

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

## Synthesis of FY 2018 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 2018. 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 2018, agencies reported 434 active ECCR efforts. Analysis of the FY 2018 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. Acronyms can be found in [Appendix F](#).

## 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)ncrease 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 2018 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 2018 reports:

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

This synthesis summarizes the information from FY 2018 individual agency reports. Individual department and agency reports are posted online at <http://www.udall.gov/OurPrograms/Institute/ECRReport.aspx>.

## ECCR Use and Context: Case Numbers Across Federal Agencies

In FY 2018, Federal departments and agencies reported 434 ECCR cases they either directly sponsored or participated in that were sponsored or convened by another agency or entity. Of the 434 active cases, 224 (52%) were completed, and the remaining projects continued into FY 2019.

There were fewer ECCR cases reported in FY 2018 than in FY 2017 (434 vs. 489), but still more than reported in FY 2016, when 368 cases reported (the lowest since FY 2010). In FY 2018, EPA, FERC, and DOI each reported greater than 100 cases.

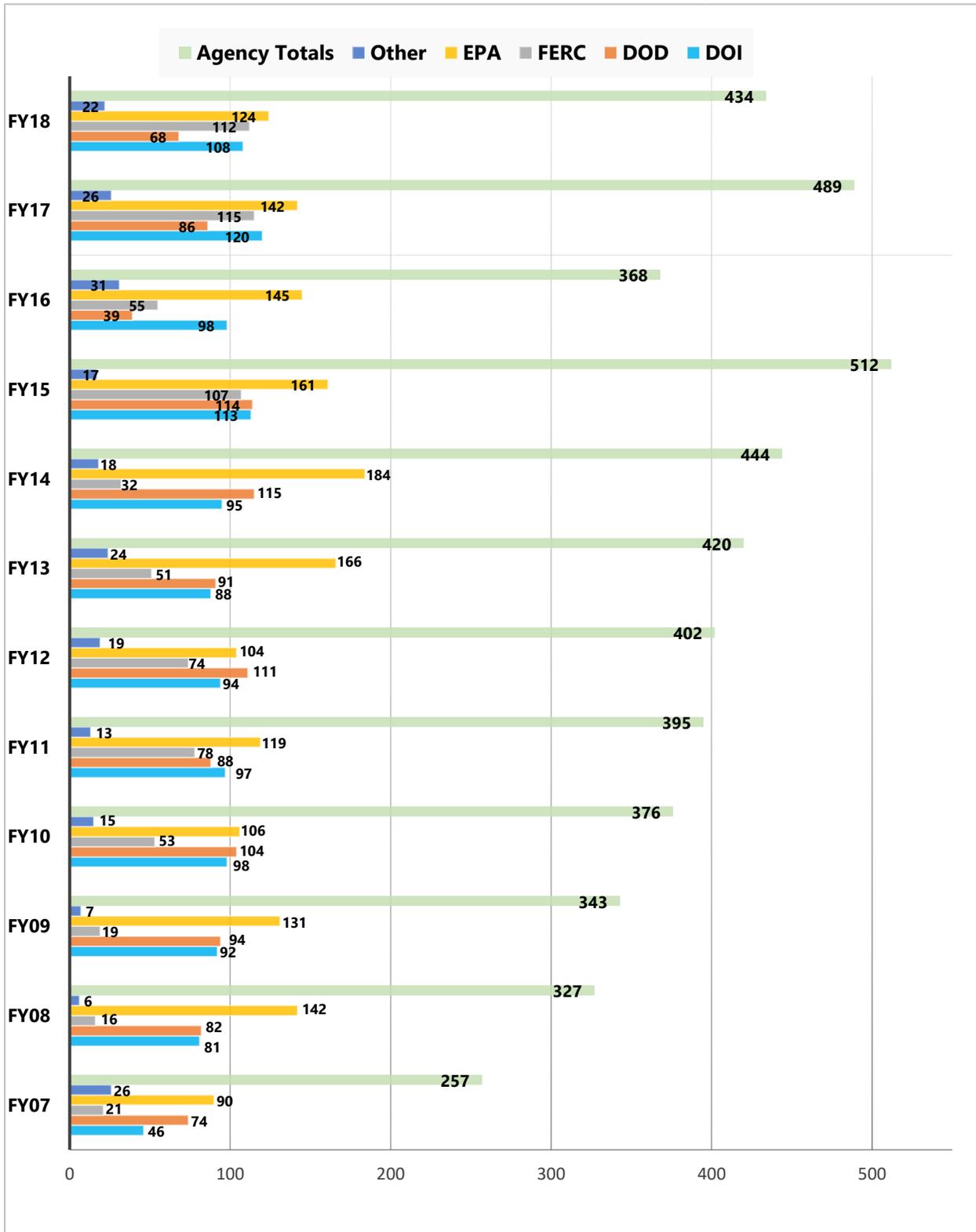
EPA, DOD<sup>4</sup>, DOI, and FERC have consistently reported the highest-volume involvement in ECCR since formal case reporting began in FY 2006 (Figure 1). This may be linked to formal ECCR centers and programs that are established and funded within their agencies and departments such as:

- Collaboration and Public Participation Center of Expertise (CPCX, USACE)
- Conflict Prevention and Resolution Center (CPRC, EPA)
- Collaborative Action and Dispute Resolution (CADR, DOI)
- Air Force Negotiation and Dispute Resolution program (Air Force)
- Army Alternative Dispute Resolution program (Army)
- Dispute Resolution Service (DRS, FERC)

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<sup>4</sup> All armed forces are grouped under Department of Defense (DoD).

FIGURE 1. DISTRIBUTION OF ONGOING ECCR CASES IN THE FEDERAL GOVERNMENT, FY 2007 TO FY 2018<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.

## General Contexts for ECCR

Federal agencies most commonly cite the following broad areas of use for ECCR:

- Natural Resource Management and Planning
- Regulatory & Administrative Rule Actions
- Consultation and Coordination
- Acts and Laws including NEPA and the Endangered Species Act
- Broad Environmental and Social Issues such as water security and environmental justice

More detailed examples of the above categories can be found in [Appendix B](#).

In FY 2018, agencies and departments outlined specific examples of activities in which ECCR was applied within the five common contexts. Example included:

- EPA used ECCR to address issues under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Clean Water Act (CWA).
- EPA Conflict Prevention and Resolution Center (CPRC) worked with the EPA American Indian Environmental Office (AIEO) to provide a professional facilitator for the National Tribal Operations Committee (NTOC). The NTOC is a forum where Federally recognized Tribes work with EPA senior leadership on policy and resource matters related to tribal capacity building, environmental program development and implementation in Indian country.
- EPA CPRC contract supported the creation and improved functioning of 13 Community Advisory Groups at Superfund sites and helped create forums for environmental justice communities to engage with the EPA throughout the country.
- CADR (DOI) convened an ECCR community of practice with representatives from Bureau of Land Management (BLM), Bureau of Ocean Energy Management (BOEM), Bureau of Reclamation (REC), U.S. Fish and Wildlife Service (USFWS), National Park Service (NPS), and United States Geological Survey (USGS). This group meets monthly and is collaboratively designing and identifying priority actions among the community of practice.
- NOAA's Aquaculture Program used multiple types of unassisted negotiations to create regulations to implement a fishery management plan for aquaculture in the Gulf of Mexico.
- The Army's Anniston Army Depot (ANAD) uses non-third-party collaboration in their consultation and National Environmental Planning Act (NEPA) planning process through Memorandums of Agreement (MOAs) with the Alabama State Historic Preservation Office.

## ECCR Use: Specific Contexts and Decision-Making Forums

Federal departments and agencies carry out numerous activities in support of their missions. These activities encompass specific contexts like planning; rulemaking; policy development; licensing and permit issuance; siting and construction; compliance and enforcement; and implementation and monitoring. Figure 2 shows specific contexts and agency decision-making forums in which Federal departments and agencies used ECCR as a tool in FY 2018.

Planning efforts were the highest reported context for ECCR cases from FY 2013 - FY 2016 and in FY 2018. During FY 2018, 30% of all Federal ECCR activity (129 cases) took place in the context of planning. Siting and construction cases were a close second at 28% of reported cases (121 cases).

ECCR used in the context of policy making generally decreased from FY 2007, when it was first tracked, to FY 2018. In FY 2007, 12% of cases reported using ECCR in this context, by FY 2018, this had decreased to 7% of cases. In FY 2018, the use of ECCR in the context of rulemaking, license and permit issuance, implementation/monitoring agreements, and policy making were reported to be used in under 14% of cases collectively.

The “other” category increased from 38 cases in FY 2017 to 78 cases in FY 2018. The highest reported ECCR cases in this category were from Navy and EPA. Examples of ECCR related activities under the “other” category were described by the agencies and departments as:

- Coordination, internal issues, info sharing (DOI);
- CERCLA (Army);
- Section 106 Programmatic Agreements (DOT);
- Partnering and process improvement (USACE);
- Los Alamos Natural Resources Damage Assessment Trustee Council (DOE); and
- Stakeholder collaboration, process improvements, situation assessment, stakeholder input, and voluntary programs (EPA).

FIGURE 2. FY 2018 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	29 (7%)	18	0	0	11
Planning	129 (30%)	87	1	2	39
Siting and construction	121 (28%)	118	0	3	0
Rulemaking	4 (1%)	3	0	0	1
License and permit issuance	7 (3%)	4	1	1	1
Compliance and enforcement action	44 (10%)	12	11	12	9
Implementation/monitoring agreements	22 (5%)	12	1	4	5
Other	78 (18%)	19	2	1	56
<b>Total</b>	<b>434</b>	<b>273</b>	<b>16</b>	<b>23</b>	<b>122</b>

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:

- Federal Agency Decisions
- Administrative Proceedings/Appeals
- Judicial Proceedings
- Other

At the agency level, the distribution of cases across decision-making forums has not changed significantly from FY 2006 through FY 2018. Since reporting in FY 2006, ECCR has been most widely used in cases that involved Federal agency decisions.

## 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. Annually, departments and agencies report investments in ECCR through:

- Promoting the use of ECCR
- Building ECCR personnel and staff capacity
- Increasing inter-agency and intra-agency ECCR coordination
- Steering ECCR capacity building and leveraging efforts

- Building ECCR partnership support
- Conducting evaluation of ECCR processes

Detailed investments within each of these categories can be found in [Appendix C](#). Notable agency-specific examples from FY 2018 include:

- The USACE held its 3<sup>rd</sup> annual Grand 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.
- 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.
- DOE sites and program offices maintain and enhance their awareness of ECCR methods and opportunities through monthly environmental attorneys' conference calls. On average, 20 participants join the monthly calls.
- The Bureau of Reclamation in DOI, promotes collaboration at the local watershed level through its collaborative WaterSMART's Cooperative Watershed Management Program. This collaborative program encourages watershed groups to engage diverse stakeholders to develop local solutions for their water management needs.
- CPRC (EPA) delivered its tenth annual Conflict Resolution Week program in October 2017. In total, over 260 people from HQ and regions attended at least one session during Conflict Resolution Week events.
- USACE has integrated ECCR objectives into the newly rolled out, USACE Campaign Plan, which focuses on transforming the way the Corps does business and providing superior customer service.

Training is a core component in building ECCR personnel and staff capacity as well as promoting the use of ECCR. Several agencies reported systematically training staff in addition to training broader audiences of stakeholders. Training subject areas reported are related to negotiation, facilitation, collaboration, conflict management, and conflict resolution. Additional skill-based courses or training modules included basic public participation, cultural competencies, and collaborative planning processes. Below are some examples of ECCR and related trainings held in FY 2018 by agencies and departments:

- The CADR (DOI) office and its cadre of in-house trainers delivered 20 conflict management skills training sessions to 500 employees from all Bureaus and offices in 8 geographic regions of the U.S. and online.
- The DOI BLM National Training Center (NTC) supported 13 classes and webinars including, "Getting to the Core of Conflict and Communication," "Developing and Maintaining High Performing Teams," "Collaboration," "Latino Engagement," and an overview of the BLM Collaborative Action and Dispute Resolution program were attended by hundreds of BLM staff.
- USACE and partner staff reached over 1,200 USACE staff and partners through 14 formal courses/workshops, 10 webinars, and multiple informal "brown bag" mini-trainings.
- CPRC (EPA) delivered 114 hours of ECCR training over the course of 19 sessions. More than 440 staff and managers attended trainings at EPA headquarters and in 6 regional offices.
- The DOI Office of Regulatory Affairs and Collaborative Action (RACA) in the Assistant Secretary for Indian Affairs office provided 8 training sessions with a combined attendance of 80 employees on conflict management and collaborative processes.
- The United States Army provided a block of Alternative Dispute Resolution (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.

- DOE hosted their annual joint DOE/DOE contractor environmental attorneys' training. A total of 89 site and program office representatives participated in the annual training.
- Federal Highway Administration (FHWA) staff participated in the U.S. Institute for Environmental Conflict Resolution's (USIECR) *Collaboration in National Environmental Policy Act (NEPA)* course.
- The Army's Judge Advocate General's Legal Center and School provided one hour of ADR training as part of its annual General Litigation Course.
- An attorney from Environmental Law Division (ELD, Army) 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.

## Benefits of ECCR

In FY 2018, 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. FERC noted in their report that to better understand the actual or perceived savings to ADR participants, they ask participants in a survey to rank from strongly disagree to strongly agree whether ADR "helped resolve my concern more quickly" and "helped reduced my costs." Of the survey responses FERC received in FY 2018, 100% of respondents answered agree or strongly agree to the statement about the subject dispute being resolved more quickly, and 80% of respondents answered agree or strongly agree to the statement about reducing costs.

### Benefits of Environmental Collaboration and Conflict Resolution for Federal Agencies

**Efficiency** – Cost savings, timely process, minimizes litigation

**Better Outcomes** – More durable solutions

**Improved Governance** – Increased capacity to serve citizens

Consistently, agencies reported a wide spectrum qualitative benefits from the use of ECCR such as: better and more durable outcomes, better relationships, more efficient operations, increased communication, and enhanced planning. Detailed benefits can be found in [Appendix D](#).

The departments and agencies provided examples of cases and projects in FY 2018 highlighting the qualitative benefits of ECCR. A selection of these cases is reported below.

## Examples of FY 2018 ECCR projects

### NEPA REVIEW OF INTERSTATE 11 CORRIDOR PROJECT (DOT)

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*In 2018, the Federal Highway Administration (FHWA) and Arizona Department of Transportation (ADOT) conducted the NEPA review of the Interstate 11 (I-11) Corridor Project from Nogales to Wickenburg, AZ. A Tier 1 Environmental Impact Statement (EIS) was prepared as a part of this process in accordance with NEPA and other Federal environmental laws. FHWA was the lead agency under NEPA and ADOT was the project sponsor.*



The FHWA Arizona Division sought help from the U.S Institute for Environmental Conflict Resolution (USIECR) for the stakeholder engagement process. USIECR organized and facilitated the stakeholder engagement meetings, which were funded through an interagency agreement between FHWA and USIECR. The meetings took place early in 2018, and USIECR developed a meeting summary report to highlight the outcomes of the interagency planning and public involvement efforts.

To complement ADOT's extensive public involvement processes, FHWA believed it would be beneficial to collect additional input in a stakeholder group setting as opposed to the traditional public information meetings. The overall objective of the I-11 Corridor stakeholder group meetings was to better understand the diverse perspectives and underlying issues of the communities in southern Arizona. In addition, the stakeholder group meetings sought to identify common ground among the varying perspectives. USIECR designed a series of meetings that allowed diverse groups in southern Arizona to discuss various alignments for the I-11 Corridor. Member groups included environmental organizations, public health and highway safety agencies, environmental advocacy groups, business interest groups, and more.

USIECR summarized the information gathered during the public engagement meetings in a report that was provided to the Federal agency leaders as they made their final decisions regarding the I-11 Corridor alternatives. Throughout the meetings, it became apparent that one of the two proposed alignments were untenable, due to cost and other logistical constraints. This information became apparent because of the open-conversation structure of the ECCR process designed by USIECR. Had a more traditional public forum been used, certain minority voices in the room might not have been heard or considered in the alternatives analysis process.

The use of ECCR in this process allowed for a more open conversation that allowed a greater number of voices to be heard, a greater range of viewpoints to be considered, and ultimately provided FHWA with a greater amount of information for making decisions during the alternatives analysis process developed for the I-11 Corridor Tier 1 EIS.

### **NELLIS AIR FORCE AND CLARK COUNTY DEPARTMENT OF AIR QUALITY (AIR FORCE)**

In 2018, Nellis Air Force Base (NAFB), Nevada, received a notice of violation from the Clark County Department of Air Quality (CCAQ) for operating diesel-powered mobile light carts without a permit. The Air Force uses the light carts to provide illumination for aircraft maintenance personnel operating in black-out conditions in deployed forward operating areas. Additionally, the carts are used around NAFB during training exercises by airfield repair technicians preparing to deploy. The carts use diesel engines to power large light fixtures and generate some air emissions of concern to CCAQ when operated locally. However, because the carts are frequently deployed throughout the world, the Air Force was strongly opposed to listing the carts on NAFB's Clean Air Act permit.



Besides financial penalties, the Air Force was concerned about potential future operational limitations if light carts throughout the U.S. were required to seek local permitting approval. On the other hand, CCAQ had a strong interest in monitoring air emissions, as it represents a county in non-attainment for several air pollutants. After four months of failed negotiations, the parties were prepared to litigate the issue. However, the Air Force proposed negotiation and CCAQ agreed to seek an advisory opinion from the U.S. Environmental Protection Agency (EPA), Region IX, Office of Air Quality. The parties agreed to stay the litigation pending EPA's review of the issue.

Because EPA both authorizes CCAQ's air quality program and can act in an enforcement capacity against the Air Force, the parties felt EPA was in a unique position to consider the interests and arguments of both sides. Moreover, EPA had reliable expertise on the Clean Air Act and agreed to provide a staff-level review at no cost to

*the parties. The parties agreed to a joint statement of facts and provided informal briefs on their respective legal and regulatory positions. Additionally, with some caveats, the parties agreed they would be bound by the advisory opinion to the extent practicable. In turn, EPA staff provided an advisory opinion that guided both parties to a successful resolution of the issue. The EPA advised the Air Force that the light carts did not require a permit because of the unique military nature of the carts and CCAQ did not have to expend additional resources to regulate the light carts.*

*The parties willingness to use a third party in the form of an EPA staff review saved the time and expense of a litigated state-level hearing. Additionally, the Air Force reduced its risk of an unfavorable local court ruling which could have had national implications. Likewise, CCAQ was able to redirect its limited enforcement resources to other areas where it had clearly delegated authority.*

### **DISPUTE BETWEEN NATURAL GAS PIPELINE COMPANY AND LANDOWNER (FERC)**

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*Non-decisional staff from the Dispute Resolution Service (DRS, FERC) mediated a dispute between a natural gas pipeline company and a landowner where the pipeline company was constructing a new pipeline on a steep slope above the landowner's property.*



*During construction, some erosion control devices (ECD) along the edge of the right-of-way failed, resulting in the slope slipping and large boulders falling down the slope into the landowner's yard. The landowner contacted DRS through the Landowner Helpline for assistance getting the slip and ECDs repaired, cleaning up the off right-of-way debris, and addressing the safety concerns raised by this incident.*

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

*DRS staff worked closely with the Commission's Office of Energy Projects compliance staff to address this matter. DRS staff facilitated communication between the landowner and pipeline company by engaging in regular caucus sessions and hosting conference calls to explore each party's interests and generate options through joint brainstorming sessions. In the joint sessions, DRS staff emphasized areas of agreement reached in previous meetings. Proper management of the mediation process by the mediators and the commitment by the parties to achieve consensus resulted in complete resolution of all issues in this dispute.*

*The parties reached a mutually beneficial agreement that provided a permanent solution to the issues raised in this dispute. The pipeline company repaired the slip and ECDs and built a triple reinforced temporary fence on the edge of the right-of-way to prevent a similar situation from recurring. The landowner provided the pipeline company access rights to clean up the debris from the slip. The pipeline company also compensated the landowner for a fence to mitigate the impact if a slip happens again.*

*The use of ECCR allowed the parties to reach a creative solution to a problem that satisfied the environmental interests of the parties.*

### **SOCIAL INTEGRATION IN USFWS CONSERVATION EFFORTS (DOI)**

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*There is growing recognition within the U.S. Fish and Wildlife Service (USFWS) that incorporating the social sciences into our work can improve conservation outcomes. Despite this recognition, significant obstacles still exist to achieving social science integration across USFWS. To help overcome these obstacles, the Human Dimensions (HD) branch of USFWS retained the services of a third-party neutral to help design and facilitate a strategic planning process focused on social science integration within USFWS, culminating in a workshop planned for May 2019. The timeline for the neutral's assistance is 2017-2019, and the effort was funded through allocated and base funds from USFWS.*

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*Integrating the social sciences into the work of USFWS will require substantial organizational change. USFWS turned to CADR (DOI) to help identify expertise in organizational theory and change. This expertise will help USFWS help design and implement an effective social science integration process. While not a traditional example of ECCR with a third-party neutral, USFWS strategic planning work fits into the category of “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 neutral brings both an outside perspective and substantial expertise in organizational change and strategic planning, which have informed the planning process for mainstreaming social science within the agency.*



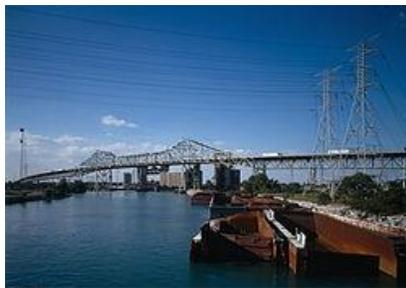
*CADR (DOI) assisted the HD branch by connecting them with a qualified third-party neutral who can help them realize their strategic vision. Bringing in an outside expert in facilitation and organizational change has also helped them keep the process moving forward amidst busy schedules. Because this endeavor involves long-term change across a complex bureaucracy, utilizing an expert in organizational theory and strategic planning has allowed us to map out our future work to create commitment, energy and understanding.*

*The inclusion of an expert perspective on organizational theory and change has helped the HD branch envision and design a process for making substantial changes across a large and complex government agency. The neutral has helped the HD branch think about who needs to be involved in the process, at what times, and in what capacity to achieve an effective workshop on social science integration. This workshop will serve as the springboard for longer-term work on social science integration across USFWS for years to come.*

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### **CHICAGO AREA WATER SYSTEM CALUMET RIVER DREDGED MATERIAL MANAGEMENT PLAN (USACE)**

*Members of a Chicago area community strongly objected to a placement of a new disposal facility for dredged material within their ward, due to the presence of a number of existing dumps and a long history of environmental justice complaints. The community had been subject to wind-blown pollution from coal dust and other contaminants, and had expressed their concerns about the potential effects of contaminated sediment on their community and health. The study was on hold for several years due to a lack of non-Federal funding, but a new cost-share sponsor was identified in 2017. By then the initially selected site had been sold, so the study was re-scoped, and a strategy of community engagement was developed. The District applied for and was awarded support from the Collaboration & Public Participation Center of Expertise (CPCX) through the Grand Collaboration Challenge (GCC) in 2018.*



*With the assistance of the CPCX, the District developed an engagement strategy and communications plans, and set up a stakeholder group including the sponsor, local government agencies, community advocacy groups, navigation stakeholders, and the local alderwoman. Community members were also able to provide comments. The ECCR process was framed to address the composition of the community in terms of demographics, ethnicity, and income. The process provided two clear beneficial outcomes. First, the community was afforded multiple opportunities for input and comment, both directly at meetings and online using a GIS-based public comment tool called Crowdsourc Reporter. These opportunities had been lacking during the initial development of the project prior to the first public meeting. The second benefit was the development of a stronger working relationship between the District and the new sponsor.*

## SEEKING JUSTICE THROUGH MEDIATION: REACH TITLE VI CASE (EPA)

*In FY 2017 and 2018, EPA provided skilled CPRC staff and an external mediator to resolve a challenging, long-standing Title VI dispute between state agency and community parties in North Carolina involving concentrated animal feeding operations (CAFOs). Mediation allowed the parties to address the current and historical conflict, explore potential remedies and options, and craft an agreement that resolved the issues raised in the Title VI complaint. The parties agreed to develop monitoring programs and to revise the North Carolina General Permit for Swine Facilities through a process that is more inclusive and responsive to the affected community. Had the case been litigated, the parties would not have been able to create their own mutually satisfactory resolution.*



## Analyzing ECCR Costs and Benefits

There are multiple ways to assess ECCR use, costs, and benefits through qualitative and quantitative methods. 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. Other agencies fully integrate ECCR into their broader budgets, so it is more difficult to separate out ECCR costs and benefits. Most agencies report that the Annual ECCR Report provides an important tool for consolidating much of the use of ECCR and costs and benefits of ECCR within their department or agency.

### METHODS FOR ASSESSING ECCR USE, COSTS, AND BENEFITS

Qualitative Methods
<ul style="list-style-type: none"> <li>• Annual agency ECCR reports</li> </ul>
<ul style="list-style-type: none"> <li>• Qualitative survey questions on perceived benefits</li> </ul>
<ul style="list-style-type: none"> <li>• Documentation of lessons learned and case studies</li> </ul>
<ul style="list-style-type: none"> <li>• Evaluations of ECCR meetings and process outcomes</li> </ul>
Quantitative Methods
<ul style="list-style-type: none"> <li>• Dedicated evaluation programs to assess use, costs, and benefits of ECCR</li> </ul>
<ul style="list-style-type: none"> <li>• Tracking labor hours and travel costs for staff supporting ECCR activities</li> </ul>
<ul style="list-style-type: none"> <li>• Funds spent on ECCR contracts, the use of third-party neutrals, and ECCR programs</li> </ul>
<ul style="list-style-type: none"> <li>• Tracking ECCR cases and/or hours in environmental project databases and case docket systems</li> </ul>

### Quantitative Methods

Some agencies note tracking ECCR cases through a case tracking system (FERC, EPA, USACE, Naval Litigation Office) or through case docket systems in formal administrative or judicial forums (DOI). Other agencies and departments track costs associated with ECCR through staff time or travel as well as through investments in ECCR programs and contracts. Below are specific examples in FY 2018 of agencies tracking ECCR through these methods:

- The Army uses the Defense Travel System to generate the travel costs expended to attend ECCR training and ECCR events.
- Bureau of Reclamation in DOI selected 27 collaborative watershed entities to receive a total of \$2.6 million to establish or further develop watershed groups in order to address water quantity or quality through Cooperative Watershed Management Program Grants.
- DOI Bureaus and Offices invested approximately \$2.9 million in ECCR through the CADR ECCR contract.
- CPRC (EPA) provides expert ECCR services, either directly by CPRC staff, or most often, through its \$51 million Conflict Resolution Services (CPRS) contract.

Another quantitative method agencies use to capture ECCR investments is through their full time employees (FTEs) dedicated to supporting ECCR services and programs. In FY 2018, agencies and departments reported the following numbers:

- DOI has 13 FTEs that focus on ECCR.
- FERC has 4 full-time neutrals that focus on ECCR and ADR case work.
- EPA has 20 skilled ECCR Specialists in its regional and program offices.

- National Ocean Service (NOS, NOAA) has dedicated Environmental Compliance Coordinators (ECCs) in Office for Coastal Management (OCM), Office for Coast Survey (OCS), Office of National Geodetic Survey (NGS), Office of National Marine Sanctuaries (ONMS), Center for Operational Oceanographic Products and Services (CO-OPS), Office of Response and Restoration (ORR), Integrated Ocean Observing System Program (IOOS) and National Centers for Coastal Ocean Science (NCCOS). The NOS Assistant Administrators' Office has full-time contracted support for environmental compliance.

### Qualitative Methods

In FY 2018, specific qualitative methods were noted by departments and agencies below:

- CPCX (USACE) logs the narrative experiences of ECCR activities as much as possible through formal evaluations and after-action reports as well as informal testimonials.
- USACE Districts annually survey USACE partners and stakeholders using the "Customer Satisfaction Survey".
- Every five years, CPCX (USACE) administers a substantial (75+ question) agency-wide survey and holds division-level workshops to assess USACE's collaborative capacity.
- Army ELD 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.
- FERC has developed a new survey which was recently approved by OMB to collect feedback from a greater number of participants that participate in voluntary ADR processes for cases.

### Data Collection and Reporting Challenges

As mentioned in previous years, several respondents noted challenges with gathering the data required for the annual report. Most agencies continued to describe the difficulties in tracking ECCR usage and quantifying costs and benefits as their greatest reporting challenges. Agencies expressed issues in quantifying ECCR use as it is not broken out in their budgets and that qualitative benefits are easier to report.

Despite challenges, agencies recognize the importance of tracking and reporting ECCR usage and outcomes. Some agencies reported specified ECCR tracking efforts that they have implemented and are planning to implement in FY 2020:

- Collaboration-related metrics are being developed as part of an HQ-sponsored effort to track progress toward agency-wide (USACE) Integrated Water Resources Management (IWRM) goals.
- CPCX (USACE) has begun tracking of qualitative or quantitative investments and benefits along with the regular tracking of projects done by field representatives.
- CPCX (USACE) is encouraging all Divisions to adopt the ECCR tracking wiki that was piloted by the Mississippi Valley Division in FY 2018.
- Army's Environmental Law Division (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.

Reporting challenges outlined in the FY 2018 individual agency reports are synthesized in [Appendix E](#).

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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

Nine (9) agencies have submitted reports each year from fiscal year 2006 through fiscal year 2018, including:

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

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

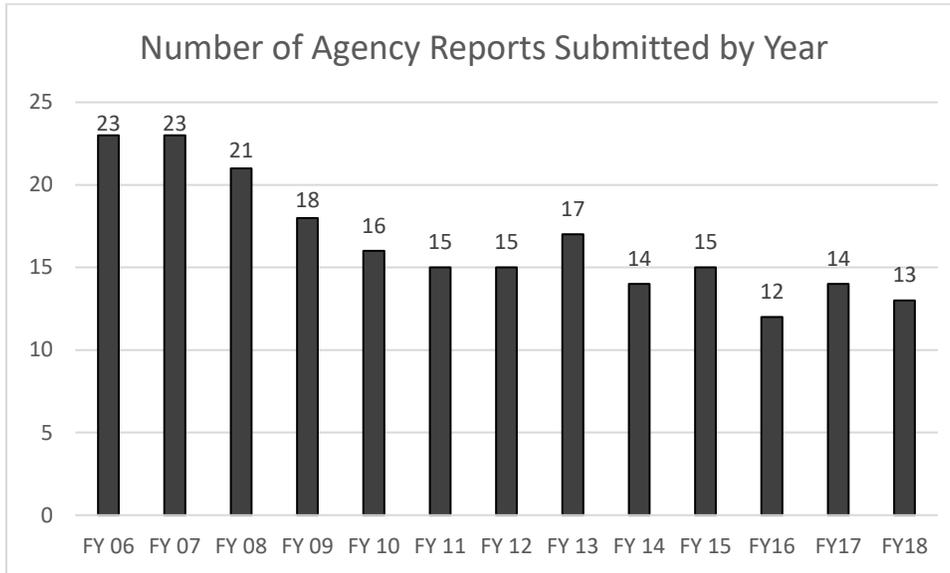
**TABLE 1: SUBMITTING AGENCIES BY FISCAL YEAR**

<b>Agency</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>	<b>FY 18</b>
U.S. Forest Service													
National Oceanic and Atmospheric Administration													
Department of Defense													
Department of the Navy													
Air Force													
Army Corps of Engineers													
Army Legal Services Agency													
Army													
Corpus Christi Army Depot													
Office of Staff Judge Advocate													
Environmental Law Division													
National Guard Bureau													
U.S. Army Reserve													
Missile Defense Agency													
Department of Energy													
Department of Health and Human Services													
Department of Homeland Security													
Department of the Interior													
Department of Justice													
Department of Labor													
Department of Transportation													
Department of Veterans Affairs													
Environmental Protection Agency													
Federal Energy Regulatory Commission													
General Services Administration													
National Aeronautics and Space Administration													
National Capital Planning Commission													
National Indian Gaming Commission													
Nuclear Regulatory Commission													
Tennessee Valley Authority													
U.S. Institute for Environmental Conflict Resolution <sup>7</sup>													

<sup>7</sup> USIECR's ECCR cases are no longer 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 13 in FY 2018.



## Appendix B: ECCR Use in the Federal Government

Below are the five most commonly cited contexts for ECCR use, in both assisted and unassisted collaborative activities (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> <li>• Emergency management</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>

## Appendix C: Investments in ECCR

The suite of qualitative ECCR benefits identified by departments and agencies have included:

- **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;
  - Funding inter-agency liaison positions to facilitate consultation and communication;
  - 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:
  - Collaboration and Public Participation Center of Expertise (CPCX, USACE)
  - Conflict Prevention and Resolution Center (CPRC, EPA)
  - Collaborative Action and Dispute Resolution (CADR, DOI)
  - Air Force Negotiation and Dispute Resolution program (Air Force)
  - Army Alternative Dispute Resolution program (Army)
  - Dispute Resolution Service (DRS, 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.

## Appendix D: Benefits of ECCR

Below are benefits of ECCR recognized by agencies:

- **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; enhanced restoration and environmental planning for long term benefits; and 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 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.

## Appendix E: Data Collection and Reporting Challenges

The following are examples of reported challenges for some departments and agencies:

- 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 into a unified response.
- Difficult to track consistent and routine relationship building and ECCR processes.

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);
- Redraft the ECCR Reporting Template into plain and clear language (multiple agencies);
- Provide a guidance document on the nuances for the ECCR Reporting Template (multiple agencies);
  - USACE's Pittsburgh District provides an "FAQ" email to their colleagues to assist in data collection (USACE).
- Reporting process is labor intensive and difficult to quantify/standardize. Suggest considering Likert Scale and/or forced values such as (0-1) (2-4) (>=5), etc. to characterize responses (USACE);
- Recommend CEQ pursuing other methods of encouraging use of ECCR across the Federal government. For example, distribution of resources on use of ECCR, connections to ECCR third-party neutral providers, or trainings on when and how to use ECCR, would be valuable (NOAA); and
- Clarify how the annual report is used and useful to OMB, CEQ, and other agencies. Within CADR (DOI), knowledge of the aggregate ECCR project numbers is important for identifying trends and sharing this information back to the Bureaus and Offices in order to assist with their projections of future ECCR resource needs (DOI).

## Appendix F: Acronyms

<b>ADOT</b>	Arizona Department of Transportation
<b>ADR</b>	Alternative Dispute Resolution
<b>AFNC</b>	Air Force Negotiation Center
<b>AIEO</b>	American Indian Environmental Office
<b>Air Force</b>	U.S. Air Force
<b>ANAD</b>	Army's Anniston Army Depot
<b>Army</b>	U.S. Army
<b>BIA</b>	Bureau of Indian Affairs
<b>BLM</b>	Bureau of Land Management
<b>BOEM</b>	Bureau of Ocean Energy Management
<b>CADR</b>	Collaborative Action and Dispute Resolution (DOI)
<b>CAFOs</b>	Concentrated Animal Feeding Operations
<b>CERCLA</b>	Comprehensive Environmental Response, Compensation, and Liability Act
<b>CEQ</b>	Council on Environmental Quality
<b>CCAQ</b>	Clark County Department of Air Quality
<b>CWA</b>	Clean Water Act
<b>CO-OPS</b>	Center for Operational Oceanographic Products and Services (NOAA)
<b>CPCX</b>	Collaboration and Public Participation Center of Expertise (USACE)
<b>CPRC</b>	Conflict Prevention and Resolution Center (EPA)
<b>CPRS</b>	Conflict Resolution Services
<b>DOE</b>	Department of Energy
<b>DOI</b>	Department of the Interior
<b>DOL</b>	Department of Labor
<b>DON</b>	Department of the Navy
<b>DOT</b>	Department of Transportation
<b>DRS</b>	Dispute Resolution Service (FERC)
<b>ECCs</b>	Environmental Compliance Coordinators
<b>ECCR</b>	Environmental collaboration and conflict resolution
<b>ECD</b>	Erosion Control Devices
<b>ELD</b>	Environmental Law Division (Army)
<b>EIS</b>	Environmental Impact Statement
<b>EPA</b>	U.S. Environmental Protection Agency
<b>ESA</b>	Endangered Species Act
<b>FERC</b>	Federal Energy Regulatory Commission
<b>FHWA</b>	Federal Highway Administration
<b>FPSIC</b>	Federal Permitting Improvement Steering Council
<b>FTE</b>	Full Time Employee
<b>GCC</b>	Grand Collaboration Challenge
<b>GSA</b>	General Services Administration
<b>IOOS</b>	Integrated Ocean Observing System Program (NOAA)
<b>IWRM</b>	Integrated Water Resources Management (USACE)
<b>MOA</b>	Memorandums of Agreement
<b>NADRC</b>	Negotiation and Appropriate Dispute Resolution Course
<b>NAFB</b>	Nellis Air Force Base
<b>NCCOS</b>	National Centers for Coastal Ocean Science (NOAA)
<b>NEPA</b>	National Environmental Policy Act
<b>NGB</b>	National Guard Bureau
<b>NGS</b>	Office of National Geodetic Survey (NOAA)

<b>NHPA</b>	National Historic Preservation Act
<b>NOAA</b>	National Oceanic and Atmospheric Administration
<b>NOS</b>	National Ocean Service (NOAA)
<b>NPS</b>	National Park Service
<b>NTC</b>	National Training Center
<b>NTOC</b>	National Tribal Operations Committee
<b>OCM</b>	Office for Coastal Management (NOAA)
<b>OCS</b>	Office for Coast Survey (NOAA)
<b>OMB</b>	Office of Management and Budget
<b>ONMS</b>	Office of National Marine Sanctuaries (NOAA)
<b>ORR</b>	Office of Response and Restoration (NOAA)
<b>PME</b>	Professional Military Education
<b>RACA</b>	Office of Regulatory Affairs and Collaborative Action (BIA)
<b>REC</b>	Bureau of Reclamation
<b>USACE</b>	U.S. Army Corps of Engineers
<b>USFS</b>	U.S. Forest Service
<b>USFWS</b>	U.S. Fish and Wildlife Service
<b>USGS</b>	United States Geological Survey
<b>USIECR</b>	U.S. Institute for Environmental Conflict Resolution
<b>VA</b>	Department of Veterans Affairs