

FY 2019 TEMPLATE
Environmental Collaboration and Conflict Resolution (ECCR)¹
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.”

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

This annual reporting template is provided in accordance with the memo for activities in FY 2019.

The report deadline is February 22, 2020.

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 FY 2019 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 2019 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: <https://udall.gov/OurPrograms/Institute/ECCRReport.aspx>

FY 19 ECCR Report Template

Name of Department/Agency responding:	Federal Energy Regulatory Commission
Name and Title/Position of person responding:	Jacqueline Holmes, Associate General Counsel
Division/Office of person responding:	OGC—Energy Projects
Contact information (phone/email):	202-502-8189 elisabeth.blaug@ferc.gov
Date this report is being submitted:	February 21, 2020
Name of ECCR Forum Representative	Joshua Hurwitz, Director, DRS

1. ECCR Capacity Building Progress

- a) Describe any **NEW, CHANGED, or ACTIVELY ONGOING** steps taken by your department or agency to build programmatic and institutional capacity for environmental collaboration and conflict resolution in FY 2019, including progress made since FY 2018. Please also include any efforts to establish routine procedures for considering ECCR in specific situations or categories of cases, including any efforts to provide institutional support for non-assisted collaboration efforts. Please refer to your agency's FY2018 report to only include new, changed or actively ongoing ECCR capacity building progress. **If none, leave this section blank.**

(Please refer to the mechanisms and strategies presented in Section 5 and attachment C of the [OMB-CEQ ECCR Policy Memo](#) for additional guidance on what to include here.

Examples include but are not restricted to efforts to

- integrate ECCR objectives into agency mission statements, Government Performance and Results Act goals, and strategic planning;
- assure that your agency's infrastructure supports ECCR;
- 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.

Office of the General Counsel - Dispute Resolution Service

In FY 2019, the Dispute Resolution Service (DRS) successfully addressed/resolved 474 cases. DRS casework included 281 inquiries from the public and 188 referrals for ADR services. Of the total cases, **128 involved ECCR** (breakdown in table below).

DRS moved from the Office of the Administrative Law Judges to the Commission's Office of the General Counsel in July 2019. The relocation

provides DRS with increased visibility at the Commission, expands opportunities to use dispute resolution and ECCR across program offices, and allows for more effective use of Commission resources.

In addition to updating its internal work processes, DRS engaged with the Office of Energy Projects (OEP) to improve coordination with the office's project managers working on natural gas pipeline projects. Staff attended the OEP "Environmental Review and Compliance for Natural Gas Facilities" seminar, that is designed to help stakeholders navigate FERC processes and discuss FERC's role in natural gas pipeline construction. Staff from both offices are working collaboratively to incorporate information regarding the services DRS can provide to natural gas pipeline companies and landowners, as well as the benefits of ECCR. The goal is to incorporate more information on when and how to use ECCR into the presentations for upcoming seminars.

- b) Please describe the trainings given in your department/agency in FY 19. Please include a list of the trainings if possible. If known, provide the course names and if possible, the total number of people trained. Please refer to your agency's FY2019 report to include only trainings given in FY 2019. **If none, leave this section blank.**

2. ECCR Investments and Benefits

- c) Please describe any **NEW or CHANGED or INNOVATIVE** investments made in ECCR in FY2019. Examples of investments may include ECCR programmatic FTEs, dedicated ECCR budgets, funds spent on contracts to support ECCR cases and programs, etc.

Please refer to your agency's FY2018 report to only include new, changed, or innovative investments made in ECCR. **If none, leave this section blank.**

Office of the General Counsel - Dispute Resolution Service

The Commission continues to support ECCR/ADR through funding of travel for cases, outreach, and training to accomplish DRS and Commission goals. In FY 2019, DRS personnel traveled to conduct two onsite mediations with landowners and the natural gas pipeline company constructing in the area.

DRS hired 3 new full-time employees in FY 2019; a new Deputy Director, an Attorney Advisor, and a Dispute Resolution Specialist. The group now has 5 full time neutrals working on ADR work inclusive of ECCR.

- d) Please describe any **NEW or CHANGED or INNOVATIVE** benefits realized when using ECCR.

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.

Please refer to your agency's previous report to only include new or innovative methodology to identify ECCR investments and benefits. **If none, leave this section blank.**

Office of the General Counsel - Dispute Resolution Service

DRS is actively participating in a pilot project using a third-party contractor to define and outline the various DRS functions and to develop better metrics for the office. DRS will utilize the information obtained to either improve its data tracking system or to begin procuring a more appropriate system. DRS anticipates that the outcome will allow the office to better measure the work DRS does to more accurately capture ECCR use and, where possible, benefit.

3. ECCR Use

Describe the level of ECCR use within your department/agency in FY 2019 by completing the three tables 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 2019 ECCR Cases ²	Decision making forum that was addressing the issues when ECCR was initiated:			
		Federal agency decision	Administrative proceedings /appeals	Judicial proceedings	Other (specify)
<i>Context for ECCR Applications:</i>					
Policy development	_____	_____	_____	_____	_____
Planning	_____	_____	_____	_____	_____
Siting and construction	119	119	_____	_____	_____
Rulemaking	_____	_____	_____	_____	_____
License and permit issuance	_____	_____	_____	_____	_____
Compliance and enforcement action	9	9	_____	_____	_____
Implementation/monitoring agreements	_____	_____	_____	_____	_____
Other (specify): _____	_____	_____	_____	_____	_____
TOTAL	128	128	_____	_____	_____
		(the sum of the Decision Making Forums should equal Total FY 2019 ECCR Cases)			

² An “ECCR case” is a case in which a third-party neutral was active in a particular matter during FY 2019.

<i>Context for ECCR Applications:</i>	Interagency ECCR Cases and Projects	
	Other Federal Agencies Only	Including non federal participants (includes states, Tribes, and non governmental)
Policy development	_____	_____
Planning	_____	_____
Siting and construction	_____	_____
Rulemaking	_____	_____
License and permit issuance	_____	_____
Compliance and enforcement action	_____	_____
Implementation/monitoring agreements	_____	_____
Other (specify): _____	_____	_____
TOTAL	_____	_____

<i>Context for ECCR Applications:</i>	ECCR Cases or projects completed ³	ECCR Cases or Projects sponsored ⁴
Policy development	_____	_____
Planning	_____	_____
Siting and construction	_____	_____
Rulemaking	_____	_____
License and permit issuance	_____	_____
Compliance and enforcement action	_____	_____
Implementation/monitoring agreements	_____	_____
Other (specify): _____	_____	_____
TOTAL	_____	_____

³ A "completed case" means that neutral third party involvement in a particular ECCR case ended during FY 2019. 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.

⁴ 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 2019 cases it should equal total ongoing cases. If you subtract sponsored ECCR cases from Total FY 2019 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 2019 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 2019). If possible, focus on an interagency ECCR case. Please limit the length to **no more than 1 page**.

Name/Identification of Problem/Conflict

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.

Non-decisional DRS staff mediated a series of disputes between a landowner group and a natural gas pipeline company to address several restoration problems. Each property had unique challenges, but the issues can generally be described as crop damages, drainage and erosion problems, sediment discharge into waterbodies, topsoil degradation, and property damages from a significant flooding event. The topsoil degradation issue was extremely contentious and involved a novel legal theory on damages that required in depth expert reports from both parties resulting in dueling expert opinions. The parties spent approximately one year attempting to resolve the issues on their own before contacting DRS. The relationships deteriorated to the point where parties were in active litigation and no longer communicating. At the request of DRS staff, the parties agreed to meet in person, on location, to attempt to resolve several landowner claims. Over the course of three days, the parties reached complete settlements in six of the eight matters, a partial settlement in another, and the final landowner opted to pursue their claims in litigation.

Assistance with the cases included using permanent DRS staff as mediators, with travel funded by the DRS travel budget. Each landowner and the natural gas pipeline company funded their own participation.

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.

DRS staff worked with the principals prior to the site visits, to develop a mutually agreeable process and schedule in advance of independent meetings, as these matters were highly contentious. DRS staff and pipeline company representatives travelled to the landowner's location to conduct the three-day mediation. FERC and pipeline representatives met with all participants on the first day and visited each landowner's property to see the concerns raised. DRS staff divided the second and third days to meet with each landowner and the pipeline company, to engage in specific negotiations.

DRS staff helped the parties engage in dialogue and used legitimate criteria in joint sessions to facilitate option generation. The parties then evaluated options, in short caucus sessions, and began making cross-party offers.

Identify the key beneficial outcomes of this case, including references to likely alternative decision-making forums and how the outcomes differed as a result of ECCR.

The parties reached mutually beneficially agreements in seven of the eight disputes. The pipeline company compensated landowners for several years of demonstrable crop losses and for verifiable damages from the flooding event. The pipeline company also made repairs to the right-of-way as a preventative measure to avoid having a similar flooding incident in future. The landowners withdrew their complaints and signed full releases. In these cases, ECCR resulted in solutions that avoided costly and time-consuming litigation; helping to preserve relationships that will continue long-term.

Reflections on the lessons learned from the use of ECCR.

The use of ECCR allowed the parties to reach solutions to problems that satisfied the needs of all parties and avoided unnecessary and costly litigation while also fostering valuable relationship interests.

5. Other ECCR Notable Cases

Briefly describe any other notable ECCR cases in the past fiscal year. **(OPTIONAL)**

6. Priority Uses of ECCR

Please describe your agency's **NEW or CHANGED** 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. Please refer to your agency's FY2018 report to only include new or increased priority uses. **If none, leave this section blank.**

7. Non-Third-Party-assisted Collaboration Processes (Optional)

Briefly describe other **significant** uses of environmental collaboration that your agency has undertaken in FY 2019 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. If none, leave this section blank.*

In FY 2018, the Commission and the Pipeline and Hazardous Materials Safety Administration (PHMSA) within the U.S. Department of Transportation signed a Memorandum of Understanding (MOU) to establish this framework for improved coordination (see <https://www.ferc.gov/legal/mou/2018/FERC-PHMSA-MOU.pdf>). The Commission's MOU with PHMSA established various steps in the coordination process to maximize the exchange of relevant information, including a framework for sharing documents, inspection findings, and other information to avoid duplication of efforts in the review of LNG projects under the Natural Gas Act, NEPA, and Pipeline Safety Act.

In FY 2019, Commission staff began implementing the MOU with PHMSA, and there has been improved processing time for 14 applications before the Commission. Commission staff have been able to independently parallel-process its review under the Natural Gas Act and meet the environmental review schedules publicly released in August 2018. Staff had more consolidated and comprehensive engineering data requests (and less hazard modeling data requests related to siting) issued, that helped lead to significantly more NEPA documents and orders.

In FY 2018, Commission staff developed a One Federal Decision (OFD) implementation plan. The Commission's OFD implementation plan commits staff to meet and work directly with appropriate agency regional- and field-office staff on OFD implementation. As part of this effort in FY 2019, staff participated in numerous meetings and workshops with multiple federal and state agencies to discuss possible programmatic approaches to meeting the goals of the OFD MOU. This could include development of Memoranda of Agreement (MOAs) and Programmatic Agreements (PAs) under Section 106 of the National Historic Preservation Act (NHPA). Commission staff has also provided in-the-field learning opportunities for other agencies regarding pipeline and compressor station construction and restoration, including Commission staff participating in outreach activities and training events to discuss the implementation of FAST-41 and OFD, as listed below.

- March 2019 - National Hydropower Association Conference
- June 2019 - Training Workshop for USDA Forest Service (Ft. Collins, CO)
- August 2019 - Interstate Natural Gas Association of America Meeting
- September 2019 - Energy Infrastructure Council Meeting

FY 2019 included several new challenges that required innovative collaboration efforts. The Commission staff worked together with other federal agencies to address several unique issues associated with federal court challenges during the construction of the Atlantic Coast Pipeline (ACP) and the Mountain Valley Pipeline (MVP); implementation of

stabilization plans due to shut-down of the ACP and MVP Projects between September 2018 and January 2019; and working with the FWS to address legal challenges regarding the Biological Opinions for both projects. Other challenges included working with agencies to adjust the schedules for several NEPA documents due to the Government Shutdown (12/22/18-1/25/19), in order to satisfy the needs of the federal permitting and cooperating agencies.

To enhance public engagement and collaboration, Commission staff updated the FERC website (www.ferc.gov) to include:

- online educational training modules “E-Learning: FERC Environmental Review and Compliance for Natural Gas Facilities” to provide additional guidance to all audiences with respect to FERC’s environmental review process.
- a new landowner-specific page to more prominently feature both existing and new content directly of interest to that stakeholder group and public engagement.
- a link to the final *Guidance for Horizontal Directional Drill Monitoring, Inadvertent Return Response, and Contingency Plans* issued in October, 2019.

Additional Commission staff collaboration efforts through training and outreach included:

- presenting four sessions of the FERC *Environmental Review and Compliance Seminar* to provide training to applicants, agencies, and consultants on implementing the environmental review process for natural gas projects (12/2018-Charlestown, SC; 4/2019-New Orleans, LA; 8/2019-Providence, RI; 12/2019-Seattle, WA).
- organizing biannual agency meetings with agencies involved in review of FERC natural gas projects in order to coordinate and align the various environmental review processes (10/2018 and 7/2019).
- participating in the newly formed EPA working group to revise the approach to Section 401 Certificates (per Executive Order 13868) (4 meetings in 5/2019 and 6/2019).
- communicating with various Native American tribes through 240 letters and 9 meetings.
- detailing staff to the Council on Environmental Quality (CEQ) and providing an opportunity at FERC for a Nuclear Regulatory Commission staff detail in order to enhance NEPA agency coordination.





8. Comments and Suggestions on Reporting

Please comment on any **NEW or CHANGED** difficulties you encountered in collecting these data and if and how you overcame them. Please provide suggestions for improving these questions in the future. Please reference your agency's FY2018 report to identify new/increased difficulties. **If none, leave this section blank.**

Please attach any additional information as warranted.

Report due February 21, 2020.

Submit report electronically to: kavanaugh@udall.gov

**Basic Principles for Agency Engagement in
Environmental Conflict Resolution and Collaborative Problem Solving**

Informed Commitment	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
Balanced, Voluntary Representation	Ensure balanced inclusion of affected/concerned interests; all parties should be willing and able to participate and select their own representatives
Group Autonomy	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
Informed Process	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
Accountability	Participate in the process directly, fully, and in good faith; be accountable to all participants, as well as agency representatives and the public
Openness	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
Timeliness	Ensure timely decisions and outcomes
Implementation	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