

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

Synthesis
of
Fiscal
Year
2019
Reports

Submitted by Federal Departments and Agencies
Pursuant to the OMB-CEQ Policy Memorandum on ECCR of September 7, 2012
Compiled by the John S. McCain III National Center for Environmental Conflict Resolution

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This report provides an overview and synthesis of Federal department and agency use of environmental collaboration and conflict resolution (ECCR) in fiscal year (FY) 2019. 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.¹ In FY 2019, twelve departments and agencies submitted ECCR reports, reporting a total of 451 active ECCR cases.² This was slightly higher than the number of ECCR cases reported in FY 2018 but consistent with the ten-year average of annual ECCR cases in the Federal government. The Department of the Interior (DOI), Federal Energy Regulatory Commission (FERC), and Environmental Protection Agency (EPA) reported the highest levels of ECCR engagement in FY 2019 and DOI, FERC, and the National Oceanic and Atmospheric Administration (NOAA) each surpassed their previous records for annual ECCR cases. The majority of FY 2019 ECCR cases occurred in the contexts of planning processes or siting and construction activities, illustrating a ten-year trend of increasing use of ECCR in these contexts and decreasing use of ECCR in compliance and enforcement actions and implementation and monitoring agreements.

Despite a decline in the number of reporting agencies over the past ten years ([Appendix A](#)), steady levels of ECCR engagement may be explained in large part by agencies' ongoing and new efforts to build their institutional capacity for ECCR. In FY 2019, agencies invested in in-house ECCR centers and programs, hired new ECCR staff, executed contracts with third-party mediators and facilitators, and developed tools and programs to support collaboration. As in past years, agencies cited training as a key ECCR capacity-building effort and highlighted their efforts to develop trainings for staff or support staff's participation in external training activities.

Overall, Federal departments and agencies' engagement in ECCR in FY 2019 helped them realize three key benefits: cost savings, improved relationships, and better outcomes. When using ECCR in a variety of contexts, including natural resource management and planning, regulatory and administrative rule actions, consultation and coordination, implementation of environmental laws and regulations, and broad environmental issues ([Appendix B](#)), agencies reported that ECCR helped them better achieve their missions and mandates; build stronger relationships within and between agencies, with Tribes, and with stakeholders; and save time and money.

[Appendix A](#) shows the reporting history of agencies since formal reporting began in FY 2006, as well as brief summaries of trends in select areas of report content. Acronyms can be found in [Appendix D](#).

Background

In 2005, the Office of Management and Budget (OMB) and the President's Council on Environmental Quality (CEQ) issued a joint policy memorandum expressing their support for the use of ECCR in environmental, natural resources, and public lands issues or conflicts.³ The memorandum urged Federal departments and agencies to increase their effective use of ECCR and build institutional capacity for collaborative problem solving, providing them with guidance for doing so.

On September 7, 2012, OMB and CEQ reinforced the importance of ECCR by issuing a new memorandum that directed all executive branch agencies to:

¹ 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.

² An ECCR case is an instance of neutral third-party involvement to assist parties in a collaborative or conflict resolution process.

³ Office of Management and Budget, & Council on Environmental Quality (2005). *Environmental Conflict Resolution Memorandum*. Washington, D.C. The 2005 memorandum is available online here: https://ceq.doe.gov/docs/ceq-regulations-and-guidance/regs/OMB_CEQ_Joint_Statement.pdf.

*(I)increase the appropriate and effective use of third-party assisted environmental collaboration as well as environmental conflict resolution to resolve problems and conflicts that arise in the context of environmental, public lands, or natural resource issues, including matters related to energy, transportation, and water and land management.*⁴

The memorandum also requires Federal departments and agencies to submit an annual report to OMB and CEQ on progress made implementing the ECCR policy direction. These reports are intended to increase the effective use of and institutional capacity for ECCR by providing detailed cost savings and other benefits realized through ECCR. Specifically, Section 4(g) of the 2012 memorandum establishes the following reporting requirement:

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).

Since 2005, the Udall Foundation's John S. McCain III National Center for Environmental Conflict Resolution (NCECR; formerly the U.S. Institute for Environmental Conflict Resolution) has collected individual agency reports and developed an annual synthesis report of ECCR in the Federal government.⁵

ECCR Use in FY 2019

Twelve Federal departments and agencies submitted ECCR reports for FY 2019 (Figure 1). Collectively, they sponsored and/or participated in 451 ECCR cases or projects, of which approximately 29% were completed in FY 2019.⁶

Despite one fewer department or agency submitting an ECCR report in FY 2019 than in FY 2018, there were 4% more cases reported in FY 2019. This may partially be explained by record reported levels of ECCR engagement by three departments and agencies: NOAA, DOI, and FERC. These agencies reported 88%, 26%, and 14% increases in ECCR cases from FY 2018 to FY 2019, respectively, and each logged their highest levels of ECCR engagement since formal reporting began in FY 2006. However, the number of ECCR cases reported in FY 2019 is nearly equal to the ten-year average of annual ECCR cases in the Federal government (452.4 cases), indicating steady overall ECCR engagement by Federal agencies.

As in the past three fiscal years (2016-2018), DOI, EPA, and FERC reported the highest-volume involvement in ECCR of all reporting departments or agencies in FY 2019 (Figure 2). For the first time, DOI reported the highest number of ECCR cases (136 cases) of any department or agency, while FERC and EPA reported 128 and 117 cases, respectively. The sustained, high level of ECCR engagement by these three departments or agencies may in part be explained by their well-established ECCR centers and programs, which provide critical infrastructure, funding mechanisms, and personnel for ECCR initiatives. These programs include:

- EPA's Conflict Prevention and Resolution Center (CPRC)
- DOI's Collaborative Action and Dispute Resolution (CADR)

Figure 1. Federal Departments and Agencies that Submitted FY 2019 ECCR Reports:

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

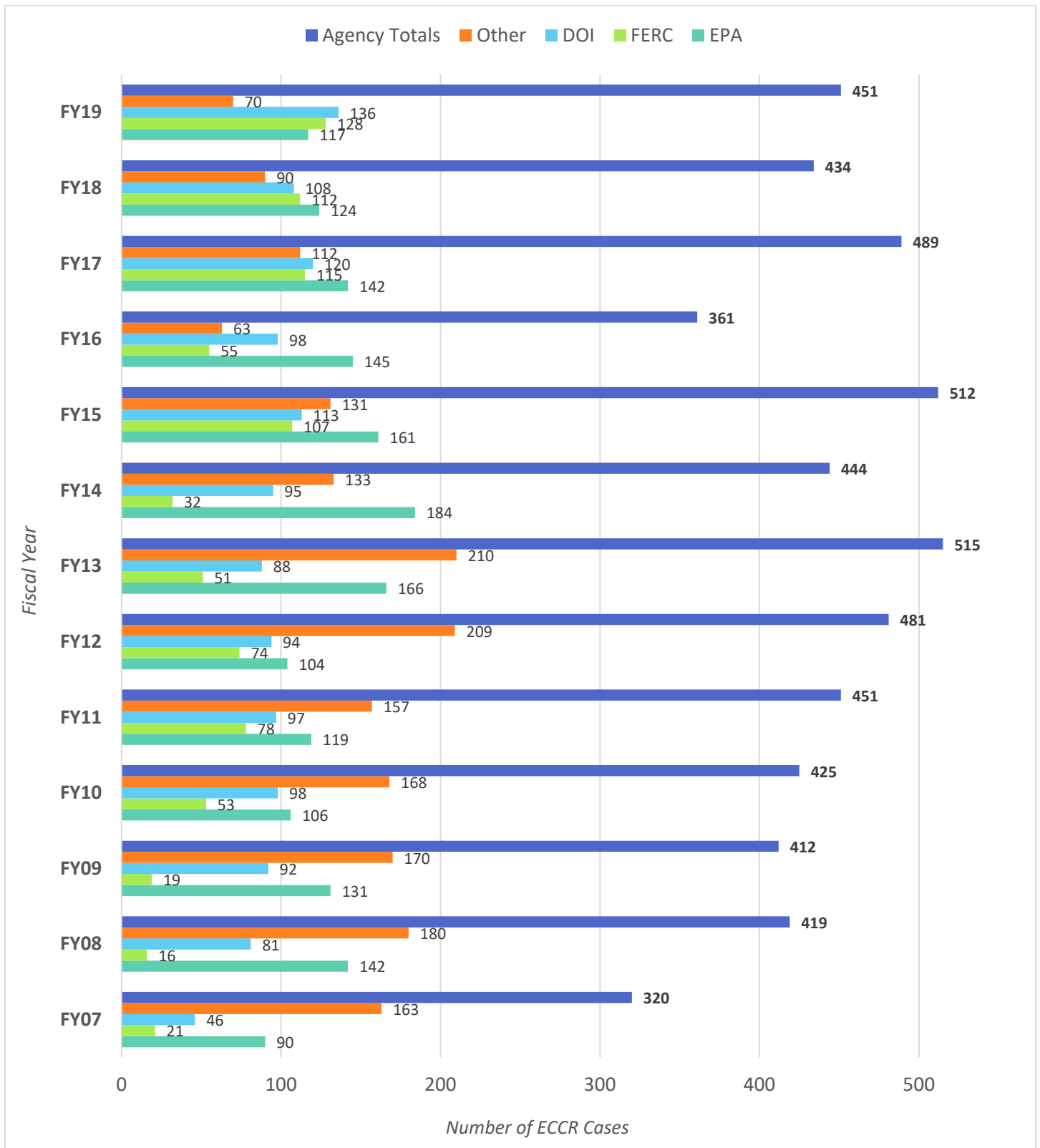
⁴ Office of Management and Budget, & Council on Environmental Quality (2012). *Memorandum on Environmental Collaboration and Conflict Resolution*. Washington, D.C. The 2012 memorandum is available online here: http://www.udall.gov/documents/Institute/OMB_CEQ_Memorandum_2012.pdf.

⁵ Individual department and agency reports as well as annual synthesis reports are available online at: <https://udall.gov/OurPrograms/Institute/ECCRReport.aspx>.

⁶ FERC did not submit data indicating the completion status of its 128 cases in FY 2019.

- FERC’s Dispute Resolution Service (DRS)

Figure 2. ECCR Cases in the Federal Government from FY 2007 to FY 2019.

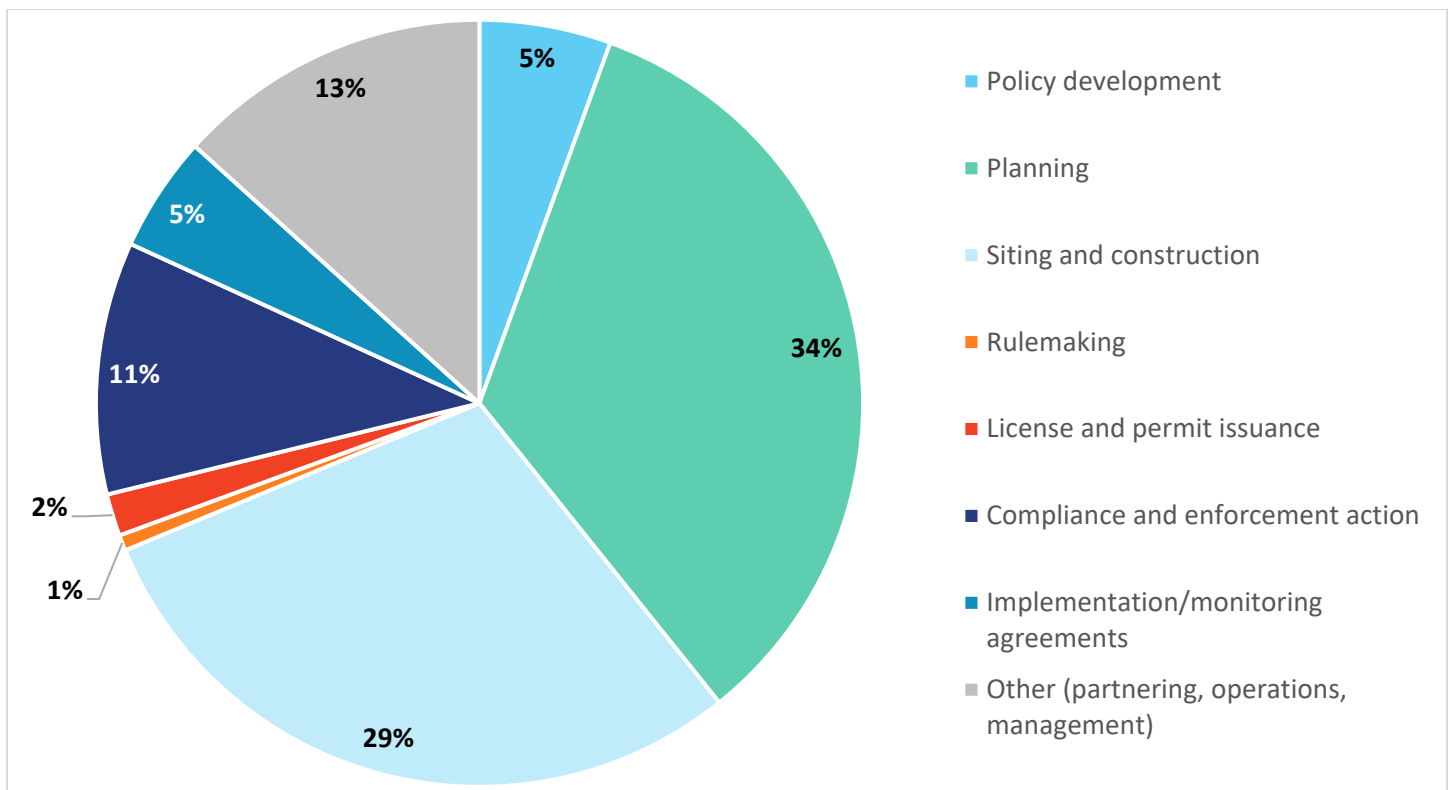


Contexts for ECCR Use

Federal departments and agencies carry out numerous activities in support of their missions, including planning, rulemaking, policy development, licensing and permit issuance, siting and construction, compliance and enforcement, and implementation and monitoring. Within each of these contexts, ECCR can be a valuable tool to help agencies achieve more durable solutions, cost savings, and other benefits.

In FY 2019, Federal departments and agencies utilized ECCR in each of these contexts, most commonly reporting use of ECCR in planning processes and siting and construction activities (Figure 3). For most agencies, including the Department of Energy (DOE), U.S. Air Force (AF), EPA, DOI, and U.S. Army Corps of Engineers (USACE), planning processes constituted their most common context for ECCR use in FY 2019 (152 cases; 34%). Though ECCR was used almost as frequently in siting and construction activities, this was primarily due to FERC: 119 of FERC's 128 ECCR cases in FY 2019 were related to siting and construction, representing approximately 90% of all Federal ECCR siting and construction ECCR cases.

Figure 3. Contexts for ECCR Use in the Federal Government in FY 2019.



Many agencies also reported using ECCR in other contexts, such as litigation, facilitation, information sharing, and programmatic agreements. EPA and NOAA reported the highest use of ECCR in these other contexts with 21 and 22 cases, respectively. For NOAA, ECCR cases conducted in these other contexts comprised nearly 75% of all its ECCR cases or projects.

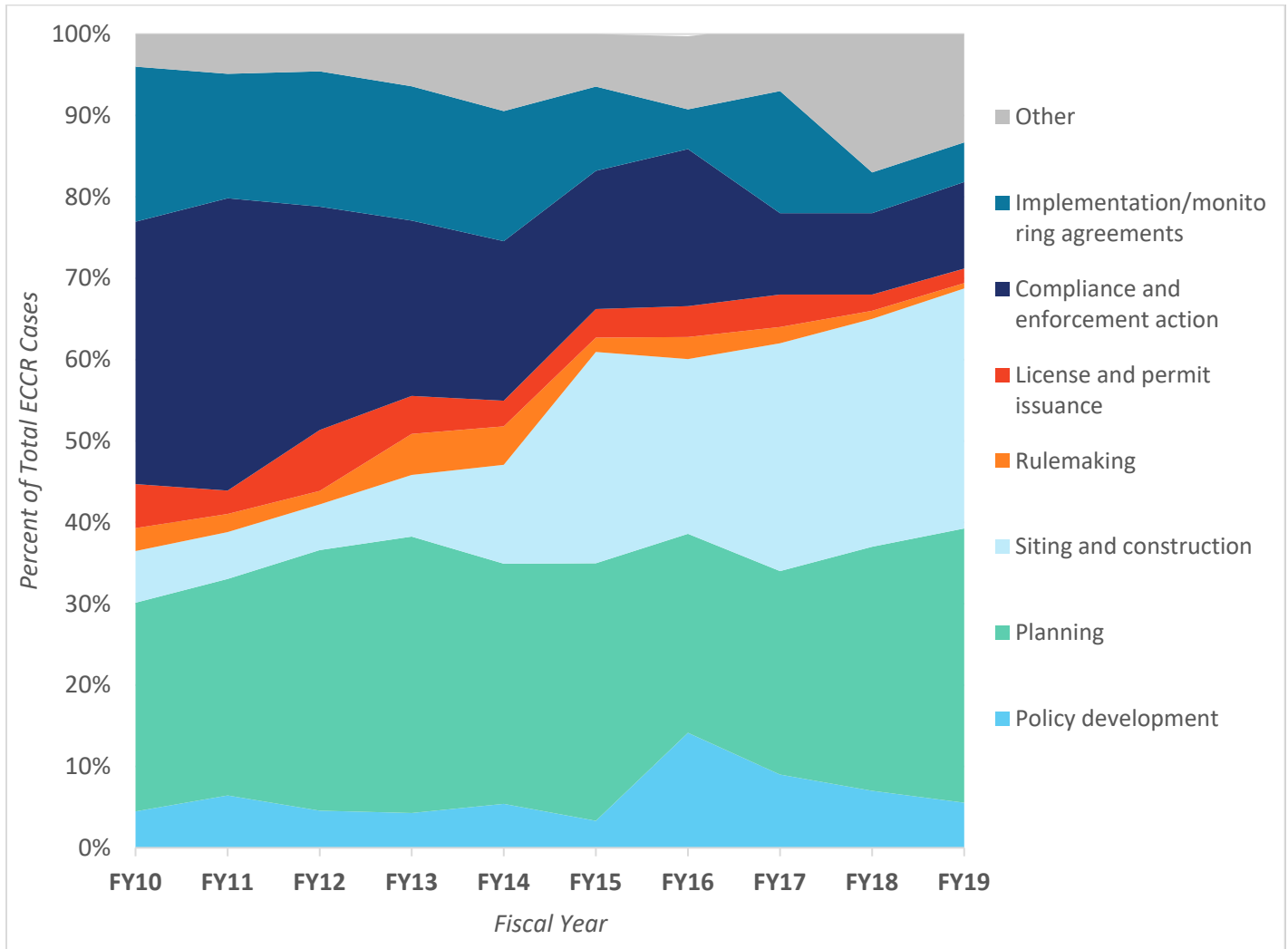
In comparison to past fiscal years,⁷ the FY 2019 data on ECCR contexts illustrates several trends (Figure 4):

- Use of ECCR in planning processes has remained consistently high year-to-year, representing the top context for ECCR use by Federal departments and agencies in seven of the ten past fiscal years.
- Since FY 2010, there has been an increase in agencies' use of ECCR for siting and construction activities; where only 6% of ECCR cases were conducted in the context of siting and construction activities in FY 2010, siting and construction now constitutes the context for nearly 30% of all Federal ECCR cases.

⁷ Contexts for ECCR use in FY 2019 were compared to contexts used in FY 2010-2018. Comparable data for FY 2007-2009 was not available.

- Inversely, ECCR use in compliance and enforcement action has steadily declined since FY 2010. Although compliance and enforcement represented the most frequent context for ECCR use from FY 2010-2011 (32-36% of all ECCR cases), it has since decreased to approximately 11%.
- The number of “other” contexts for which agencies reported using ECCR was higher in FY 2018 and FY 2019 than in previous years. This may be attributable to enhanced use of ECCR in non-traditional categories, or, more likely, could be due to different internal data collection and ECCR reporting processes and/or different understandings of the different contexts.

Figure 4: Contexts for ECCR Use in the Federal Government from FY 2010 – FY 2019.



Decision-Making Forums for ECCR Cases

In addition to sharing the contexts for their ECCR cases and projects, Federal departments and agencies report on the decision-making forums for addressing the pending issues when ECCR was initiated. These forums include:

- Federal agency decisions;
- Administrative proceedings/appeals;
- Judicial proceedings; or
- Other decision-making forums.

In FY 2019, approximately two-thirds of ECCR cases were initiated in response to Federal agency decisions, while the remainder largely stemmed from other decision-making forums. This distribution of cases across decision-making forums is consistent with previous years: since reporting began in FY 2006, ECCR has been most commonly used in cases that involved Federal agency decisions.

ECCR Capacity Building in FY 2019

Sustained, robust use of ECCR by Federal departments and agencies may largely be explained by ongoing and new efforts to build institutional and programmatic ECCR capacity. Consistent with Sections 4 and 5 of the 2012 OMB-CEQ policy memorandum,⁸ agencies reported investing significant time and resources into ECCR capacity building in FY 2019, using strategies and mechanisms falling broadly within several categories:

- Integrating ECCR objectives into agency mission statements, goals, and strategic planning;
- Building and investing in internal ECCR infrastructure;
- Supporting training and professional development opportunities for staff and ECCR personnel;
- Fostering internal and external information exchange about ECCR;
- Building ECCR partnerships; and
- Tracking and evaluating ECCR processes and programs.

Detailed information about specific strategies and mechanisms used within each of these categories as well as agency and department examples from FY 2019 may be found in [Appendix C](#). Several notable examples of ECCR capacity-building efforts in FY 2019 are provided below:

- CADR (DOI) continued its work convening an internal ECCR community of practice with representatives from the Bureau of Land Management (BLM), Bureau of Ocean Energy Management (BOEM), Bureau of Reclamation (REC), U.S. Fish and Wildlife Service (FWS), National Park Service (NPS), and U.S. Geological Survey (USGS). The group collaboratively developed a white paper describing the use of ECCR in DOI, including priority actions for the community of practice.
- NOAA's Office of the General Counsel, Environmental Review & Coordination Section (ERC) developed a draft strategic plan to create a centralized ECCR program at NOAA. ERC plans to work with a variety of NOAA line offices to finalize and implement this plan.
- FERC moved its Dispute Resolution Service (DRS) office from the Office of the Administrative Law Judges to the Commission's Office of the General Counsel, providing DRS with increased visibility at the Commission. This expanded the opportunities for program offices to use ECCR and alternative dispute resolution (ADR) and allows for more effective use of Commission resources.
- AF ran a pilot program to develop negotiation skills at separate organizational units with the goal of negotiation becoming an individual and enterprise-wide corporate capability.
- EPA's Region 9 staff held several meetings of its Facilitator Cadre in FY 2019. The Facilitator Cadre consists of a dozen staff members from various program offices who were trained in facilitation skills by the now-retired Regional Facilitator and are now managed by the ECCR Specialist. Requests for facilitation services are made through the regional intranet site to both the ECCR Specialist and to individual members of the Facilitator Cadre.
- USACE developed several new policies at the headquarters and District levels to build programmatic and institutional capacity for ECCR. One such policy is the new *Engineering Pamphlet on Stakeholder Engagement, Collaboration and Coordination*, which guides stakeholder involvement in Civil Works project planning.

Investments

Agencies reported significant investments in human and financial resources, training, ECCR programs, and other initiatives in FY 2019 to build their institutional and programmatic capacity for ECCR.

Although several respondents noted the challenge of tracking and quantifying overall investments in ECCR, those with in-house ECCR programs and centers were able to provide program or center contract values as estimates for their ECCR investments. For instance, DOI bureaus and offices reported investing approximately \$3.9 million in ECCR in FY 2019

⁸ 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.

through the CADR (DOI) ECCR contract, while CPRC (EPA) noted that it provided ECCR services through its \$51 million Conflict Resolution Services contract.

Many respondents provided staffing metrics, such as number of FTEs who work on ECCR, to quantify their investments in ECCR in FY 2019:

- CADR (DOI) had 12 FTEs focused on ECCR.
- DRS (FERC) hired two new full-time neutrals, bringing its total staffing up to 5 FTEs.
- EPA had 20 skilled ECCR Specialists in its regional and program offices.
- USACE had Public Involvement Specialists in 20 of the 38 Districts that provided training and technical assistance in ECCR processes at the home District.

Other investments reported by departments and agencies included:

- Travel costs, staff salaries, and office resources to prepare for and attend ECCR meetings, negotiations, mediations, etc.
- Contracts with neutral facilitators for ongoing projects and meetings (e.g. DOE Environment Management-Los Alamos Field Office retained the service of a neutral facilitator for monthly meetings)
- Tools to support collaboration (e.g., USACE invested in its Collaborative Technologies workgroup to identify and pilot technology tools like Crowdsourcer Reporter to assist in collaboration and stakeholder engagement)
- ECCR grants and funding opportunities (e.g., Reclamation’s WaterSMART grants, USACE’s Grand Collaboration Challenge)

Agencies also captured their investments by tracking spending on training activities (see below), which can be more straightforward to track than other types of ECCR investments. For instance, although the United States Army (Army) noted that it has no formal method of capturing ECCR costs and benefits, one way it was able to quantify its investment was in staff training. Additional information about agency investments in ECCR may be found in [Appendix C](#).

Training

As in past fiscal years, agencies highlighted training as a critical tool for building institutional ECCR capacity. Agencies both conducted their own internal trainings and participated in those held by other organizations, noting the value of training staff with diverse roles and backgrounds in ECCR and related topics. Training subject areas spanned a range of topics, including interest-based negotiation, facilitation, strategic planning, risk communication, public participation, legal bargaining, relationship management, and environmental justice.

Below are several examples of ECCR-related trainings that agencies conducted or participated in during FY 2019:

- CADR (DOI) delivered 39 training sessions of its foundational course, *Getting to the Core of Conflict and Communication*, to 1,100 employees from all bureaus and offices in eight geographic regions of the U.S. and online.
- The Bureau of Indian Affairs (BIA) Assistant Secretary-Indian Affairs Office of Regulatory Affairs and Collaborative Action (RACA) provided six, two-day trainings on “Compassionate Leadership and Coaching” and “Mindfulness Based Emotional Intelligence, reaching 90 employees.
- The NPS Stewardship Institute developed and hosted a four-day training and facilitated workshop on trauma awareness and restorative justice.
- USACE reached over 580 USACE staff and partners through 14 formal courses/workshops and several webinars, including “Working with Cooperating Agencies,” “How to Naturally Manage our Resources through Collaboration and Public Participation,” and “Get on the Bus, Gus! How to Rev up a Team and Drive it Home.”
- CPRC (EPA) delivered 92.5 hours of ECCR training over the course of 18 sessions. More than 410 staff and managers attended trainings at EPA headquarters and in six regional offices. CPRC also developed a new training to better meet the agency’s needs: *A Narrative Framework for Community Involvement and Conflict Resolution*.

“The broad range of people being trained provides direct benefits to USACE from a common language and a common appreciation of the value of working collaboratively internally and externally.” – U.S. Army Corps of Engineers

- NOAA’s Facilitation Network (FacNet) trained additional NOAA employees as volunteer facilitators and has now trained more than 100+ NOAA employees in basic facilitation skills.
- The Federal Transit Administration (FTA) provided its *Managing the Environmental Review Process* and *Advanced Environmental Justice* trainings to 165 staff in Philadelphia, Seattle, Fort Worth, and Chicago.
- AF has institutionalized training in ECCR as a module at its week-long Negotiation and Appropriate Dispute Resolution Course conducted annually at the AF Judge Advocate General's Corps (JAG) School at Maxwell Air Force Base, Alabama.
- DOE sites and program offices maintained and enhanced their awareness of ECCR methods and opportunities through monthly environmental attorneys calls and the annual joint DOE/DOE contractor environmental attorneys training. In FY 2019, 101 site and program office representatives participated in the annual training.
- 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. Twelve Army attorneys attended the Negotiation and Appropriate Dispute Resolution Course sponsored by the AF JAG School. One attorney attended the Advanced Multi-Party Negotiation of Environmental Disputes course sponsored by NCECR.

Benefits of ECCR

Federal departments and agencies reported that their ECCR engagement resulted in a wide range of benefits in FY 2019, providing case examples and projects as evidence of positive outcomes. Broadly, these benefits fell into three main categories: cost reduction, improved relationships, and better outcomes.

Several agencies reported that their ECCR engagement helped them **save time and money** through reduction of staff workload, production of faster resolutions, and avoidance of litigation. The Army reported a \$22 million CERCLA cost recovery action in New Mexico as an example of this cost savings benefit: the DOD and several private parties were able to reach settlement through mediation in FY 2019, avoiding the expense and expanded timeline of going to trial. Similarly, EPA Region 1 reported that the use of independent mediators in a Resource Conservation and Recovery Act (RCRA) penalty case with Polycarbon Industries, Inc. and a Superfund removal cost recovery case (Grant Street Fire) resulted in comparatively quick agreements in principle without the additional costs, delays, and risks to all parties associated with pursuing litigation.

“Compared to litigation, the early resolution of enforcement cases resulted in cost savings, quicker case resolution, and reduction of wasteful gamesmanship, posturing, and delays between counter-offers.” – Environmental Protection Agency

“By using the ECCR principles of “informed commitment,” “accountability,” and “openness,” Reclamation has built trusting relationships with stakeholders, resulting in timely decision-making and a willingness to work through difficult and culturally sensitive issues in a collaborative manner.” – Department of the Interior

ECCR’s ability to promote open and productive dialogues and build trust also resulted in **improved relationships** within the Federal family and between the Federal government a variety of stakeholders. For instance, NOAA shared BOEM and NOAA Fisheries’ (NMFS) efforts to improve their coordination on offshore wind permitting as an example of ECCR’s ability to improve interagency relationships. FERC reported that DRS’ assistance in a series of disputes between a landowner group and natural gas pipeline company over restoration helped strengthen relationships that will continue long-term. USACE underscored the value of this ECCR benefit, noting that

the rapid pace of change and uncertainty in the government has illustrated the advantages of and need for solid relationships as a platform for future engagements.

Finally, many agencies spoke to ECCR’s ability to produce **better outcomes** for agencies and the public, facilitating creative and durable solutions to complex, longstanding environmental issues. For example, DOE reported that effective

use of ECCR helped them overcome 30 years of entrenched disagreement and conflict with the New York State Energy and Research Development Authority (NYSERDA) over disposition of the West Valley Demonstration Project and Center. The project is now on course to reach mutual and final decisions on the ultimate disposition of the site in 2023. BLM reported that the use of third-party neutrals in public engagement processes drastically reduced or eliminated conflict. They noted that even if all parties were not completely happy with the outcome, “the public seems satisfied that they were heard, honored, and their input valued.”

Relatedly, departments and agencies noted that ECCR enabled them to better achieve their missions, goals, and mandates, resulting in improved governance. AF noted that senior leadership has long recognized the value of ADR and its contribution to mission accomplishment, noting that it treats ADR as “budget neutral” with a positive impact on mission accomplishment. NOAA provided recent collaborative efforts in the Columbia River Basin as another example of ECCR’s impact on agency governance (see case study below).

“The real savings from ECCR is the ability to accomplish mission without dispute-caused interruption.” – U.S. Air Force

Additional case examples from FY 2019 that illustrate the benefits of ECCR may be found below.

Examples of FY 2019 ECCR Projects

SALMON AND STEELHEAD RESTORATION IN THE COLUMBIA RIVER BASIN (NOAA)



JOHN MCMILLAN/NWFSC, CC-BY-NC-ND-2.0

Over the next five years, NMFS West Coast Region (WCR) will be making several significant fishery management decisions in the Columbia River Basin regarding the Endangered Species Act (ESA) and recovery of ESA-listed species. These decisions must consider the broad suite of regional interests, including tribal treaty and trust responsibilities, sustainable fisheries, and other federal obligations for salmon and steelhead and the water resources in the Basin. NMFS’ goal is for these decisions to reflect regional views regarding salmon and steelhead recovery in the Basin.

After commissioning a situation assessment by two neutral, university-based institutions from 2012-2013 to explore the views of Columbia Basin states, tribes, federal agencies, and stakeholders regarding long-term salmon recovery strategies, the NMFS Marine Fisheries Advisory Committee (MAFAC) created the Columbia Basin Partnership Task Force (CBP Task Force) in 2016.

The FACA-chartered CBP Task Force includes 28 members of regional stakeholders, states and tribes and is facilitated by a third-party, neutral facilitator. In its first year, CBP Task Force members collaboratively developed a shared vision for Columbia Basin salmon and steelhead. By spring 2019, the CBP Task Force reached agreement on common qualitative and provisional quantitative goals for long-term recovery of both ESA-listed and non-listed salmon and steelhead to meet conservation needs and provide harvest opportunities in the future. These recommendations were presented to the MAFAC in a Phase 1 report. Since then, the CBP Task Force has been working on Phase 2, discussing and considering options and recommendations for how to achieve the goal. The Task Force is scheduled to complete its work by summer 2020.

The Task Force’s in-depth work and recommendations provide necessary input for MAFAC to formalize its advice for NOAA consideration, per the FACA processes. The NMFS Assistant Administrator for Fisheries, along with WCR leaders, accepted the stakeholder-endorsed shared goals in the Phase I Recommendations Report and noted that the goals provide all partners a common and coherent path for recovery of salmon and steelhead throughout the entire Columbia Basin. Regional and state partners (such as the Northwest Power and Conservation Council and a governor’s task force in Idaho) have begun to consider these goals in various planning and management processes, furthering the mission of NMFS. In addition, the creation of the CBP Task Force resulted in improved working relationships between WCR and numerous stakeholders.

AVON PARK AIR FORCE RANGE CLEANUP MEDIATION (AIR FORCE)

In 2019, the Air Force engaged in a mediation with BKF Capital Group (BKF) over liability for cleanup costs under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). From 1900-1942, BKF's corporate predecessor operated cattle dipping vats on a site in Avon Park, Florida, where cattle infected by ticks were dipped in an arsenic solution every few weeks. As a result of this activity, arsenic and other pesticides were released into the environment, contaminating the surrounding soil and groundwater. The land where the vats were located now comprises Avon Park Air Force Range (AFR) and the Air Force has incurred over \$4.2 million in costs responding to contamination of Avon Park AFR to date.

As a corporate successor to the prior landowner, BKF was a potentially responsible party liable to pay a share of the Air Force's cleanup costs under CERCLA. In 2015, Air Force referred this matter to the Department of Justice (DOJ) for cost recovery against BKF, and DOJ reached out to BKF to discuss settlement. Over the next three years, the parties engaged sporadically in settlement discussions, exchanging briefs and cost documentation, without much progress. After the U.S. filed suit against BKF in the U.S. District Court, the parties agreed to submit the disputed issues to a mediator.

The mediator conferred independently to discuss what each party perceived to be their risks, hurdles, and concerns should litigation continue, as well as ideas for how to reach a settlement. The mediator then conducted a joint session with both parties, asking each to present a summary of their view of the case. After the joint session, the mediator held a series of private sessions with each side to assist them in trying to find a mutually acceptable solution. After several rounds of discussions, the parties agreed upon a settlement.

The mediation provided several benefits over litigation. Following several years of discussion and little demonstrable progress, the use of a third-party neutral helped both parties better understand each other's position. In addition, the mediation allowed both parties to avoid a lengthy litigation schedule, costly trial, and uncertain outcome.

SCITUATE, MASSACHUSETTS DISASTER PREPAREDNESS (EPA)

In FY 2019, EPA's ECCR assistance to the town of Scituate, Massachusetts enabled the vulnerable coastal community to begin a long-term process of comprehensive disaster preparedness after years of focusing only on crisis management. Despite the looming risk of injury to its citizens and recurring serious property damage caused by severe storms, the town did not have the resources to chart a clear path forward. There were also many divergent views about how best to plan for natural disasters.



MA CZM, CC BY-NC-SA-2.0

The EPA provided \$10,000 to the town to help fund a professional facilitator to conduct an assessment based on confidential interviews of community members. After interviewing over 40 individuals representing a cross-section of the community and using the extensive but piecemeal data that the town had provided, the facilitator produced an assessment report that conveyed a candid, easily-understood overview of community concerns and priorities, and put forward a set of recommendations.

With the benefit of this direction from the community, the town's Select Board secured state and regional planning grants totaling \$300,000. These funds will be used to develop short-term and 50-year coastal resilience plans and to conduct outreach to impacted community members. Scituate's experience of the EPA-supported community assessment and facilitation as a catalyst for disaster preparedness may be replicated in other vulnerable communities.

PROVOLT SEED ORCHARD RECREATION AREA MANAGEMENT PLAN (BLM)

The BLM's Medford District (Oregon) - Grants Pass Field Office previously managed a seed orchard with no public access. The site provides important access to almost 300 acres of river and meadows for dispersed recreation. The parcel is surrounded by communities that are critically focused on BLM management and express a wide range of preferences for management options.



BLM OREGON, CC BY 2.0

As part of their Recreation Area Management Plan (Plan), BLM chose to open the area to angling and recreation opportunities on the Applegate River. Knowing the Plan would need stakeholder involvement, including engagement with residents, watershed councils, USACE, and State and local agencies, BLM engaged a neutral facilitator to conduct two public workshops. The goal of the workshops was to engage stakeholders, as required to complete an Environmental Assessment and Decision Record. As a result of the meetings, public input was fully integrated into the Decision Record and a durable, neighborhood-based group remains engaged as elements of the proposed development plan are completed over the next few years.

NHPA PROGRAMMATIC AGREEMENT FOR PUERTO RICO (FHWA)

The Federal Highway Administration (FHWA) routinely creates Section 106 Programmatic Agreements with States to improve decision-making and streamline environmental review, as mandated by the National Historic Preservation Act (NHPA). A Programmatic Agreement can delegate some responsibilities to States and provide parameters for expedited reviews under certain circumstances and is key tool supporting Federal and State coordination under NHPA. Often, States and FHWA have divergent views on the depth and applicability of environmental reviews and processes. States may also have different interpretations of the policy and what is or is not appropriate for expedited review under Section 106.

Puerto Rico (PR) has a Programmatic Agreement for Section 106 that is expiring in the next year. However, the PR Department of Transportation and the State Historic Preservation Offices (SHPO) are currently unable to invest the full level of effort needed to lead the preparation of a new Programmatic Agreement given their need to focus on rebuilding communities after Hurricane Maria.

Revising a Section 106 Programmatic Agreement is an important effort that can create an opportunity for collaboration between the Federal and State governments to build common understanding and mitigate future disagreements. Recognizing this, FHWA contracted with NCECR in FY 2019 to provide a facilitator to convene the agencies and help them to avoid conflicts that are likely to arise from putting together a new Programmatic Agreement, especially if they are unable to do so in a timely manner. The use of a skilled, bilingual facilitator has helped PR's state agencies navigate potential challenges to deliver an efficient and effective new Section 106 Programmatic Agreement. The project is ongoing and a draft Programmatic Agreement has been developed.

BRANDON ROAD LOCK & DAM FISH BARRIER TABLETOP EXERCISE (USACE)

This case about invasive species is a follow-on to the Great Lakes and Mississippi River Interbasin Study that evaluates options to prevent the spread of aquatic nuisance species between the Great Lakes and the Mississippi and Ohio River Basins. Environmental groups are strongly in favor of severing the aquatic connections between the basins due to predictions that the establishment of Asian carp in the Great Lakes could devastate an aquatic ecosystem already in peril from overfishing and other invasive species. The primary connection is the Chicago Sanitary and Ship Canal, which is used for navigation and contains plumbing for a significant portion of the Chicago metropolitan area's sanitary sewerage. The situation presents significant challenges and opportunities for engaging, educating and inviting participation on solutions to this complex problem.



USACE CHICAGO DISTRICT

An international interagency team, the Monitoring and Response Workgroup (MRWG) of the Asian carp Regional Coordinating Committee, works to prevent the Asian carp's establishment in the Great Lakes. The MRWG has initiated an annual tabletop exercise to maintain collaboration and prevent conflict with stakeholders in the Chicagoland region. In FY 2019, the Illinois Department of Natural Resources (ILDNR) contracted a neutral third-party to facilitate a two-day tabletop exercise with funds from the Great Lakes Restoration Initiative.

The USACE Chicago District, ILDNR, and EPA co-hosted the exercise the third-party facilitator directed the meeting process, allowing participants to ask question, gain a better understanding of the proposal, and voice their support for or concerns about different scenarios. All participating parties were generally accepting of the proposed response actions for each potential scenario discussed and dialogue with action agencies and stakeholders helped revise the contingency response plan for the following year.

The use of a neutral third-party facilitator signaled to stakeholders that the governmental agencies were not just directing action but genuinely seeking input and collaboration. Use of a neutral was critical in providing a forum where multiple disagreeing parties were able to hear the concerns of others, ask questions, and gain a better understanding about the proposed plan and the next steps for a regionally and internationally significant project. The exercise allowed feedback from potentially affected parties under various response scenarios and ultimately reduced the risk for conflict or controversy should an action need to be taken. There is now pending authorization language in the Water Resources Development Act of 2020 with vocal support from multiple states and federal agencies.

NEW MEXICO CERCLA MEDIATION (ARMY)

Mediation arose in a cost recovery action brought under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) regarding a site in New Mexico. In 2001, the EPA placed the site on the National Priorities List after discovering the site contained a groundwater plume contaminated with perchloroethylene. The EPA estimated the site cleanup would cost \$22 million. After failed attempts to negotiate a settlement on the allocation of response costs, two parties sued DOD and other private parties and discovery followed. Subsequently, the court ordered the parties to mediation and selected a Federal magistrate judge to serve as the mediator. The court funded the costs for the mediator and the mediation process, and each party paid its own costs to participate in the mediation.

The parties had previously obtained information through discovery, so the parties moved directly to the exchange of demands and settlement offers. The parties also submitted confidential mediation statements to the magistrate and the magistrate hosted an ex parte call to establish the mediation process. This established an informed process and ensured accountability for all parties. At mediation, the magistrate briefed the parties on the ground rules, issues, and goals. The parties caucused so each party could openly address its issues with the mediator. Caucusing allowed the mediator to understand the rationale behind the proposals, work with the parties to narrow the gap, and reach settlement. Ultimately, the parties agreed on an allocation of costs and the mediation concluded in one day.

Mediation helped the parties build trust so they could resume negotiations and tailor a consent decree that met their needs for this case. By reaching settlement through mediation, the parties avoided the expense and expanded timeline of going to trial and the Army avoided the costs and resources that would have been required for trial.

DISPUTE BETWEEN NATURAL GAS PIPELINE COMPANY AND LANDOWNERS (FERC)

Non-decisional staff from the Dispute Resolution Service (DRS, FERC) mediated a series of disputes between a natural gas pipeline company and a landowner group to address several restoration problems. Although each property faced unique challenges, issues included 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 especially 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. Relationships had 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 and on location to attempt to resolve several landowner claims. DRS staff worked with the principals prior to the site visits to develop a mutually agreeable process and schedule. Then, DRS staff and pipeline company representatives travelled to the landowner's location to conduct a three-day mediation. FERC and pipeline representatives met with all participants on the first day and visited each landowner's property to see their concerns. DRS staff met with each landowner and the pipeline company on the second and third days to engage in 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.

By the end of the third day, the parties reached mutually beneficial 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, 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.

EM-LA NRDA TRUSTEE COUNCIL FACILITATED MEETINGS (DOE)

DOE's Environmental Management – Los Alamos Field Office (EM-LA) participates in monthly meetings of the Los Alamos National Laboratory (LANL) Natural Resource Damages Assessment (NRDA) Trustee Council, which consists of representatives from the State

of New Mexico, several nearby Pueblos, and the U.S. Forest Service. The EM-LA NRDA Trustee Council is an important organization where candid discussions are necessary and encouraged regarding the sensitive issue of potential injury to local natural resources.

EM-LA is one of two co-lead Trustees (along with the State of New Mexico) and contracted a third-party neutral facilitator for meetings between DOE and the Trustees of the NRDA in FY 2019. EM-LA found that the use of a facilitator in monthly meetings improved the overall relationship between DOE and the Trustees and helped them gather necessary information for future discussion and decision-making. The facilitator greatly assisted the Trustees in engaging in discussions during the monthly meetings in order to reach timely resolution on important and sensitive issues as well as ongoing studies.

This synthesis was developed by the Udall Foundation's John S. McCain III National Center for Environmental Conflict Resolution on behalf of OMB and CEQ.

Appendix A: Trends in Federal Government Reporting on Use of ECCR

The number of Federal departments and agencies submitting ECCR reports each year has declined from 23 in FY 2007 to 12 in FY 2019 (Table 1). Eight departments or agencies have submitted reports annually since reporting began in 2006 (Table 2), including:

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

Table 1: Number of Federal ECCR Reports Submitted Annually.

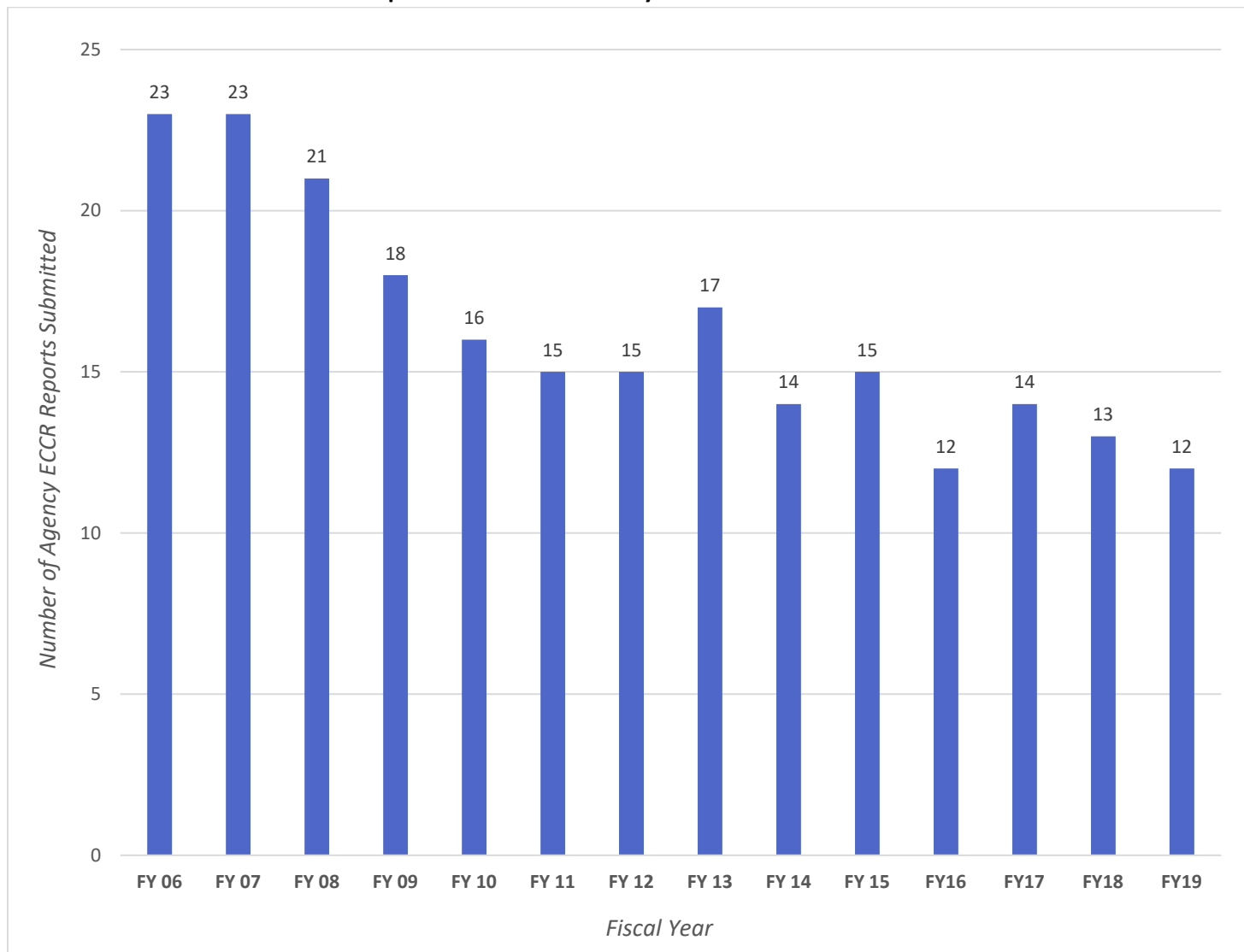


Table 2: Federal Department and Agency Submissions of Annual ECCR Reports, FY 2006 – FY 2019.

Agency	Fiscal Year													
	06	07	08	09	10	11	12	13	14	15	16	17	18	19
Department of Agriculture; Forest Service														
Department of Commerce; National Oceanic and Atmospheric Administration (NOAA)														
Department of Defense (DOD)														
Department of the Navy (Navy)														
Air Force (USAF)														
Army Corps of Engineers (USACE)														
Army Legal Services Agency (USALSA)														
Army (Army)														
Corpus Christi Army Depot (CCAD)														
Office of Staff Judge Advocate (OSJA)														
Environmental Law Division														
National Guard Bureau (NGB)														
U.S. Army Reserve (USAR)														
Missile Defense Agency														
Department of Energy (DOE)														
Department of Health and Human Services (HHS)														
Department of Homeland Security (DHS)														
Department of the Interior (DOI)														
Department of Justice (DOJ)														
Department of Labor (DOL)														
Department of Transportation (DOT)														
Department of Veterans Affairs (VA)														
Environmental Protection Agency (EPA)														
Federal Energy Regulatory Commission (FERC)														
General Services Administration (GSA)														
National Aeronautics and Space Administration (NASA)														
National Capital Planning Commission (NCPC)														
National Center for Environmental Conflict Resolution (NCECR)														
National Indian Gaming Commission (NIGC)														
Nuclear Regulatory Commission (NRC)														
Tennessee Valley Authority														

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):

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

Appendix C: Capacity-Building and Investments in ECCR

Capacity-Building Initiatives	Agency Examples from FY 2019	
Integrating ECCR objectives into agency mission statements, goals, and strategic planning	Integrating ECCR principles into department and agency performance goals	The USACE Chicago District established a performance metric that specifically addresses problem solving and ensures that staff practice effective communication and sound conflict resolution fundamentals internally and externally.
	Integrating ECCR principles into department and agency agreements	FHWA contracted with NCECR to provide a facilitator to convene Puerto Rico DOT and SHPO in developing a new Section 106 Programmatic Agreement. Revising the agreement creates an opportunity for Federal and State governments to build a common understanding and mitigate future disagreements.
	Integrating ECCR objectives into operating principles	At the end of FY 2019, a DOI Office of Hearings and Appeals board began to discuss changing their operating regulations to include specific language regarding the use of ADR. Planning to include these changes will continue in FY 2020.
	Integrating ECCR principles into strategic planning	NOAA's Office of the General Counsel, Environmental Review & Coordination Section (ERC) developed a draft strategic plan to create a centralized ECCR program at NOAA
	Integrating ECCR principles into policy development	USACE HQ issued a new <i>Engineering Pamphlet on Stakeholder Engagement, Collab, and Coord</i> , which guides stakeholder involvement planning for Civil Works projects.
Building and investing in internal ECCR infrastructure	Setting internal expectations that leadership use ECCR to preclude, manage, or resolve conflict	Air Force Policy Directive 51-12 makes negotiation a critical leadership skill and requires Air Force programs, including those resolving environmental disputes, to use negotiation and dispute resolution processes, as appropriate.
	Emphasizing leadership's commitment to and support of ECCR	Regional leaders in EPA Region 1 are aware of the services that the ADR Program provides, and they frequently direct parties (both internal and external) to the Agency and to the Program.
	Updating internal work processes and structures to promote ECCR programs and processes	DRS (FERC) moved from the Office of Administrative Law Judges to the Commission's Office of the General Counsel in FY 2019. The relocation provides DRS with increased visibility at the Commission, expands opportunities to use dispute resolution and ECCR across program offices, and allows more effective use of Commission resources.
	Developing guidelines and criteria to support ECCR use	The boards in DOI's Office of Hearings and Appeals developed guidelines for identifying cases on their dockets that were good candidates for the use of ADR processes.

	Incorporating procedures for the appropriate application of ECCR into policies and practices	Army ELD continued to implement its policy for each counsel to assess each assigned matter to determine whether ECCR is appropriate and how non-third party-assisted collaboration or partnering could help resolve potential disputes.
	Budgeting for ECCR services, including contracting with third-party neutrals	
	Encouraging use of ECCR and building awareness of internal programs and opportunities through regular outreach and marketing activities	DOE sites and programs maintained and enhanced their awareness of ECCR methods and opportunities through monthly environmental attorneys' conference calls.
	Providing and promoting ECCR technical assistance and support programs and opportunities	USACE's Grand Collaboration Challenge provided an opportunity for USACE project teams to receive hands-on assistance from ECCR experts to address complex collaboration challenges.
	Investing in internal programs and centers that support ECCR and deliver ECCR-related services, including consultation, conflict assessment, process design, mediation, and facilitation	Several departments and agencies funded and operated internal ECCR programs and centers in FY2019, including: <ul style="list-style-type: none"> • FERC DRS • EPA CPRC • USACE CPCX • DOI & BLM CADR
	Developing in-house facilitators and ECCR professionals	NOAA's Facilitation Network (FacNet) volunteers responded to at least 22 requests for facilitation from a wide variety of line offices. Such requests often lead to subsequent requests by various NOAA line offices for specific facilitators.
Promoting and supporting training and professional development opportunities for staff and ECCR personnel	Building expert knowledge, skills, and capacity in ECCR with trainings, workshops, and other learning opportunities	USACE Public Involvement Specialists program identifies and trains subject matter experts at the District-level to provide local, regional, and national level support on collaborative processes. Also see "Training" on page 7 for additional examples.
	Encouraging and supporting the pursuit of professional certificates in ECCR	Increasing numbers of USACE staff have earned the Udall Foundation's Certificate in Environmental Collaboration and Conflict Resolution.
	Providing training and mentorship opportunities	An EPA Region 5 Specialist worked with the Federal Executive Board to provide training and mentorship to new mediators through the Shared Neutrals as Partners (SNAP) Program.
Fostering internal and external information exchange about ECCR	Promoting staff participation in professional networks or organizations	NOAA ERC staff co-chaired the Environment and Public Policy Section of the Association for Conflict Resolution, helping to plan the 2019 National Meeting.

	Engaging in interagency groups to advance ECCR efforts and facilitate information sharing across the Federal family	CADR (DOI) staff represented DOI on several interagency groups and participated in a variety of interagency efforts to build common understanding and jointly advance collaboration and ECCR (e.g., Interagency ADR Working Group, ECCR Forum).
	Participating in intra-agency work groups to build ECCR capacity within the organization	NPS Rivers, Trails, and Conservation Assistance Program coordinated five communities of practice to help employees interested in recreation, conservation, and community collaboration connect virtually and share lessons learned.
	Developing innovative tools and techniques to share ECCR knowledge	The FWS Human Dimensions Resource Portal is a place to put Human Dimensions tools into the hands of practitioners by centralizing resources, promoting shared learning, fostering cross-agency collaboration, and creating a community of practice.
	Ensuring easy access to ECCR information and resources	EPA Region 8 staff and managers had quick and easy access to info about ECCR on their desktops using a tab on the 8Net, the region's intranet homepage. Resources on 8Net include a definition of what ECCR is, steps to take in assessing if ECCR might be beneficial in a variety of situations, and contact information for further support.
Building ECCR partnerships	Cultivating strong working relationships with local, state, and Federal governments, Tribes, private entities, and non-governmental organizations	NOAA Office of Aquaculture partners with regional Fisheries Commissions, grant recipients, state agencies when conducting environmental review of financial assistance awards for finfish and shellfish projects.
	Establishing public-private partnerships	NOAA completed its fifth year of West Hawaii Habitat Focus Area Partnership, whose goal is to sustain healthy and productive nearshore fisheries and coral reefs. The Partnership engaged with resort managers to help them begin addressing nutrient inputs and set the stage for innovative funding mechanisms like resort funds and reef assurance to increase private investment in coastal management.
	Committing to engaging stakeholders early in ECCR projects and cases	DOE's Environmental Management Nevada program (EM-NV) successfully used regular meetings with environmental regulators and a site-specific advisory board and committees to engage stakeholders in the early stages of decision-making processes.
	Building capacity for stakeholders and partners to effectively engage in ECCR	FHWA provided funding for NCECR to deliver its "Collaboration in NEPA" training course to the Arizona Department of Transportation (ADOT) to help ADOT improve its capacity to implement its NEPA assignment responsibilities.
Tracking and evaluating ECCR processes and programs	Developing and improving methods for tracking ECCR use	DRS (FERC) is participating in a pilot project using a third-party contractor to define and outline the various DRS functions and develop better metrics for

		<p>the office. DRS will utilize the information obtained to either improve its data tracking system or to begin procuring a more appropriate system.</p>
	<p>Evaluating ECCR cases, projects, and programs to identify lessons learned and opportunities for improvement</p>	<p>CPCX (USACE) began the third Collaborative Capacity Assessment in FY 2019, a semi-decadal quantitative and qualitative survey of collaboration strengths and weaknesses across the USACE. The survey results will inform CPCX's next five-year strategic plan.</p>

Appendix D: Acronyms

ADOT	Arizona Department of Transportation
ADR	Alternative Dispute Resolution
AF	U.S. Air Force
AFNC	Air Force Negotiation Center
AFR	Air Force Range
Army	U.S. Army
BIA	Bureau of Indian Affairs
BLM	Bureau of Land Management
BOEM	Bureau of Ocean Energy Management
CADR	Collaborative Action and Dispute Resolution (DOI)
CBP	Columbia Basin Partnership
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
CEQ	Council on Environmental Quality
CWA	Clean Water Act
CPCX	Collaboration and Public Participation Center of Expertise (USACE)
CPRC	Conflict Prevention and Resolution Center (EPA)
DOE	Department of Energy
DOI	Department of the Interior
DOL	Department of Labor
DOT	Department of Transportation
DRS	Dispute Resolution Service (FERC)
ECCR	Environmental collaboration and conflict resolution
ELD	Environmental Law Division (Army)
EIS	Environmental Impact Statement
EPA	U.S. Environmental Protection Agency
ERC	Office of the General Counsel, Environmental Review & Coordination Section (ERC)
ESA	Endangered Species Act
FACA	Federal Advisory Committee Act
FERC	Federal Energy Regulatory Commission
FHWA	Federal Highway Administration
FTE	Full-time employee
FY	Fiscal year
GCC	Grand Collaboration Challenge
JAG	Judge Advocate General's Corps (AF)
MAFAC	Marine Fisheries Advisory Committee (NMFS)
NCECR	National Center for Environmental Conflict Resolution
NEPA	National Environmental Policy Act
NGB	National Guard Bureau
NHPA	National Historic Preservation Act
NMFS	NOAA Fisheries
NOAA	National Oceanic and Atmospheric Administration
NPS	National Park Service
OMB	Office of Management and Budget
RACA	Office of Regulatory Affairs and Collaborative Action (BIA)
RCRA	Resource Conservation and Recovery Act
REC	Bureau of Reclamation
SHPO	State Historic Preservation Office
USACE	U.S. Army Corps of Engineers
USFWS	U.S. Fish and Wildlife Service

USGS United States Geological Survey
VA Department of Veterans Affairs
WCR NMFS' West Coast Region