** Avoidance of litigation and the costs associated with the process;

- **Increased communication:** More frequent, effective communication between multiple government entities and with the public;
- **Better understanding:** Improved communication of all parties' interests, goals, and concerns, resulting in more focused outcomes, better understanding of issues and roles, and narrowing of the range of disagreement;
- **Enhanced skills and planning:** Increased ECCR skills among staff, such as insights into the decision-making process and the needs of stakeholders, leading to improved planning for future processes; better planning for early dialogue; and
- **Better and more durable outcomes:** More creative and durable solutions to disagreements, even those that are long-term or entrenched; improvements in environmental and socio-economic conditions; improved community resilience; advancement of the agency's mission; and increased stakeholder buy-in and ownership of solutions.

In addition to identifying general categories of ECCR benefits, the departments and agencies provided examples of cases and projects highlighting the benefits of ECCR. A selection of these cases is reported below.

### **Examples of FY 2016 ECCR projects**

#### **Abandoned Uranium Mines Clean Up (DOE)**

*DOE worked with EPA, the Department of the Interior, the Department of Justice, the Navajo Nation, and Freeport-McMoRan, utilizing a third-party mediator to reach a settlement in excess of \$600 million. Third-party mediation helped the parties schedule dates, work out regular meetings to discuss settlement, and most importantly, facilitate discussions to find common ground. In reaching common ground, the United States and Freeport agreed to share the costs to clean up over 200 abandoned uranium mines. The agencies will place \$335 million into a trust while Freeport McMoRan provides the remaining funds. Third-party mediation helped bridge the communication gap between the parties and helped avoid costly litigation while also achieving an outcome agreeable to all parties.*

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#### **Plains and Eastern Transmission Project Programmatic Agreement (DOE)**

*For the Plains and Eastern Transmission Project, the DOE Field Element based in Oklahoma, implemented public outreach and collaboration processes associated with the NEPA Environmental Impact Statement scoping processes. For the drafting of the Section 106 Programmatic Agreement pursuant to the National Historic Preservation Act, DOE utilized a collaborative outreach effort with all affected agencies and Native American governments in a series of face-to-face meetings and conference calls. Personnel from the Advisory Council on Historic Preservation and the DOE Office of Tribal and Intergovernmental Affairs participated in stakeholder meetings to address particular areas of conflict during the collaborative drafting process of the Programmatic Agreement. The parties used many ECCR techniques in developing the Programmatic Agreement.*

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#### **CERCLA Clean Up Cost Recovery Dispute (Air Force)**

*CERCLA clean-up cost recovery dispute at a former California Air National Guard Station (Airport) was successfully settled with mediation. In 2005, the Regional Water Quality Control Board presented draft Clean Up and Abatement Orders to the Air Force (AF), Army Corps of Engineers, and four private companies for TCE found near the Airport. Later, two municipalities and a water utility district were brought into the dispute. The private parties conducted (with AF assistance) extensive groundwater studies showing that the TCE source was likely not the Airport. All the parties jointly selected and paid for the services of The Honorable Carl West from JAMS. The parties had great incentive to reach a settlement due to the limited window of opportunity to contribute funds to a scheduled intercept project for treating contaminated waters and protecting a significant aquifer to the South. Any separate remedy would have cost significantly more for similar benefits. AF settled for less than 10 % of the total cost of remediation and less than the costs and fees that would have been incurred if this case was litigated.*

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**Mediated Dispute between Electric Utility Company and Landowner (FERC)**

*Non-decisional staff from the DRS mediated a dispute between an electric utility company and a landowner with transmission lines on his property. The parties reached an uncontested settlement regarding the company's vegetation management policy and the landowner's ability to grow vegetation near the transmission lines. Issues arose when, after a change in ownership, the utility company implemented a more robust vegetation management policy that resulted in the removal of trees and other vegetation that had been in place since the transmission lines were originally built many years ago. During removal, the landowner and the contractor communicated poorly and the conflict escalated quickly. The landowner did not understand the new vegetation management policy and was unable to get an explanation from the contractor or the company. Furthermore, after the vegetation was removed the contractor threatened the landowner that it would come back and remove the rest of the trees on his property during the next trimming cycle. The landowner requested DRS assistance in clarifying which trees were at risk of removal during the next trimming cycle, reimbursement for work that was needed on his property to repair damage done by the contractor, and an explanation of what types of vegetation could be grown near the transmission lines without running afoul of the vegetation management policy.*

*DRS staff hosted regular conference calls to keep the parties engaged in a dialogue. DRS staff also engaged in regular caucus sessions with parties to explore each party's interests and generate options through brainstorming sessions. In the joint sessions DRS staff emphasized areas of agreement reached in previous meetings and facilitated option generation and evaluation for areas still in dispute. Proper management of the mediation process by the mediators and the committed work of the parties resulted in a complete resolution of all issues in this dispute. The parties reached a mutually beneficial agreement that provided a permanent solution to the problems raised by this vegetation management policy. The landowner was reimbursed for expenses incurred repairing damage caused by the contractor and was able to regrow vegetation with assurances that it was compliant with the vegetation management plan. Without ECCR, the parties would have likely engaged in litigation.*

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**Bureau of Reclamation Glen Canyon Dam Adaptive Management Program (DOI)**

*In this facilitated process, long term operational recommendations are being developed by consensus among a diverse set of stakeholders of the Colorado River including power customers, conservationists, recreational interests, States, Tribes, 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.*

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**Kettleman Hills Title VI Settlement (EPA)**

*El Pueblo Para el Aire y Agua Limpia (El Pueblo), a grassroots community group in Kettleman City, CA, and the non-profit organization Greenaction for Health and Environmental Justice (Greenaction), filed a Title VI Complaint with the Office of Civil Rights (OCR) at the United States Environmental Project Agency (US EPA) against the California Environmental Protection Agency (CalEPA) and the California Department of Toxic Substances Control (DTSC) on March 19, 2015. The complaint alleged that DTSC and CalEPA violated Title VI of the Civil Rights Act of 1964 (Title VI) when it approved the Kettleman Hills Facility permit to expand the B-18 landfill. OCR, working with EPA's Conflict Prevention and Resolution Center (CPRC), offered the parties the opportunity to resolve this complaint through Alternative Dispute Resolution (ADR). Both the complainants (El Pueblo and Greenaction) and the recipients (CalEPA and DTSC) agreed to attempt to resolve the dispute through mediation.*

*The mediator structured the first joint session as a nonjudgmental information-sharing opportunity so that parties could understand the Zone of Potential Agreement (ZOPA), which in this case was partly defined by California laws that govern the operations of the state agencies involved in the mediation. All information sharing and discussions were oriented around whether the parties could find common ground that would resolve the complaint. The parties took ownership of crafting the agreement by each taking turns with a draft agreement, a twist on the mediator-driven single text procedure. The draft development took place between live joint sessions, and allowed the live*

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*sessions to focus on relationship building, defining the ZOPA, and creative problem solving. The historic settlement agreement was signed in August 2016, and not only incorporated civil rights consideration, but also included meaningful public participation in the decision-making process for state hazardous waste permitting. This is the second EPA Title VI case to be resolved using ADR.*

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#### **Everglades Restoration Transition Plan Endangered Species Act (USACE/USIECR)**

*Jacksonville District contracted with USIECR to assist with facilitation of the Everglades Restoration Transition Plan (ERTP) Endangered Species Act consultation that resulted in a Jeopardy Biological Opinion for the endangered Cape Sable seaside sparrow. Jacksonville District and the USFWS Vero Beach Ecological Services Office jointly funded USIECR for facilitation, mediation and negotiation support services between February and July 2016. Jacksonville District realized that third party assistance was needed for ERTP after over 12 months of unsuccessful negotiations with USFWS to develop technically feasible alternatives to protect the endangered Cape Sable seaside sparrow. This case is completed and involved Federal agencies.*

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## Analyzing ECCR Costs and Benefits

The departments and agencies that tend to make greater use of ECCR (EPA, DoD, DOI, and FERC) reported having more formal and quantifiable methods to track their investments in ECCR processes in FY 2016 as compared to previous years. Other agencies have fully integrated ECCR into their budgeting so costs are not separated (Air Force). Air Force stated that “The real savings from ECCR is the ability to accomplish mission without disputes causing interruption.” Therefore, ADR and ECCR are considered “budget neutral.” Those with fewer ECCR cases tended to report on the costs and benefits through more qualitative methods, such as case studies.

While most respondents pointed to the difficulties in quantifying the benefits of ECCR processes, some agencies have worked together to develop an evaluation instrument to measure the impacts of ECCR cases, building on EPA’s and DOI’s experiences collecting data on investments in ECCR cases and comparisons to likely alternative scenarios, which has allowed these agencies to generate quantitative benefits information. In FY 2016, the EPA obtained OMB approval on a fifth generation of evaluation instruments developed collaboratively with the DOI and the USACE.

As part of the effort to gather data for the ECCR annual report, EPA included a question in a qualitative survey to EPA offices and regions concerning their views of the benefits associated with ECCR cases that occurred in FY 2016. To minimize the burden on the responding offices and regions, the survey asked about collective benefits of the ECCR cases, rather than individual case benefits.

To preemptively support the annual ECCR data call, USACE increased its focus on tracking activities of the center’s staff and field partners to better capture ECCR activities in USACE. USACE also submitted revised ECCR-related evaluation surveys to OMB for approval.

Other specific examples of department and agency efforts to formally track ECCR costs and benefits include the following:

- Capture of data relating to investments in FTEs, hours spent on a case or project, and human resource investments tracked through performance plans;
- Funds spent on public involvement programs and collaborative activities;
- Funds spent on contracts with third-party neutrals or interagency agreements to support and draw on rosters of third-party neutrals; and
- Tracking ECCR cases through a case tracking system (FERC, EPA) or case docket system in formal administrative or judicial forums (DOI).

Figure 4 lists reported methods for assessing use of ECCR processes and the associated costs and benefits in FY 2016.

#### **Figure 4. Methods for assessing ECCR use, costs, and benefits**

<b>Qualitative Methods</b>
• Annual agency ECCR reports
• Qualitative survey questions on perceived benefits
• Documentation of lessons learned and case studies
• Evaluations of ECCR meetings and process outcomes
<b>Quantitative Methods</b>
• Dedicated evaluation programs to assess use, costs, and benefits of ECCR
• Tracking labor hours and travel costs for staff supporting ECCR activities
• Funds spent on ECCR contracts, the use of third-party neutrals, and ECCR programs
• Tracking ECCR cases and/or hours in environmental project databases and case docket systems

### Data Collection and Reporting Challenges

Several respondents noted challenges with gathering the data required for the annual report and in particular with generating cost/benefit information associated with ECCR. Many pointed to the difficulty in engaging staff in the time- and resource-intensive exercise of collecting ECCR data on an annual basis. The effort can be hindered by a lack of internal resources to conduct these efforts, as well as by staff turnover.

To aid in future data collection efforts, respondents made the following suggestions. The suggesting agency is listed in parenthesis after each suggestion and does not constitute a consensus based recommendation on the part of the Federal ECCR Forum. Some of the recommendations are already being implemented by agencies other than the recommending agency.

- Create a collection system to monitor ECCR efforts throughout the year rather than at the end of the year, given the difficulty and threats to reliability of retrospective reporting (multiple agencies);
- Simplify the report format for agencies whose mission focus is not licensing, permitting, or environmental enforcement (multiple agencies);
- Develop an OMB-approved form for capturing the time and costs incurred by other Federal, state, local, and tribal government partners in these efforts as well as private individuals (DOI);
- Develop a mechanism for comparing combined costs of ECCR process to combined costs associated with litigation (DOI);
- Clarify whether Bureaus should be tracking and reporting costs and benefits related only to formal ECCR cases (involving third-party neutral assistance) or all 'environmental collaboration' occurrences (DOI, USACE); and

- Implement OMB-approved evaluation instruments to assess and track short and long-term benefits of ECCR assistance (DOI).

Similar to previous years, in FY 2016 agencies continued to point to the difficulties in tracking ECCR usage and quantifying costs and benefits as their greatest reporting challenges. The following are examples of reported challenges for departments and agencies with no formal methods of tracking and analyzing the costs and benefits/savings of ECCR processes:

- Development of formal mechanisms to collect and report on quantifiable benefits and/or costs savings of ECCR may require significant investments of agency time and resources.
- ECCR is often integrated into department and agency programs, resulting in challenges with separating ECCR investments from general project costs.
- Given that ECCR benefits are often intangible, indirect, or subjective, they can be difficult to track and quantify.
- In the absence of a centralized data collection system for ECCR cases, ECCR usage may be underreported.
- It is difficult to compare the resource costs of ECCR vs. non-ECCR processes due to the nature and complexity of different disputes.
- Without clear standards and criteria, reporting of benefits and costs may be subjective and varies among respondents.

Despite these challenges, agencies recognize the importance of tracking and reporting ECCR usage and outcomes. Accordingly, several participating agencies have been working to develop an improved evaluation instrument that seeks to respond to the data collection challenges and provide users with a more reliable method of capturing the costs and benefits of ECCR processes, with the ultimate goal of better demonstrating the value of ECCR to federal agencies.

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This synthesis was developed by the Udall Foundation's U.S. Institute for Environmental Conflict Resolution on behalf of OMB and CEQ.

## Appendix A: TRENDS IN THE FEDERAL GOVERNMENT REPORTING ON USE OF ECCR

### Submitting Agencies by Fiscal Year

Nine (9) agencies have submitted reports each year from fiscal year 2006 through fiscal year 2016, including:

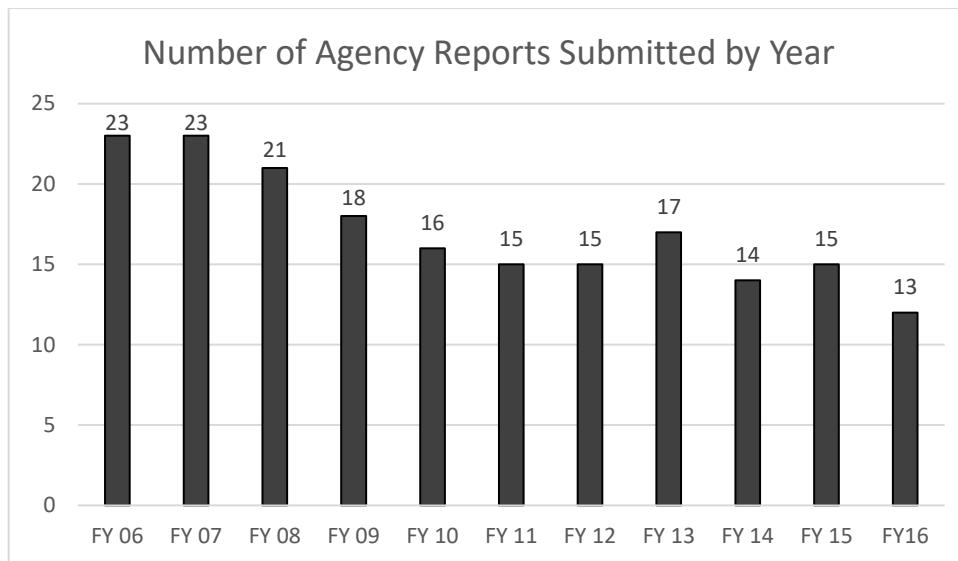
- Department of the Navy
- Air Force
- U.S. Army Corps of Engineers
- Department of Energy
- Department of the Interior
- Department of Veterans Affairs
- Environmental Protection Agency
- Federal Energy Regulatory Commission
- National Oceanic and Atmospheric Administration

Table 1 below shows agency submission by year for those agencies that have not submitted a report for each fiscal year since 2006.

<b>TABLE 1</b>	<b>FY 06</b>	<b>FY 07</b>	<b>FY 08</b>	<b>FY 09</b>	<b>FY 10</b>	<b>FY 11</b>	<b>FY 12</b>	<b>FY 13</b>	<b>FY 14</b>	<b>FY 15</b>	<b>FY 16</b>
USDA Forest Service											
Department of Defense (DOD)											
Army Legal Services Agency (USALSA)											
Army											
Corpus Christi Army Depot (CCAD)											
Office of Staff Judge Advocate (OSJA)											
Environmental Law Division											
National Guard Bureau (NGB)											
U.S. Army Reserve (USAR)											
Department of Health and Human Services (HHS)											
Department of Justice (DOJ)											
Department of Transportation (DOT)											
General Services Administration (GSA)											
National Aeronautics and Space Administration (NASA)											
National Capital Planning Commission (NCPC)											
National Indian Gaming Commission (NIGC)											
Nuclear Regulatory Commission (NRC)											
Tennessee Valley Authority											
U.S. Institute for Environmental Conflict Resolution											
<b>TOTAL (sum)</b>	<b>23</b>	<b>23</b>	<b>21</b>	<b>18</b>	<b>16</b>	<b>15</b>	<b>15</b>	<b>17</b>	<b>14</b>	<b>15</b>	<b>13</b>

**Table 2: Number of Agency Reports Submitted by Year**

The number of agencies submitting reports each year declined from 23 in FY 2007 to 13 in FY 2016.



#### **Context for ECCR Use**

Over the past 10 years, ECCR has been most commonly used across the federal government as a tool to address compliance and enforcement, implementation and monitoring agreements, and planning efforts. From 2007-2016, the percentage of agencies using ECCR for planning efforts grew from 20% in 2007, to 26% in 2016.

ECCR used in the context of policy making generally decreased from 2007, when it was first tracked, to 2015. In 2007, 12% of cases reported using ECCR in this context, by 2015, this had decreased to 3% of cases. In 2016 ECCR use in the policy context was back up to 12%.

ECCR in the context of siting and construction had been increasing in the last few years except for 2016. In 2015, 26% of cases were related to siting and construction projects.

#### **Decision-Making Forums for ECCR Applications**

Over the years, information has been collected on the decision-making forums involved in agency cases of ECCR. Agencies have been asked to report on whether the ECCR case was in relation to

- 1) Federal Agency Decisions
- 2) Administrative Proceedings/Appeals
- 3) Judicial Proceedings or
- 4) Other

Throughout the years, ECCR has been most widely used in cases that involved federal agency decisions. Consistently, the highest number of cases have fallen within this category each year. From 2015 to 2016, ECCR cases related to federal agency decisions increased 6%.

#### **Benefits of ECCR**

Since FY 2013, benefits reported every year have included better relationships, more efficient operations, increased communication amongst parties involved in a collaborative process, and better

and more durable outcomes. In addition, resource savings have been increasingly noted as a benefit arising from better coordination amongst parties, streamlined processes, and timelier dispute resolution, particularly regarding enforcement actions.