

Environmental Collaboration and Conflict Resolution (ECCR) in the Federal Government Fiscal Year 2021 Agency Reporting Template

Background

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, and defines ECCR 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.”

The 2012 memorandum requires annual reporting by Federal Departments and Agencies to OMB and CEQ on their use of Environmental Collaboration and Conflict Resolution and on the estimated cost savings and benefits realized through third-party assisted negotiation, mediation or other processes designed to help parties achieve agreement. The memo also encourages departments and agencies to work toward systematic collection of relevant information that can be useful in on-going information exchange across departments and agencies

The Udall Foundation’s National Center for Environmental Conflict Resolution (National Center) has, since 2005, collected select ECCR data on behalf of Federal Departments and Agencies. *Beginning in FY 2021, the National Center is streamlining the data it collects to reduce the reporting burden on Federal Departments and Agencies and provide the most salient information on ECCR use. This updated reporting template is focused collection of ECCR case studies and data on capacity building, including ECCR training. Case numbers and context reporting are optional.*

Fiscal Year 2021 Data Collection

This annual reporting template is provided in accordance with the memo for activities in FY 2021.

The report deadline is Friday, January 28th, 2022.

Reports should be submitted to Steph Kavanaugh, NCECR Deputy Director, via e-mail at kavanaugh@udall.gov

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 a compilation of all FY 2021 ECCR reports submitted. 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>.

1. Agency Submission Information

Name of Department/Agency responding:	Department of the Air Force
Name and Title/Position of person responding:	Patricia Collins, Associate General Counsel
Division/Office of person responding:	Installations, Energy & Environment, Office of the General Counsel
Contact information (phone/email):	patricia.collins@us.af.mil
Date this report is being submitted:	January 28, 2022
Name of ECCR Forum Representative: Patricia Collins	

2. ECCR Capacity Building and Investment:

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 2021, including progress made since FY 2020.

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 focus on accountable performance and achievement.
 - ECCR programmatic FTEs
 - Dedicated ECCR budgets
 - Funds spent on contracts to support ECCR cases and programs
- a) Please refer to your agency's FY 2020 report to only include new, changed or actively ongoing ECCR investments or capacity building. **If none, leave this section blank.**

ECCR is encompassed within the overall Air Force Negotiation & Dispute Resolution program. AF Policy Directive 51-12 makes negotiation a critical leadership skill, and sets the expectation that AF leaders will use negotiation and dispute resolution techniques to preclude, manage, or resolve conflict. The Policy Directive's implementing instruction requires AF programs, including those resolving environmental disputes, to, where appropriate, use negotiation and dispute resolution processes. The resources of the AF NDR program are, and have been, available to support the use of ECCR and train AF personnel in negotiation and communication skills within the context of ECCR.

Senior leadership has long recognized the value of ADR and its contribution to mission accomplishment through its creative problem-solving attributes as well as savings in cost and time. ADR is treated by the Air Force as "budget neutral" with a positive impact on mission accomplishment. Air Force leadership fully supports the need for up-front investment in training in the use of collaborative processes and conflict resolution.

ECCR is fully integrated into Air Force budgeting and costs are not separated. The real savings from ECCR is the ability to accomplish mission without dispute-caused interruption. Air Force environmental conflicts and disputes tend to be small in number covering a wide range of issues. The volume is not as high as for agencies with licensing and enforcement as their primary mission.

- b. Please describe the trainings given in your department/agency in FY 2021. 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 2020 report to include ONLY trainings given in FY 2021. **If none, leave this section blank.**

The Air Force continued education and training in negotiation and interest-based conflict resolution skills through the following initiatives:

-The Air Force Negotiation Center (AFNC), based at Air University in Montgomery, Alabama, has successfully imbedded negotiation and conflict management skills into every level of commissioned officer and noncommissioned officer Professional Military Education (PME). AFNC also conducted Negotiation and Dispute Resolution Workshops at Maxwell AFB. Additionally, different aspects of conflict management have been incorporated into multiple aspects of enlisted leadership development.

Training in ECCR has been institutionalized as part of a module at the week-long Negotiation and Appropriate Dispute Resolution Course (NADRC) conducted annually at the AF JAG School at Maxwell AFB, AL.

In FY 2021, the Air Force continued increasing its education and training efforts through the following initiatives:

- The General Counsel's Office partnered with Department of the Air Force Barrier Analysis Working Groups to engage Airmen and Guardians in critical influence workshops to enhance their ability to drive positive change.
- The General Counsel's Office partnered with key stakeholders to identify structural barriers and challenges which inhibit delivery of quality mediation services, resulting in a multi-year plan to enhance mediation services across the department.

3. ECCR Case Example

Using the template below, provide a description of an ECCR case (preferably **completed** in FY 2021). If possible, focus on an interagency ECCR case. Please limit the length to **no more than 1 page**.

Name/Identification of Problem/Conflict: *U.S. v. Lockheed Corporation (Burbank)*

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.

In January 2000, the U.S. and Lockheed Corporation entered into a Consent Decree (CD) whereby the parties agreed to mutual liability for remediating contamination from Lockheed's former plant in Burbank, California (Burbank Plant), which manufactured aircraft and other aeronautical products for the Air Force. Under the terms of the CD, the U.S. agreed to pay, among other costs, 50% of Lockheed's "Future Groundwater Costs" for cleaning up contaminated groundwater caused by the Burbank Plant.

In September 2018, Lockheed entered into an agreement with the Los Angeles Department of Water and Power (LADWP) in which Lockheed agreed to pay \$20M over five years to compensate LADWP for 2,000 acre feet of groundwater lost from certain contaminated wells near the Burbank Plant.

In February 2019, Lockheed submitted a claim to the U.S. under the CD seeking 50% reimbursement of its first installment of the \$20M payment. Lockheed asserted that this payment was reimbursable under the CD as a CERCLA response cost because it was for "alternate water supply." The U.S. objected to this claim because it appeared to be a payment for tort damages (lost profits from the sale of water) and therefore not reimbursable under the CD.

Efforts to resolve the parties' disagreement were thwarted by Lockheed's insistence, based on assertions of privilege and settlement confidentiality, that it could not produce any settlement communications between Lockheed and LADWP. Without access to such settlement communications, the U.S. could not properly determine the nature of the \$20M payment and whether it was reimbursable under the CD.

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.

Under the dispute resolution provisions of the CD, the parties submitted this matter to a mediator, who agreed that the U.S. was entitled to review pertinent communications between Lockheed and LADWP. To facilitate this review, and to alleviate Lockheed's concerns about the confidential and privileged nature of the communications, the parties agreed that the mediator would reach out to LADWP's counsel to obtain a waiver of confidentiality, thereby allowing the U.S. to review such communications. In January 2021, LADWP's counsel agreed to a waiver of confidentiality for Lockheed to produce documents regarding settlement discussions regarding the \$20M payment. With access to necessary documentation, obtained through the mediator, the parties were able to negotiate, with further assistance from the mediator, a settlement in May 2021 whereby the U.S. agreed to pay \$6.5M, or 32.5%, of the \$20M payment to LADWP.

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.

Without the assistance of the mediator, the U.S. anticipated that this dispute would have needed to be litigated before the U.S. District Court for the Central District of California. Such an outcome would have required tremendous time and effort, with increased cost and litigation risk to the U.S.

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

Prior to the engagement of the mediator, Lockheed refused to produce documents to properly substantiate its claim. The mediator's concurrence with the U.S. position that Lockheed's documentation was insufficient and subsequent efforts to obtain necessary documentation were crucial in the resolution of the parties' dispute.