

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

## Synthesis of FY 2017 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 2017. ECCR is defined as third-party assisted collaborative problem solving and conflict resolution in the context of environmental, public lands, or natural resources issues or conflicts, including matters related to energy, transportation, and water and land management.<sup>1</sup> In FY 2017, agencies reported 489 active ECCR efforts. Analysis of the FY 2017 agency reports shows that the Environmental Protection Agency (EPA), 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 ECCR.<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 2017 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 information that can be useful in on-going information exchange across departments and agencies as fostered by Section 4(e).*

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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.

The following departments and agencies submitted FY 2017 reports:

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

This synthesis summarizes the information from FY 2017 individual agency reports. Individual department and agency reports are posted online at <http://www.udall.gov/OurPrograms/Institute/ECRRReport.aspx>.

## ECCR Sponsorship, Participation, and Context

In FY 2017, federal departments and agencies reported 489 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 489 active cases, 218 (56%) were completed, and the remaining projects continued into FY 2018.

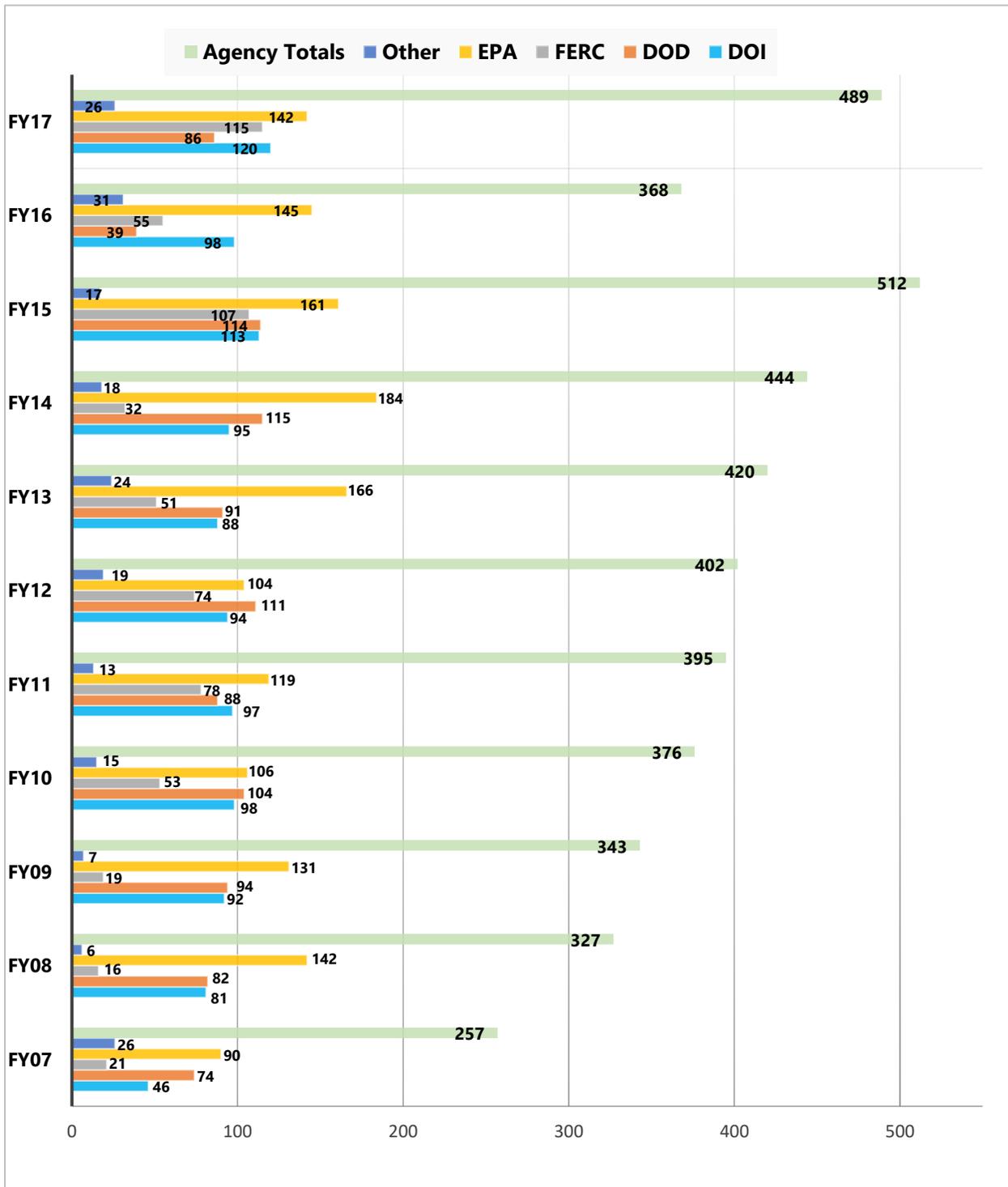
While there was a reduction in ECCR use reported in FY 2016 (see Figure 1), the level decrease in the number of use appears to be returning to nearly the highest level of use recorded in FY 2015. EPA, DOD<sup>4</sup>, DOI, and FERC have consistently reported the highest-volume involvement in ECCR since formal case reporting began in FY 2006, and this trend continued in FY 2017 (Figure 1).

Federal departments and agencies also reported on the context in which ECCR was used most commonly in FY 2017. Figure 2 shows the most comment contexts for both assisted and unassisted collaborative activities in FY 2017.

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<sup>4</sup> All armed forces are grouped under DoD.

**Figure 1. Distribution of ongoing ECCR cases in the federal government, FY 2007 to FY 2017<sup>56</sup>**



<sup>5</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.

<sup>6</sup> All armed forces are grouped under DoD.

## Contexts for ECCR

**Figure 2. Five most commonly cited contexts for ECCR use, in both assisted and unassisted collaborative activities in FY 2017 (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;
- Site-wide RCRA permits;
- Environmental siting for a wind demonstration project;
- Planning hydropower projects under NEPA (FERC); natural gas and hydroelectric licensing and permitting;
- Public involvement and community engagement to increase communication and reduce conflict;
- Planning and implementation under NEPA (EPA) and resource protection under ESA;
- NEPA evaluation process;
- Executing natural resource management regulatory cycles and ecosystem valuation efforts;
- Designing the Marine Mammal Take Reduction Plans developed by consensus which is required by MMPA and ESA related negotiations;

- Environmental justice;
- Requirements under CWA, NEPA, and ESA, including water resource protection;
- Designed Programmatic Agreements with the Advisory Council on Historic Preservation under the NHPA;
- Programmatic agreement for the Navajo-Gallup water supply project and Section 106 of NHPA;
- Increased interagency cooperation and collaboration;
- Expanded efforts in tribal consultation and engagement;
- Coordinated and obtained Clean Water Act 401 permits from the Kentucky Department for Environmental Protection, Division of Water to work along waterways (NGB).

Figure 3 shows specific contexts and agency decision-making forums in which federal departments and agencies used ECCR as a tool in FY 2017.

**Figure 3. FY 2017 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	43 (9%)	24	0	0	19
Planning	120 (25%)	84	0	1	35
Siting and construction	137 (28%)	130	2	5	0
Rulemaking	10 (2%)	10	0	0	0
License and permit issuance	18 (4%)	14	1	2	1
Compliance and enforcement action	49 (10%)	22	11	9	7
Implementation/monitoring agreements	74 (15%)	15	1	0	58
Other	38 (8%)	8	2	5	23
<b>Total</b>	<b>489 (100%)</b>	<b>307</b>	<b>17</b>	<b>22</b>	<b>143</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 2017, departments and agencies reported the following investments in ECCR:

- **Promoting the use of ECCR** through
  - Proactively engaging project 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 such as designating and training collateral duty ECCR practitioners within the agency
- Incorporating procedures for the appropriate application of ECCR into department and agency policies and practices;
- Dedicating specific budget allocations for ECCR services, including contracting with third-party ECCR professionals; and
- Routinely encouraging parties to consider ECCR as an alternative to traditional dispute resolution mechanisms (e.g., hearings, appeals, litigation) for example, including ECCR use clauses in partnership agreements with private sector.
- **Building 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 the use of ECCR, 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.
- **Increasing inter-agency and intra-agency ECCR coordination** through
  - Fostering inter-agency ECCR partnerships and agreements; and
  - 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.
  - 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; and
  - Institutionalizing ECCR education through integration into regular agency curricula, certification programs, and career development training.
- **Steering ECCR capacity building and leveraging efforts** through
  - Increasing knowledge management and transparent communications;
  - Expanding and promoting rosters and indefinite delivery/indefinite quantity contracts to make use of non-governmental ECCR professionals;
  - 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; 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);
    - 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).
- **Building ECCR partnership support** through
  - Committing in an ongoing way to developing effective working relationships with federal, local, tribal, and community partners; and
  - 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.
- **Conducting 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.

Notable agency-specific examples include:

- The USACE held its 2<sup>nd</sup> annual Gnarliest Collaboration Challenge, which is an effort to identify the most difficult collaboration challenges in the agency and fund a neutral third party to resolve these challenges.
- USACE will be piloting a GIS tool called Crowdsour Reporter to enable online stakeholder input to projects.
- EPA's CPRC created a whiteboard video to teach EPA employees about mediation and facilitation.
- 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 to address project issues.
- DOE sites and program offices maintain and enhance their awareness of ECCR methods and opportunities through monthly environmental attorneys' conference calls and the annual joint DOE/DOE contractor environmental attorneys' training.
- The United States Army provided a block of ADR training as part of its annual General Litigation Course.
- The Air Force Negotiation Center (AFNC) based at Air University in Montgomery, Alabama, has successfully imbedded negotiation and conflict management skills into every level of commissioned officer and noncommissioned officer Professional Military Education (PME). AFNC is working on imbedding these skills in Civilian Development Education.

## Benefits of ECCR

In FY 2017, 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, DOI) reported that ECCR processes saved staff time and travel costs compared to alternative processes, such as litigation and unassisted negotiation.

EPA reported from a census of lead attorneys in ECCR cases from 2011-2014 and found:

- ECCR processes required 45% fewer weeks to reach a decision than litigation. ECCR and unassisted settlement required about the same amount of time to reach a decision.
- ECCR processes required 30% fewer staff members than litigation. ECCR and unassisted settlement required roughly the equivalent amount of staff members.
- ECCR processes required 79% fewer lead attorney hours than litigation and 38% fewer lead attorney hours than settlement without third party neutrals.

These findings conclude cost savings due to avoidance of litigation and streamlined processes.

The suite of qualitative ECCR benefits identified by departments and agencies in FY 2017 included the following:

- **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.
- **Better relationships:** Increased trust and improved long-term working relationships among agencies and stakeholders; improved relationships with Tribes; and enhanced international relationships.
- **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; and development of technical tools that can help create a shared vision or understanding of technical information.
- **Cost and Resource savings:** Resource savings from better coordination, streamlined processes, and timely dispute resolution, particularly in enforcement actions; and enhanced restoration and environmental planning for long term benefits. Avoidance of litigation and the costs associated with the process.
- **Increased communication:** More frequent, effective communication between multiple government entities and with the public; and better messaging from agencies to stakeholders. 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; increased public transparency; and less stress due to enhanced communication.
- **Enhanced 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 improved meeting execution.

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 2017 ECCR projects

### **Klamath Project Operations Coordinated Endangered Species Act (ESA) (DOI)**

*Over the past decade, the Bureau of Reclamation (Reclamation) has received separate, uncoordinated Biological Opinions (BiOps) from NOAA's National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS; collectively "the Services"). The competing needs of the three ESA listed species lead to conflicting requirements in the BiOps that made it difficult to meet those requirements simultaneously. In some cases, these conflicting requirements resulted in shortages or curtailments in contracted water deliveries to agricultural water users and National Wildlife Refuges within the Klamath Project. Reclamation and the Services management concluded that a coordinated proposed action for operation of the Klamath Project resulting in a joint or coordinated BiOp(s) could be a solution. Reclamation's Klamath Basin Area Office participated in coordination with the Services under Section 7 of the ESA that led to the integrated Biological Opinion(s) (2013 BiOp) released by the Services in May 2013. In 2017 litigation was brought against Reclamation and NMFS for failure to reinstate consultation due to exceedance of the disease threshold identified in the incidental take statement in 2014 and 2015. Reclamation reinstated consultation (ROC) with the Services in spring of 2016 and clarified this in January 2017. Together, Reclamation, the facilitators, and the Services, have been able to successfully elevate coordination efforts and the level of engagement with key stakeholders and Tribes during the ROC process.*

*With assistance from the third party neutral, Reclamation, the Services and Basin stakeholders have found ways to constructively address their conflicts while identifying flexibility within the constraints of the ESA and tribal trust responsibilities and remaining consistent with applicable law and policy. Stakeholder engagement and interagency coordination have been key factors to the success of this effort.*

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### **Cultural Resources under Section 106 (DOT)**

*Work continued on FHWA and Indiana DOT's (INDOT) efforts to improve processes for engaging multiple tribes in consultation under Section 106 for traditional cultural resources throughout the State. This effort began in FY 2016 and the U.S. Institute for Environmental Conflict Resolution (USIECR) completed the work in FY 2017.*

*In FY 2017, USIECR facilitated coordination among INDOT, the FHWA Indiana Division, and multiple tribes with historic property affiliations in Indiana. These efforts resulted in a multi-agency, multi-tribe executed MOU that provides a programmatic approach to consultation under Section 106 on surface transportation highway projects in Indiana.*

*USIECR provided services to help FHWA and INDOT improve tribal coordination practices with tribes having cultural and ancestral ties to Indiana. Services included assessing the feasibility of a workshop, gathering information on process design, and convening a two-day workshop with representatives from multiple tribes, FHWA, and INDOT to discuss developing an MOU. Out of the workshop, a sub-group of tribal representatives drafted an MOU with FHWA and INDOT. The sub-group met regularly and engaged additional tribes at several points in the MOU process. Parties to the MOU circulated drafts for comments, then circulated the final MOU for signature and execution. The signatory parties executed the MOU in April 2017.*

*The FHWA Indiana Division and INDOT have a process in place to consult with tribes, and this new process will create efficiencies on multiple projects throughout the State.*

*The parties learned that engaging multiple stakeholders with varying interests fosters better communication and clearer expectations of respective roles.*

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**Mediated Dispute between Natural Gas Pipeline and Landowner (FERC)**

*Non-decisional staff from the DRS (Dispute Resolution Service) mediated a dispute between a natural gas pipeline company and a landowner where the pipeline was proposed to be built on his property.*

*When the parties attempted unassisted negotiations, tensions escalated, and communication broke down. The parties reached out to the DRS through the Landowner Helpline to help get negotiations back on track. The property owner contacted the Landowner Helpline with concerns about the path of a pipeline through his property. The pipeline was routed to go directly through a dike on the owner's land. The property owner was not satisfied with the routing choice or the potential short- and long-term damage that could occur if the dike was impacted.*

*Specifically, the landowner requested an explanation as to why the dike would need to be impacted and assurances that the pipeline company would pay any resulting damages. Through mediation and periodic caucuses tensions cooled and the parties were able to meaningfully discuss the issues and reach a mutually beneficial resolution.*

*The case was funded through the use of permanent DRS mediation staff at FERC, and self-funding by each non-FERC staff participant.*

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**Communicating Levee Safety Risks to 2.5 Million People (USACE)**

*Due to the enormity of the task to convey levee safety risk communication messages to 18 local sponsors representing 2.5 million people, the Los Angeles District applied for technical support from the "Gnarliest Collaboration Challenge" program offered by the USACE Collaboration and Public Participation Center of Expertise (CPCX). With millions of people at risk, risk communication will be a long-term, ongoing effort that requires an effective and coordinated strategy. Los Angeles District's Levee Safety Program Manager has been establishing relationships with all of the local levee sponsors. Because the sponsors tend to be very large organizations, the risk communication effort will require multiple people at the table within their organization. Building relationships and understanding the concerns of each person within each sponsor organization was too much of a task for the District and their current resources. The District recognized the need for stakeholder engagement expertise to establish and build sponsor relationships and trust while establishing open lines of communications. Because this is a completely new kind of effort for the District, they recognized that the learning curve would be tremendous. The District looked to the CPCX to fill the experience gap in the project team. CPCX, in partnership with the U.S. Institute for Environmental Conflict Resolution, contracted a third-party facilitator to support this enormous effort.*

*What makes this effort "gnarly" is the sheer number of people at risk and the jurisdictional complexity of the levee portfolio of the Los Angeles District. The third-party facilitator assisted with conducting sponsor interviews, without USACE present. That information was used to build relationships and trust to create key messages and talking points for the communication plans and refine the workshop training. The sponsor interviews would include a stakeholder assessment and be a 2-way conversation to gain insights into the sponsor's fears or understanding of levee risk communication. The information learned from the interviews was used to create three 1-day Risk Communication Workshops where USACE invited sponsors to learn about risk communication as it specifically relates to the USACE Levee Safety Program. The facilitator brought a high level of communication skills to the training.*

*Building trust and open lines of communications within different groups in the sponsoring agencies is crucial to developing risk communication plans that will ultimately help save millions of lives. Risk communication is a collaborative effort by definition. It's an open 2-way exchange that requires the right resources to build the relationships with sponsors and partner with them to reach the communities behind levees. Levee safety policies and guidance are constantly being updated, and sponsors are doing their best to keep up. By helping the District meet the needs and concerns of the numerous sponsors, the facilitator helped strengthen relationships, which will lead to more effective risk communication, more risk-informed decisions and risk reduction, and will save lives. The facilitator provided credibility to the risk communications messaging. Without their help, sponsors might view levee safety risk communication as yet another requirement from USACE. Ultimately, with increasing storm severity and record rainfall across the U.S. these past few years, this effort is now more important more than ever.*

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### **Helping States and Tribes Protect Their Waters (EPA)**

*From FY 2014 to FY 2017, the EPA took a cooperative federalism approach and effectively used ECCR to bring clarity to an area of Clean Water Act (CWA) implementation which had been unresolved for decades. At issue was the identification of which waters a state or tribe can assume permitting responsibility for under section 404(g) of the CWA – known as “assumable waters” – and which waters remain under the permitting authority of the U.S. Army Corps of Engineers. The EPA’s Office of Water tapped the expertise of the EPA’s Conflict Prevention and Resolution Center (CPRC) to design a stakeholder assessment, establish a balanced federal advisory subcommittee, and engage a neutral facilitator to lead discussions among experts from states, tribes, academia, interest groups, the regulated public, and federal agencies. The professional facilitator helped all parties converge on an understanding of the issue, the process improved relationships with stakeholders, and a super-majority reached a timely agreement on recommendations to the EPA. If adopted by the EPA, the recommendations will make it easier for states and tribes to assume 404 permitting responsibility as Congress had intended.*

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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 2017 as compared to previous years. Other agencies have fully integrated ECCR into their budgets, so costs are not separated (Air Force).

In 2017, the DOI Office of Collaborative Action and Dispute Resolution (CADR) secured the final necessary clearances to implement the new evaluation instruments that were redesigned in FY 2016. They anticipate the new evaluation instruments will result in better tracking of ECCR investments and benefits. They also anticipate the data will be collected through the new instruments will be useful in improving process design, as well as evaluation agency performance and process outcomes.

FERC, through its DRS, has developed a new survey which was recently approved by OMB to collect feedback from a greater number of participants that voluntarily participate in ADR processes for cases. They anticipate the increased quantity of results will improve the reliability of the feedback we receive from participants.

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 (multiple agencies);
- Funds spent on public involvement programs and collaborative activities (multiple agencies);
- Funds spent on contracts with third-party neutrals or interagency agreements to support and draw on rosters of third-party neutrals (multiple agencies);
- Tracking ECCR cases through a case tracking system (FERC, EPA) or case docket system in formal administrative or judicial forums (DOI); and
- The Naval Litigation Office (NLO) has a case tracking system with a separate “ADR” field which requires trial attorneys to identify whether or not ADR was offered, when, the ADR type and source, the dispute type, and whether or not the case was resolved using ADR.

Figure 4 lists reported methods for assessing use of ECCR processes and the associated costs and benefits in FY 2017.

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

Qualitative Methods
• Annual agency ECCR reports
• Qualitative survey questions on perceived benefits
• Documentation of lessons learned and case studies
• Evaluations of ECCR meetings and process outcomes
Quantitative Methods
• 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 and budget cuts resulting in fewer FTEs.

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).
- Quantify the following as part of a tracking and reporting system of costs:
  - Cost of third party facilitators

- Labor and travel costs for staff supporting ECCR activities (Feasible for employees dedicated to these activities full time)
- Labor support provided specifically for ECCR activities associated with special designations
- Training related expenses
- Meeting attendance
- Meeting documentation including accomplishments
- Number of webinars delivered and attendance
- Number of employees trained and affiliated expenses
- Number of stakeholders contacted

Similar to previous years, in FY 2017 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:

- Cost to collect and report data on costs and benefits.
- Data on cost is not available separately from general program cost
- Difficult to track and quantify intangible, indirect and subjective benefits.
- Lack of centralized data collection and reporting system leads to underreporting
- Difficult to quantify relative difference in cost for ECCR vs non ECCR processes due to the nature and complexity of different disputes.
- Lack of standards and criteria for reporting leads to variation and subjectivity in reports
- Staff turnover which may result in lost information.
- Difficulty in collecting information from agencies and departments with dispersed programs.

Despite these challenges, agencies recognize the importance of tracking and reporting ECCR usage and outcomes.

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

### Submitting Agencies by Fiscal Year

Eight (8) agencies have submitted reports each year from fiscal year 2006 through fiscal year 2017, including:

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

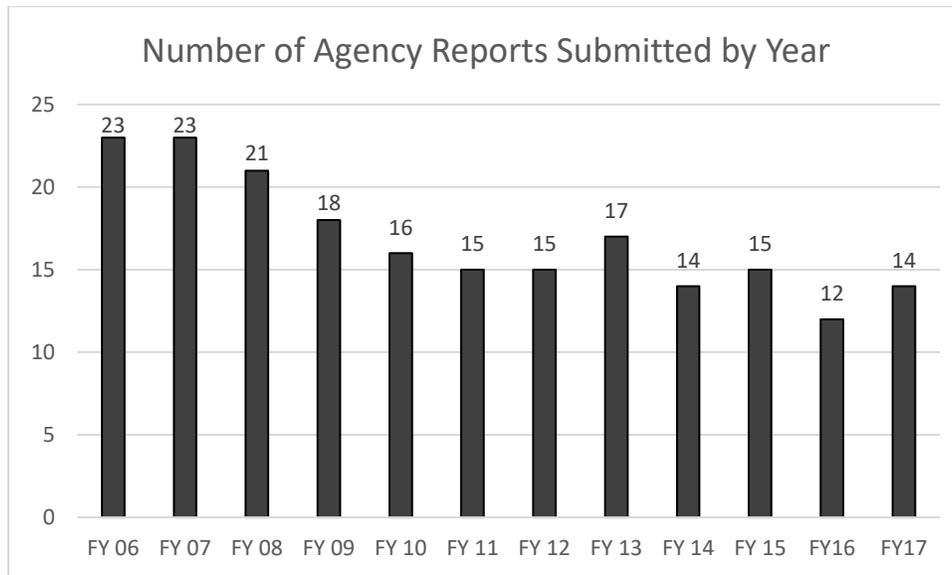
Table 1 below shows agency submission by year for those agencies that have not submitted a report for each fiscal year since 2006.

<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>	<b>FY 17</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)												
Department of Labor (DOL)												
Department of Veterans Affairs (VA)												
Tennessee Valley Authority												
U.S. Institute for Environmental Conflict Resolution <sup>7</sup>												

<sup>7</sup> USIECR's ECCR cases are not included as most should be reported by other federal departments and agencies.

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

The number of agencies submitting reports each year declined from 23 in FY 2007 to 14 in FY 2017.



**Context for ECCR Use**

Over the past 12 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. Planning efforts has continually been the highest reported ECCR cases from 2013-2016. However, in FY 2017, siting and construction was reported to have the highest number of ECCR cases which is a 7% increase from FY 2016.

ECCR used in the context of policy making generally decreased from FY 2007, when it was first tracked, to FY 2017. In FY 2007, 12% of cases reported using ECCR in this context, by FY 2017, this had decreased to 3% of cases.

**Federal Agency Decision-Making is Most Frequently Used Forum 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

ECCR has been most widely used in cases that involved federal agency decisions but has increased in recent years. From FY 2016 to FY 2017, ECCR cases related to federal agency decisions increased 6.5%. This has been a 13.9% rise from FY15.

**Benefits of ECCR**

Since FY 2013, benefits reported every year continue to include 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.