

FY 2020 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 2020.

The report deadline is February 26, 2021.

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 2020 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 2020 ECCR reports. You may be contacted for the purpose of clarifying information in your report.

For your reference, synthesis reports from past fiscal years are available at <https://www.udall.gov/OurPrograms/Institute/ECRReport.aspx>.

FY 2020 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:	Office of General Counsel-Office of Energy Projects
Contact information (phone/email):	Elisabeth Blaug 202-502-8189 Elisabeth.blaug@ferc.gov
Date this report is being submitted:	February 24, 2021
Name of ECCR Forum Representative	Joshua Hurwitz

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 2020, including progress made since FY 2019.

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 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.

Please refer to your agency's FY 2019 report to only include new, changed or actively ongoing ECCR capacity building progress. **If none, leave this section blank.**

Office of the General Counsel - Dispute Resolution Service
In FY 2020, the Dispute Resolution Service (DRS) successfully addressed/resolved 381 cases. DRS casework included 238 inquiries from the public and 143 referrals for ADR services. Of the total cases, 89 involved ECCR (breakdown in table below).

DRS continues to update its internal work processes. In FY 2020 DRS distributed ECCR Application definitions to ensure staff within the office are consistently tracking their ECCR projects.

- b) Please describe the trainings given in your department/agency in FY 2020. Please include a list of the trainings, if possible. If known, please provide the course names and total number of people trained. Please refer to your agency's FY 2019 report to include **ONLY** trainings given in FY 2020. **If none, leave this section blank.**

2. ECCR Investments and Benefits

- a) Please describe any **NEW or CHANGED or INNOVATIVE** investments made in ECCR in FY 2020. Examples of investments may include (but are not limited to):
- ECCR programmatic FTEs
 - Dedicated ECCR budgets
 - Funds spent on contracts to support ECCR cases and programs

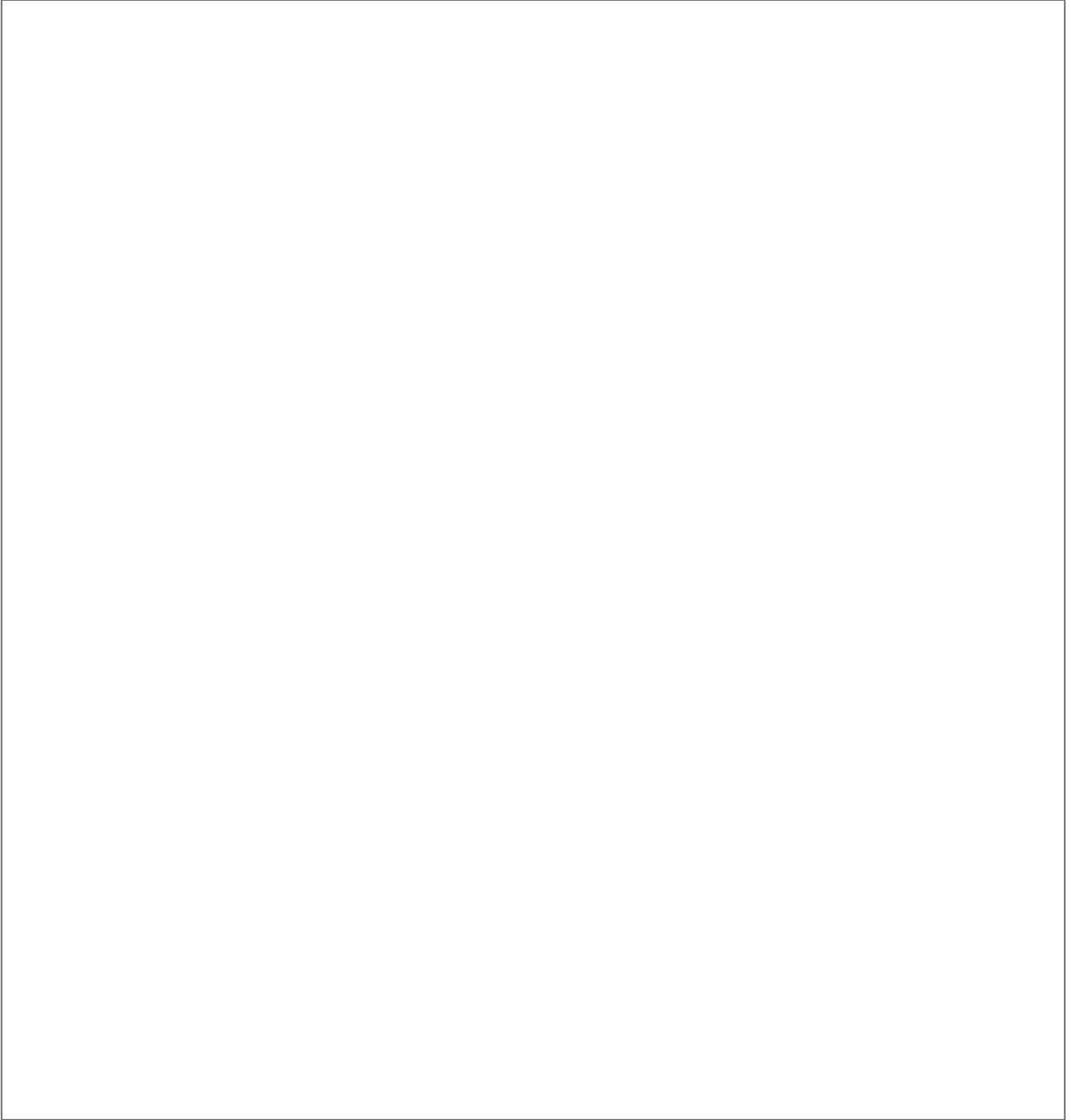
Please refer to your agency's FY 2019 report to only include new, changed, or innovative investments made in ECCR. **If none, leave this section blank.**

Office of the General Counsel - Dispute Resolution Service

DRS continues to actively participate in a pilot project using a third-party contractor to define and outline the various DRS functions and to develop enhanced metrics for the office. Through this process, DRS staff is working with internal data management contractors to update our current data tracking system and begin the process to acquire an updated system for future fiscal years. DRS anticipates that the updates to the existing system and the procurement of an enhanced system for the future will allow the office to better assist our stakeholders; measure DRS's work more accurately; better capture ECCR use; and where possible, help document and demonstrate the benefits of ECCR at the Commission.

- b) Please describe any **NEW or CHANGED** benefits realized when using ECCR in FY 2020. Examples of benefits may include (but are not limited to):
- Cost savings
 - Environmental and natural resource results
 - Furtherance of agency mission
 - Improved working relationship with stakeholders
 - Avoidance of litigation
 - Timely project progression

Please refer to your agency's FY 2019 report to only include new or changed benefits of ECCR realized in FY 2020. If none, leave this section blank.



3. ECCR Use

Describe the level of ECCR use within your department/agency in FY 2020 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.]

To avoid double counting processes, please select one category per case for decision making forums and for ECCR applications.

	Total FY 2020 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 below)
<i>Context for ECCR Applications:</i>					
Policy development	___	___	___	___	___
Planning	_1_	_1_	___	___	___
Siting and construction	_78_	_78_	___	___	___
Rulemaking	___	___	___	___	___
License and permit issuance	_1_	_1_	___	___	___
Compliance and enforcement action	_9_	9	___	___	___
Implementation/monitoring agreements	___	___	___	___	___
Other (specify): _____	___	___	___	___	___
TOTAL	89	89	___	___	___
		(the sum of the Decision Making Forums should equal Total FY 2020 ECCR Cases)			

****If you indicated above that any of your ECCR cases or projects were initiated in an “other” decision making forum, please elaborate here.**

² An “ECCR case” is a case in which a third-party neutral was active in a particular matter during FY 2020.

<i>Context for ECCR Applications:</i>	Interagency ECCR Cases and Projects	
	Included Other Federal Agencies Only	Included Non-Federal Participants (e.g., 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 2020. 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.

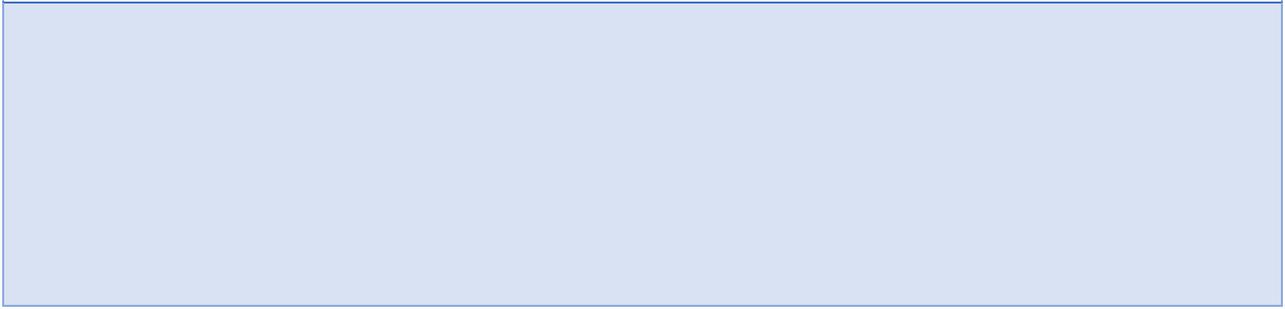
Note: If you subtract completed ECCR cases from Total FY 2020 cases it should equal total ongoing cases. If you subtract sponsored ECCR cases from Total FY 2020 ECCR cases it should equal total cases in which your agency or department participated but did not sponsor. If you subtract the combined interagency ECCR cases from Total FY 2020 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 2020). If possible, focus on an interagency ECCR case. Please limit the length to **no more than 1 page**.

Name/Identification of Problem/Conflict:
<i>[Please add case "title" here]</i>
<p>Overview of problem/conflict and timeline, including reference to the nature and timing of the third-party assistance, and how the ECCR effort was funded.</p> <p>Non-decisional DRS staff mediated a dispute between a natural gas pipeline company and a landowner to address how to mitigate a serious land slip (a portion of land that became unstable and began to move downward) on the landowner's property. The land slip occurred on a steep slope and had been temporarily stabilized when the parties came to the Commission seeking assistance. The parties had spent months unsuccessfully negotiating a number of different plans to permanently stabilize the slope before seeking DRS assistance. Both parties were concerned that if a solution could not be reached quickly, there would not be enough time to implement permanent stabilization measures before winter and the slip would likely get worse. Over the course of a few weeks, DRS staff worked with the parties to identify a mutually acceptable plan to permanently stabilize the slope that was quickly approved by Commission staff and completed during the fall of 2020.</p> <p>This case used permanent DRS staff as mediators and was funded through the DRS budget. Each party was responsible for its own costs.</p>
<p>Summary of how the problem or conflict was addressed using ECCR, including details of any innovative approaches to ECCR, and how the principles for engagement in ECCR outlined in the policy memo were used.</p> <p>DRS staff facilitated conference calls among the parties, their counsel, decisional FERC staff, and third-party contractors to discuss the merits of multiple mitigation plans. DRS staff also had regular caucus sessions with each party to further explore each parties' interests and the likely alternatives to a negotiated solution.</p>
<p>Identify the key beneficial outcomes of this case, including references to likely alternative decision-making forums and how the outcomes differed as a result of ECCR.</p> <p>The parties reached a mutually beneficial agreement that permanently stabilized the slope. The pipeline company compensated the landowner for additional property required to implement the mitigation plan and the landowner withdrew their objection. ECCR resulted in a solution that avoided costly and time-consuming litigation, helping to preserve relationships that will continue long-term.</p>

Please share any reflections on the lessons learned from the use of ECCR.



5. Other ECCR Notable Cases

Briefly describe any other notable ECCR cases in FY 2020. **(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 FY 2019 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 2020 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.**

As an example of improved collaboration, prior to issuance of a notice of schedule change for the Jordan Cove Energy Project, Commission staff learned that cooperating agencies had identified critical information that they needed from the project sponsor for incorporation into the final environmental impact statement (EIS). Staff promptly convened several teleconferences with all of the cooperating agencies to determine a path forward that would minimize delays to issuance of the final EIS. This coordination resulted in a revision to the schedule of approximately one month, rather than an extended delay had the additional coordination not taken place.

Additional Commission staff collaboration efforts through training and outreach included:

- organizing the fourth annual agency meeting with agencies involved in review of FERC natural gas projects, held in June 2020, to coordinate and align the various environmental review processes, and allow for discussion among our federal agency partners.
- writing 70 letters for 6 proceedings to various Indian tribes, holding one meeting with an Alaska Native Village, and participating in the Cultural Resources Law Conference: Consulting with Tribes on Energy Projects in October 2019.

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 FY 2019 report to identify new/increased difficulties. **If none, leave this section blank.**

Please attach any additional information as warranted.

Report due Friday, February 26, 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