

**FY 2018 TEMPLATE**  
**Environmental Collaboration and Conflict Resolution (ECCR)<sup>1</sup>**  
**Policy Report to OMB-CEQ**

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

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

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

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

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

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

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

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

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

This annual report format below is provided in accordance with the memo for activities in FY 2018.

The report deadline is February 22, 2019.

We understand that collecting this information may be challenging; however, the departments and agencies are requested to collect this data to the best of their abilities. The 2018 report, along with previous reports, will establish a useful baseline for your department or agency. Departments should submit a single report that includes ECCR information from the agencies and other entities within the department. The information in your report will become part of an analysis of all FY 2018 ECCR reports. You may be contacted for the purpose of clarifying information in your report. For your reference, prior year synthesis reports are available at <http://www.ecr.gov/Resources/FederalECRPolicy/AnnualECRReport.aspx>

### **FY 18 ECCR Report Template**

Name of Department/Agency responding:	United States Army
Name and Title/Position of person responding:	Marc Van Nuys, Director of Dispute Resolution
Division/Office of person responding:	Office of General Counsel
Contact information (phone/email):	(703) 614-6861 marc.vannuys.civ@mail.mil
Date this report is being submitted:	18 January 2018
Name of ECR Forum Representative	Carrie M. Greco, Litigation Attorney, ELD, USALSA

1. **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 2018, including progress made since FY 2016. 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.]

In FY18, the Army Dispute Resolution Specialist (ADRS) continued to maintain the Army's Alternative Dispute Resolution program in accordance with the 22 June 07 memorandum issued by the Secretary of the Army and the Department of Defense (DoD) Instruction 5145.05, Alternative Dispute Resolution (ADR) and Conflict Management. During FY18, all Environmental Law Specialists (ELs) at all Army Commands, Army Service Component Commands, and all of their subordinate commands and installations continued to build the Army's institutional and programmatic capacity for ECCR through the following activities.

1. Proactive Engagements. Army ELs routinely seek to avoid disputes by engaging with Federal and state regulators, local stakeholders, and the public in non-third-party-assisted collaboration and partnering.

2. Training. In FY18, the Judge Advocate General's Legal Center and School provided one hour of ADR training as part of its annual General Litigation Course. One attorney from the Environmental Law Division (ELD) attended, along with counsel from the U.S. Army Legal Services Agency (USALSA) and other counsel throughout the Army. One attorney from ELD attended the Negotiation and Appropriate Dispute Resolution Course (NADRC) sponsored by the U.S. Air Force Judge Advocate General's School. All ELD litigation attorneys received a one-hour course that included a condensed version of the NADRC course and an update on ECCR.

3. Agreements. Current federal facilities agreements (FFAs), direct sales agreements, and partnering agreements require the resolution of disputes through informal cooperative measures, to include ECCR.

4. Case-by-case assessment. In FY18, every ELD and ELs counsel assessed each assigned matter to determine whether ECCR is appropriate and how non-third-party-assisted collaboration or partnering could help resolve potential disputes. Attorneys balanced litigation risks and potential costs against the benefits of using dispute resolution processes. Factors considered include: (1) the likelihood of adverse court decision; (2) payment of claims and penalties; (3) personnel hours and resources; and (4) precedential value of the case.

## 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.

**Investments.** The Army has no formal method for tracking investments in ECCR or non-third-party-assisted collaboration processes, however, travel costs incurred to attend ECCR events are documented in the Defense Travel System and qualitative investments are informally noted in the case reports, databases, or case files. The ECCR Coordinator queries all ELD and ELS counsel to identify all Army investments made in ECCR and non-third-party collaboration.

**Benefits.** In FY18, the Army informally noted the benefits of ECCR or non-third-party-assisted collaboration processes in meeting minutes, after action reports, or within the case database or case file. The ECCR Coordinator queries all ELD attorneys and all ELS counsel to identify all benefits obtained from ECCR and non-third-party collaboration.

- b) Please report any (a) quantitative or qualitative investments your agency captured during FY 2018; and (b) quantitative or qualitative results (benefits) you have captured during FY 2018.

**Investments.** In FY18, the Army's quantitative investments included staff salaries, travel costs, and office resources as follows.

- The Army did not fund the salaries of any third-party neutral or the costs of the ECCR process.
- The Army invested \$1238.54 in travel costs to attend a two-day mediation. The Army incurred internal resources and salary costs to prepare for the mediation and to prepare for and participate in the mediation related conference calls and emails.
- The Army invested an unknown amount of office resources and salaries to engage with regulators, stakeholders, and the public in non-third-party-assisted collaboration processes.
- The Army invested travel costs and personnel time to attend ADR/ECCR training. ELD invested \$1,015 to send an attorney to the Judge Advocate General's Legal Center and School's annual General Litigation Course. The Army invested \$1,229.50 to send one attorney to the NADRC. ELD litigation attorneys invested one hour of personnel

time to attend training on NARDC and ECCR programs and principals.

**Benefits:** In FY18, the use of non-third-party-assisted collaboration processes helped the Army to avoid conflict. In the reported ECCR matter, the parties learned the mediation process would not resolve the dispute. They now use another dispute resolution method that could work to resolve their dispute.

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

The costs and benefits of ECCR can be indirect and difficult to quantify. The Army can identify some of the costs incurred to manage a case, but the actual number of hours saved per case or matter by using ECCR is speculative. Additionally, most matters using ECCR take a number of years to resolve, so the overall benefits may not be visible in a one-year assessment.

The Army uses the Defense Travel System to generate the travel costs expended to attend ECCR training and ECCR events. The Army tracks the cases that use ECCR in its database. Army ELD and ELS counsel document the costs and benefits from using ECCR or non-third-party assisted dispute resolution or dispute avoidance activities in individual case databases, case files, meeting minutes, and after action reports.

For coming FYs, Army ELD will determine whether a database could capture in real time all ECCR activities, to include the costs and benefits from using ECCR. ELD will need to determine what system could be augmented to incorporate this data, and what activities warrant inclusion in the database. Once a workable reporting system is identified and put in place with defined parameters, individuals may use this system to collect data on costs and benefits of the ECCR.

6. **ECCR Use:** Describe the level of ECCR use within your department/agency in FY 2018 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 2018 ECCR Cases <sup>2</sup>	Decision making forum that was addressing the issues when ECCR was initiated:				ECCR Cases or projects completed <sup>3</sup>	ECCR Cases or Projects sponsored <sup>4</sup>	Interagency ECCR Cases and Projects	
		Federal agency decision	Administrative proceedings /appeals	Judicial proceedings	Other (specify)			Federal only	Including non federal participants
<i>Context for ECCR Applications:</i>									
Policy development	0	0	0	0	0	0	0	0	0
Planning	0	0	0	0	0	0	0	0	0
Siting and construction	0	0	0	0	0	0	0	0	0
Rulemaking	0	0	0	0	0	0	0	0	0
License and permit issuance	0	0	0	0	0	0	0	0	0
Compliance and enforcement action	0	0	0	0	0	0	0	0	0
Implementation/monitoring agreements	0	0	0	0	0	0	0	0	0
Other (specify): CERCLA	2	0	2	0	0	0	0	0	2
<b>TOTAL</b>	<b>2</b>	<b>0</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>2</b>
		(the sum of the Decision Making Forums should equal <b>Total FY 2018 ECCR Cases</b> )							

<sup>2</sup> An “ECCR case” is a case in which a third-party neutral was active in a particular matter during FY 2018.

<sup>3</sup> A “completed case” means that neutral third party involvement in a particular ECCR case ended during FY 2018. 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 2018 cases it should equal total ongoing cases. If you subtract sponsored ECCR cases from Total FY 2018 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 2018 cases it should equal total cases that involved only your agency or department with no other federal agency involvement.

#### 4. ECCR Case Example

Using the template below, provide a description of an ECCR case (preferably completed in FY 2018). 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>The case involves a disagreement regarding the proper scope of the remedial investigation and the allocation of investigation costs at a CERCLA site owned by the Federal agencies, but leased to different private parties who separately operated different portions of the site. During negotiations, the participating parties agreed to use a mediation process with the private parties and the Department of Justice sharing the costs of a third-party neutral to help resolve these issues.</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 mediator grouped the numerous private parties together as one PRP group, with one PRP in the lead. The PRP group and the Federal agencies exchanged large document collections and each submitted position papers to the mediator. The mediator held an initial mediation session, followed by the submission of additional fact papers and conference calls. All communications went through the mediator. After the mediator offered a proposal for cost allocation, the parties held an additional two-day in-person mediation.</p>
<p>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</p>
<p>Unfortunately, the mediation style used by the mediator did not help the parties reach a common understanding of the facts or the governing law, and generated positions that were too far apart to reach an agreement. Grouping all private parties together in one generic allocation did not work when each party had separate releases, which required individualized investigations and separate cost allocations. Grouping all private parties together as one PRP group with one PRP as the lead who worked directly with the mediator failed to provide open communications between the Federal agencies and each private party so they could address the specific issues of each release. Thus, it failed to provide all parties a balanced representation, and resulted in a lack of informed process.</p>
<p>The Federal agencies decided to discontinue mediation and use direct negotiations with all participating parties to attempt to resolve the dispute. The parties are now engaged in direct negotiations. The Federal agencies hope direct negotiations with each party will open communications and allow for a more balanced discussion among all parties, which may result in the parties reaching agreement.</p>

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

While ECCR can be a powerful tool to aid in reaching shared understanding and consensus, the parties must identify a truly neutral and capable mediator who can establish a mediation framework that enables the best opportunity for success.

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

The Federal agency parties and the private parties continued to use a facilitator during the negotiation of a proposed cleanup plan and cost allocation. The facilitator guides open discussions between the parties, generating trust through a productive working relationship. The parties use the facilitator to narrow and resolve issues in dispute, sometimes through caucusing. This facilitation ensures the balanced inclusion of all parties' interests and provides for accountability as parties work together to move the matter forward to resolution.

### 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.

The Army continues to use ECCR in complex, multiparty CERCLA matters before litigation ensues and after a suit is filed. The Army also uses non-third-party-assisted collaboration in areas of installation restoration, resource sustainment, and land management to avoid disputes. Some of these processes are tied to NEPA or historic preservation laws, others are related to cleanup actions under CERCLA or land management requirements.

The Army's main priority is dispute avoidance as it conducts training operations, manages cleanup actions, and takes other actions that ensure proper land management and resource sustainability. The Army uses open communication with stakeholders through open meetings, collaboration, tiered partnering, consultation, public meetings, and negotiated agreements with dispute resolution provisions. This open communication allows the Army to minimize the number of matters that require ECCR.

When the Army obtains a demand or suit from a regulator or private party regarding an environmental matter it typically falls under CERCLA, but on occasion will include a NEPA action. In these instances, the Army's priority is to utilize ECCR to timely resolve the claims, avoid costly litigation, reduce or eliminate extensive discovery, narrow the issues of dispute, and work toward settlement. In some matters, the Army merely follows local court rules or judicial orders to participate in settlement conferences with a Magistrate or other third-party neutral. Whether court ordered or Army initiated, the result is often expedited case processing and early settlement that avoids years of litigation and expenditures of time and resources. Sometimes, however, mediation does not resolve the dispute, but merely helps the party to identify the issues that need to be resolved in other forums.

**7. Non-Third-Party-assisted Collaboration Processes:** Briefly describe other significant uses of environmental collaboration that your agency has undertaken in FY 2018 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.*

In FY18, the Army's use of non-third-party collaboration generated a more efficient process to identify, narrow and address the stakeholders or regulators' interests and to reach timely and appropriate agreements with stakeholders and regulators, avoiding the need for a third-party-assisted dispute resolution process. The Army invested in proactive measures, such as open meetings and site visits. The participants created solutions tailored to fit the needs of each specific project. This resulted in better protection of the natural resources. Below are areas where the Army used non-third-party-assisted collaboration in FY18.

1. The Army ensures alternative dispute resolution provisions are included in its Federal Facilities Agreements (FFAs) and the environmental annexes to its direct sales and other partnering agreements. These provisions set forth options for parties to resolve disputes early on and more efficiently. This year, for example, personnel at Anniston Army Depot (ANAD) managed certain agreements with the understanding dispute resolution provisions could be invoked. Although the Army did not invoke them this year, it may do so next year, if needed. Pursuant to the terms of an FFA at Rocky Mountain Arsenal (RMA), the Army has maintained a three-tiered working group to manage its communication with regulatory agencies. Other Army installations continue oversight of their FFAs and partnering and interagency service agreements for opportunities to use ECCR before a matter becomes the subject of litigation.

2. The Army encouraged participation in community outreach via town hall meetings and other public forums in FY18.

a. Fort Carson utilized the Southern Colorado Working Group to increase transparency with local governments, groups and stakeholders. The Army highlighted accomplishments from the Integrated Training Area Management

Program, including seven erosion control dams, three bank sloping projects and rehabilitation of four trails. Army personnel demonstrated how a low-cost innovative nesting structure for cliff swallows encouraged the birds to build nests in more compatible areas, away from nuisance areas, thereby enhancing the health and safety of the cliff swallow population.

3. The Army uses non-third-party collaboration in their consultation and NEPA planning process. Below are some examples from ANAD.

a. ANAD continues to have Memorandums of Agreement (MOAs) with the Alabama State Historic Preservation Office to address certain complexes on the installation that have significant importance to the broad patterns of history. These MOAs help ANAD better manage cultural resources.

b. In advance of a mechanized armor-training event at Piñon Canyon Maneuver Site, Fort Carson held a Community and Media Day event and hosted a visit by Native American Tribal Representatives in August 2018. Army personnel explained how regular meetings allowed all participants to enhance their environmental and cultural resource awareness and education, and highlighted Army's additional investments that further protected cultural and historic sites. This visit is part of Army's evolving system of fostering the protection of cultural artifacts and sites. Other activities include providing Army personnel maps with marked resource locations for proper vehicle navigation and situational awareness so Army personnel can avoid these areas in their operations.

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.

None.

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

Report due February 22, 2019.

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