

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

Synthesis
of
Fiscal
Year
2021
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

BACKGROUND

In 2005, the White House Office of Management and Budget (OMB) and Council on Environmental Quality (CEQ) issued a joint policy memorandum expressing their support for the use of environmental conflict resolution and collaboration in environmental, natural resources, and public lands issues or conflicts.¹ The memorandum urged Federal agencies to increase their effective use of environmental conflict resolution and collaboration 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 environmental collaboration and conflict resolution (ECCR) use by Federal agencies by issuing a new, superseding memorandum. The 2012 joint memorandum² (2012 memo) acknowledged the beneficial use of collaboration to prevent disputes before they happen, and directed all executive branch agencies to:

“(I)ncrease the appropriate and effective use of third-party assisted environmental collaboration . . . 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. . . .”

and defined ECCR as:

“(T)hird-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 2012 memo also renewed direction to Federal agencies to submit an annual report to OMB and CEQ on progress made implementing the ECCR policy direction, and to “work toward systematic collection of relevant information that can be useful in on-going information exchange across departments and agencies.”

Annual [ECCR in the Federal Government Agency Reports](#) are intended to increase the effective use of and institutional capacity for ECCR by providing information on realized benefits of ECCR use.

¹ 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.

² 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.

EXECUTIVE SUMMARY

Since 2005, the Morris K. Udall and Stewart L. Udall Foundation’s John S. McCain III National Center for Environmental Conflict Resolution has collected individual agency reports and developed an annual synthesis report of ECCR in the Federal Government.³

The National Center has streamlined the ECCR in the Federal Government Synthesis Report (Synthesis Report) for FY 2021. The new format focuses on case studies that illustrate the benefits of ECCR use, documents ECCR investments and capacity-building across Federal agencies, and indexes ECCR case numbers utilizing data from four agencies with histories of consistent data collection and reporting. Agencies that commonly submit ECCR in the Federal Government Reports provided significant input on these updates, and the FY 2021 Synthesis Report reflects that feedback.

Eleven Agencies reported on their use of ECCR in FY 2021, including:

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

BENEFITS OF ENVIRONMENTAL COLLABORATION AND CONFLICT RESOLUTION	
EFFICIENCY	Cost savings, timely process, minimizes litigation
BETTER OUTCOMES	Better, more durable outcomes
IMPROVED RELATIONSHIPS	Good governance, increased capacity to serve citizens

[Appendix A](#) shows the number of agencies reporting on ECCR use since formal reporting began in FY 2006. [Appendix B](#) shows the most commonly cited contexts for ECCR use. Acronyms can be found in [Appendix C](#).

In FY 2021, reporting agencies continued to perform most ECCR activities in a virtual environment due to the ongoing COVID-19 pandemic. Agency investments in virtual technology, detailed in the [FY 2020 Synthesis Report](#), provided a strong foundation for continuing to conduct ECCR activities and trainings in the virtual environment.

In line with previous years, reporting agencies shared data that demonstrated the three key benefits of ECCR use: cost savings to the Federal Government, improved interagency and stakeholder relationships, and better outcomes. See the [FY 2021 ECCR Case Examples](#) section below for details on agency case submissions.

Agencies also shared a broad array of continued and new investments to build ECCR capacity, including providing ECCR training for staff, contractors, and stakeholders. See the [ECCR Capacity Building and Investment in FY2021](#) section below for details on agency capacity building efforts.

³ Individual department and agency reports as well as annual synthesis reports are available online at: <https://udall.gov/OurPrograms/Institute/ECCRReport.aspx>.

FY 2021 ECCR CASE EXAMPLES

Of the 11 agencies that submitted an agency report in FY 2021, 9 provided a case study to demonstrate how benefits were realized through ECCR use. The total of 10 cases below include a National Center case study that highlights a suite of ECCR projects conducted in cooperation with the DOI Bureau of Ocean Energy Management (BOEM).

Federal agencies utilized ECCR to realize multiple benefits in FY 2021. Below are examples of how ECCR use enabled the Federal Government to save money and time, improve strained relationships, and realize more sustainable environmental outcomes. Case studies serve as tangible examples of the conditions and contexts in which ECCR can provide benefits, the diversity of scope and scale of ECCR processes, and possible formats for ECCR processes.

COST SAVINGS AND AVOIDANCE OF CONTINUED LITIGATION

AIR FORCE, U.S. V. LOCKHEED CORPORATION

In September 2018, Lockheed entered into an agreement with the Los Angeles Department of Water and Power (LADWP) in which Lockheed agreed to pay \$20 million over 5 years to compensate LADWP for the loss of 2,000-acre feet of from contaminated wells near the Lockheed's Burbank Plant.

In February 2019, Lockheed submitted a claim to under the agreement seeking 50 percent reimbursement of its first installment of the \$20 million payment. Lockheed asserted that this

payment was reimbursable under the agreement 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 agreement.

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.

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 \$20 million



Photo Credit: Harry Shelton, Unsplash.com

payment and whether it was reimbursable under the agreement.

Under the dispute resolution provisions of the CD, the parties submitted this matter to a third-party 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 \$20 million payment. Due to the mediator's efforts, the parties were able to access necessary documentation and negotiate a settlement in May 2021 whereby the U.S. agreed to pay \$6.5 million, or 32.5 percent of the \$20 million payment to LADWP.

Without the assistance of a 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.

AGENCY-LED CONFLICT PREVENTION FOR COST SAVINGS

U.S. ARMY, RESTORATION ADVISORY BOARDS

The Army's main ECCR priority is dispute avoidance using mediation not provided by a third party. One main area of informal dispute avoidance is through restoration advisory boards, or RABs. RABs are volunteer organizations comprised of interested and concerned citizens, representatives of the Army installation, various environmental regulatory agencies, local government activities, and community environmental groups. In FY 2021, RABs were used to avoid conflict by providing open communication between the stakeholders, regulators, and Army personnel. RABs allowed the Army and regulators to provide updates on the status of restoration projects so all stakeholders understand the issues, requirements, and limitations for particular restoration projects. The RABs also provided an avenue for stakeholders to submit public comments orally or in writing to address their concerns about current, ongoing, or future restoration activities.

In FY 2021, the Army's use of RABs generated a more efficient process to identify, narrow, and address the stakeholders or regulators' interests and to reach timely and appropriate agreements with stakeholders and regulators, avoiding the need for a more formal dispute resolution process.

RABs promote community awareness and obtain constructive community review and comment on environmental restoration actions that will accelerate the overall restoration actions. Most importantly, they help the Army avoid disputes that would otherwise require third-party neutrals or courts to resolve.

SUSTAINABLE OUTCOMES FOR THE ENVIRONMENT

DEPARTMENT OF ENERGY (DOE), PANTEX PLANT

The Pantex Plant in Amarillo, Texas is one of six production facilities in the National Nuclear Security Administration's Nuclear Security Enterprise. The Plant is the nation's primary assembly, disassembly, retrofit, and life-extension center for nuclear weapons.

ECCR processes have been a proactive part of the Pantex Environmental Program. Pantex used a third-party neutral to facilitate environmental cleanup decision-making through meetings with DOE staff, the Texas Commission on Environmental Quality (TCEQ), and EPA Region 6 beginning in FY 2001. Major accomplishments have included:

- The successful creation of an Interagency Agreement between DOE, EPA Region 6 and the TCEQ. This tri-party agreement contains a dispute resolution process.
- The signing of a final Record of Decision regarding clean-up actions at Pantex.
- The issuance of a Groundwater Compliance Plan, which recognizes the remedy selected under the ROD as the RCRA Corrective Action Systems for cleanup.
- The issuance of two Five-Year Review Reports with concurrence by EPA Region 6 and TCEQ.



HEALING RELATIONSHIPS THROUGH INCLUSION

DOI NATIONAL PARK SERVICE, MANHATTAN PROJECT NATIONAL HISTORICAL PARK STAKEHOLDER ENGAGEMENT

Established on November 10, 2015, the Manhattan Project National Historical Park (MPNHP) is managed through a collaborative partnership by the National Park Service (NPS) and the U.S. Department of Energy (DOE) to preserve, interpret, and facilitate access to key historic resources associated with the Manhattan Project (MP). From 2019 to 2021, DOI's Collaborative Action and Dispute Resolution (CADR) program provided impartial facilitation services to ensure that the full story of the MP is comprehensive, including its impact on populations whose experiences are untold or who have not been given the attention they deserve.

Through interviews with individuals from government, academia, businesses, and non-profits, the DOI CADR facilitation team identified groups and individuals who might represent these voices and offer guidance to the Park as it moves forward. The interviews formed the basis for the MP Public Engagement Plan, completed in summer 2020. Twelve virtual public engagement sessions were then conducted between March and July 2021. Activities included a webinar to introduce the Park and announce upcoming opportunities for involvement, a session for local government officials and those active in tourism, and a series of online meetings for the communities and larger cities surrounding each of the three sites in Hanford, WA; Los Alamos, NM; and Oak Ridge, TN. Five focus sessions were held for specific stakeholders and demographics: African American, Native American, victims of radiation exposure in the U.S., next generation (high school students), and hibakusha (Japanese survivors and descendants of those impacted by the detonation of the atomic bombs).

Participants also discovered important and novel benefits from online engagement. Stakeholders in the three different locations could spend time together on screen. African American residents of Oak Ridge and Hanford, whose families had migrated to the sites to work and live under harsh conditions, found common bonds both in the experience of their forebears and their own experience as descendants. High school students in Oak Ridge, Hanford, and Santa Fe exchanged thoughts about the MP and what it

means in their lives. Native Americans from the Pacific Northwest and from NM exchanged stories of sacrifice and significant loss. The focus sessions highlighted a longstanding distrust of the Federal Government in relationship to the development of nuclear weapons and underscored that many populations who have experienced significant detrimental health impacts have been largely disregarded and have not been included in the narrative.

The engagement meetings were powerful and resulted in trust building between Park staff and attendees that opened the door for further relationship-building. The Park discovered that the then-current planning documents did not reflect the input of many stakeholders. The Park will be updating its key planning document to better reflect a larger, more comprehensive group of stakeholders. Neutral, third-party facilitation helped the NPS break through its norms and pre-existing bias about what communities want and need and helped communities with low trust in NPS see the process as safer, professional, and well structured.

IMPROVED COMMUNICATIONS AND RELATIONSHIPS

U.S. NAVY, WEAPONS RESERVE PLANT CLEAN UP

The Department of the Navy (Navy), in cooperation with the Department of Justice (DOJ), was engaged in mediation with Northrop Grumman (NG) concerning the cleanup of environmental contamination in the vicinity of the former Naval Weapons Industrial Reserve Plant (NWIRP) in Bethpage, New York. A third-party neutral was involved starting in FY 2011. Funding of the mediator was split between NG and the DOJ.

The mediator supported discussion and debate on technical and legal issues and provided ongoing process feedback to the parties. During FY 2021, the parties recognized that the mediation effort had failed but continued to pursue settlement negotiations directly through counsel.

BETTER OUTCOMES FOR A SUPERFUND COMMUNITY

ENVIRONMENTAL PROTECTION AGENCY (EPA), LOWER DARBY CREEK AREA SUPERFUND SITE

EPA often uses ECCR to improve the functioning of community advisory groups (CAGs) at Superfund sites. In 2021, a professional facilitator provided by CPRC's contract worked with EPA Region 3 staff to facilitate CAG meetings at the Lower Darby Creek Area Superfund site. The site is in the Eastwick community of Philadelphia, a community overburdened by a history of storm-related flooding, toxic dumping, and heavy industry. Members of the community distrusted government agencies because of their lack of progress in addressing many local issues, including historic and ongoing dumping, health risks from contamination, and severe flooding during major rain events.



Photo Credit: Environmental Protection Agency (EPA)

The EPA site team and the facilitator helped the community to establish the CAG in FY 2015, and the facilitator has managed the CAG's monthly meetings on an as-needed basis. The facilitator's involvement fostered transparency, promoted open dialogue, and laid the groundwork for an improved relationship with EPA. As a result, EPA's cleanup actions moved forward in partnership with the community, and the CAG and site team worked together to respond to other community issues, such as storm-related flooding. In FY 2021, the Lower Darby

Creek CAG won EPA's Citizen Excellence in Community Involvement award, a national award that recognizes outstanding achievements in environmental protection and community involvement leadership during the site cleanup process. The facilitator supported EPA staff in the development of the successful award nomination.

AVOIDANCE OF LITIGATION

FEDERAL ENERGY REGULATORY COMMISSION, PHYTOPHTHORA CASE

In FY 2021, the Federal Energy Regulatory Commission (FERC) Dispute Resolution Service staff mediated a dispute between a natural gas pipeline company and a tree farm owner. The landowner asserted, and the pipeline company contested, that nearby pipeline construction and associated restoration activities caused phytophthora (a plant pathogen) to infect 95 percent of the Fraser fir trees on the farm.

Over a period of several months, DRS staff worked with the parties to help them jointly identify appropriate experts to investigate the phytophthora situation on the property and make recommendations on ways to mitigate or address the harm. The experts determined that the phytophthora was likely spread through the property through pipeline construction activity. Based on the contents of the experts' reports, the parties were able to reach a financial settlement to resolve all outstanding issues. Because there is no effective remedy to a phytophthora infestation once it's present, the only likely alternative remedy is financial compensation through litigation. By reaching a settlement, the parties were able to avoid the time and expense of litigation.

The use of ECCR allowed the parties to control the outcome of this dispute. They were able to select experts they trusted and to rely on the experts' judgments to resolve a complex issue with limited available remedies.

INTRA-AGENCY COLLABORATION FOR CONFLICT PREVENTION

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION (NOAA), NEW ENGLAND STATE SEA GRANT COLLABORATION

NOAA's Sea Grant Office works with a network of 34 university-based programs to protect, enhance and restore habitats, ecosystems and the services they provide. Shellfish aquaculture is an important area of research and education for these programs. A significant challenge to expanding sustainable shellfish aquaculture in southern New England is a lack of available information regarding potential environmental impacts and human use conflicts. Full understanding of public waters as a shared resource and the legal implications of aquaculture in that context is lacking, contributing to conflicts between user groups and government.

Connecticut Sea Grant led the establishment of a collaboration comprised of Sea Grant Programs in Connecticut, Rhode Island and Massachusetts, and key partners to provide information on shellfish aquaculture to the public. The collaborative group worked together to create interpretive shellfish aquaculture signage and shellfish aquaculture messaging for the public and is now establishing an aquaculture permitting workgroup in Rhode Island to jointly develop regulatory guidance. The group is also piloting a survey examining public values related to shellfish aquaculture to inform future dialogue.



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IMPROVING RELATIONSHIPS FOR BETTER GOVERNMENT-TO-GOVERNMENT CONSULTATION

UDALL FOUNDATION, NATIONAL CENTER FOR ENVIRONMENTAL CONFLICT RESOLUTION, BUREAU OF OCEAN ENERGY MANAGEMENT (BOEM) TRIBAL OCEAN SUMMIT



Photo Credit: Nicholas Doherty, Unsplash.com

In March 2021, National Center staff facilitated the Bureau of Ocean Energy Management (BOEM) Tribal Ocean Summit (the Summit), a culmination of months of planning that included gathering input from Federally-recognized Tribes on the goals and desired outcomes of the Summit. The Summit aimed to enable a mutual exchange of information and learning to improve working relationships and meaningful Government-to-Government Consultation (Consultation) practices.

Over the course of two weeks, the Summit consisted of six 6 virtual sessions where:

- Tribes and BOEM became better acquainted and built a foundation for future partnerships.
- Participants engaged in open dialogue and shared ideas to improve future Consultation.
- Tribes had the opportunity to share experiences from their different regions and connect with each other.
- BOEM heard and learned about Tribal concerns related to offshore energy development.
- BOEM shared information as requested by Tribes.
- Tribal representatives had the opportunity to speak directly with BOEM staff and leadership.

The outcomes of the summit will provide a foundation for dialogue and improved relationships that will be important to both formal and information consultation with Tribes on potential areas of offshore wind energy development.

SIGNIFICANT TIME SAVINGS

U.S. ARMY CORPS OF ENGINEERS (USACE), INTERNATIONAL SOURIS RIVER STUDY

The International Souris River Study was an International Joint Commission (IJC) effort to study potential changes in operations of three reservoirs in Canada and one in the U.S. to support flood control and water supply. The study began in 2017 and concluded in 2021. Extensive, facilitated public involvement occurred throughout the four years. The IJC sponsored their staff to facilitate Public Advisory Group meetings and Public Hearings. They also sponsored contracted facilitation for Indigenous Advisory Group calls with indigenous facilitators. The USACE St. Paul District Public Involvement Specialist also contributed to the design and facilitation of public meetings.

The study group was often surprised at the high level of buy-in and support. The team successfully provided recommendations to the IJC with broad public, agency, and indigenous support. Group members attributed success to the extensive, facilitated outreach performed over the course of the study. Collaborative process development for engagement meetings was used for all the advisory group workshops and meetings and was especially critical for the effectiveness of the indigenous engagement activities.

ECCR benefits included shortening the overall duration of the effort by reducing controversy through bringing the stakeholders and nations along throughout the study. The team provided ample opportunities for input, incorporated that input into the study, and then explained how that input was used. Therefore, major setbacks in forwarding and implementing recommendations were avoided. There were no surprises that required re-opening the study or that derailed the recommendations.

One lesson learned for USACE on this case is that collaborative virtual engagement requires twice as much planning and resource development as face- to-face meetings due to the need for multiple facilitators to handle the virtual meetings. Managing a virtual meeting in a fair and equitable manner is more challenging, especially if few participants are on camera and may require the use of polls and other collaborative technology tools to sustain engagement.

ECCR CAPACITY BUILDING AND INVESTMENT IN FY 2021

Federal departments and agencies reported a wide variety of investments to build capacity and sustain the use of ECCR in FY 2021, including providing ECCR training to staff and partners. Notable investments are listed below by agency and represent a summarization of the full submission from each agency. Most reporting agencies listed ECCR training as a large part of their ECCR capacity building. Several agencies also cited continued investment in virtual meeting and collaboration platforms. Also notable, FERC established a new [Office of Public Participation](#) (OPP) with the mission to empower, promote, and support public voices.

Complete reports from submitting agencies are available on the National Center's website: <https://www.udall.gov/OurPrograms/Institute/ECCRReport.aspx>

DEPARTMENT OF THE AIR FORCE (AIR FORCE)

Air Force environmental conflicts and disputes tend to be few but cover a wide range of issues. In FY 2021, Air Force Policy Directive 51-12 continued to prioritize negotiation as a critical leadership skill and set expectations that Air Force leaders will utilize negotiation and dispute resolution techniques to preclude, manage or resolve conflict. The Policy Directive's implementing instruction requires Air Force programs, including those resolving environmental disputes, to use negotiation and dispute resolution processes where appropriate. Finally, 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.

The Air Force also continued education and training in negotiation and interest-based conflict resolution skills through the following initiatives in FY 2021:

- The Air Force Negotiation Center (AFNC), based at Air University in Montgomery, Alabama, has imbedded negotiation and conflict management skills into every level of commissioned officer and noncommissioned officer Professional Military Education (PME).
- 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 Air Force Judge Advocate General School at Maxwell AFB, AL.

DEPARTMENT OF ARMY (ARMY)

In FY 2021, despite COVID-19 limitations, the Army Dispute Resolution Specialist continued to maintain ECCR capacity through continued implementation of the Army's Alternative Dispute Resolution (ADR) program in accordance with a June 22, 2007 memorandum issued by the Secretary of the Army, and the Department of Defense (DoD) Instruction 5145.05, Alternative Dispute Resolution and Conflict Management dated May 27, 2016. Additionally, Army built internal ECCR capacity through the following:

- Seventy-five legal professionals, including four attorneys and one paralegal from the Environmental Law Division (ELD), attended the Judge Advocate General's Legal Center and School's Federal Litigation Course, which provided one hour of training in alternative dispute resolution.

- One Army attorney from the ELD attended the Air Force’s Negotiation and Alternative Dispute Resolution Course on April 26-29, 2021, which provided instruction in interest-based negotiation and alternative dispute resolution methods.

DEPARTMENT OF ENERGY (DOE)

DOE site and program offices continued to maintain and enhance their awareness of ECCR methods and opportunities through monthly environmental attorneys' conference calls and the annual environmental attorneys’ training. On average, 12 participants join the monthly calls. A total of 86 DOE staff participated in the annual environmental attorneys’ training conducted on October 6, 2021.

DEPARTMENT OF THE INTERIOR (DOI)

Within DOI the directives in the OBM/CEQ Memorandum on ECCR are operationalized through the following structures: the Office of Collaborative Action and Dispute Resolution ([DOI CADR](#)) in the Office of the Secretary; and the Bureau of Land Management Collaborative Action and Dispute Resolution CADR Program (BLM CADR), which resides within the BLM Headquarters Office of Resources and Planning Directorate; Division of Decision Support, Planning and NEPA. DOI CADR serves as an independent, impartial source of collaborative problem solving and alternative dispute resolution (ADR) expertise and services. Established in 2001, DOI CADR supports all Bureaus and Offices for both ECCR and workplace matters including oversight and implementation of the Administrative Dispute Resolution Act of 1996, other relevant laws, regulations, directives and guidance, and the Department’s policy on the use of collaborative processes and problem-solving, ADR, ECCR, consensus-building, and related training. BLM CADR provides leadership, guidance, and assistance in collaborative implementation of the BLM’s mission “to sustain the health, diversity, and productivity of America’s public lands for the use and enjoyment of present and future generations.”

- In FY 2021, DOI CADR continued its work convening an ECCR community of practice with representatives from Bureau of Land Management (BLM), Bureau of Ocean Energy Management (BOEM), Bureau of Reclamation (REC), Fish and Wildlife Service (FWS), National Park Service (NPS), and United States Geological Survey (USGS). This group collaboratively developed and hosted a webinar to orient other DOI employees about the use of ECCR in general and in various bureaus.
- During FY 2021, the DOI CADR office and its cadre of in-house trainers delivered its foundational course “Getting to the CORE of Conflict and Communication” to 784 employees from all Bureaus and Offices in eight geographic regions of the U.S.
- DOI CADR team members also delivered a beta-version of “Dynamic Facilitation Skills” to 416 employees across the Department. Other offerings in 2021 included (1) a regular Virtual Resilience Café, attended by over 1200 DOI employees, (2) a Supervisory Skills workshop that reached 280 supervisors, (3) a training for 100 DOI facilitation and mediation roster members and (4) added courses in Resiliency Mapping, Communication Skills, Structured Dialogue and Delivering and Receiving the Gift of Feedback reaching 470 participants across these offerings. In total DOI CADR training offerings in 2021 reached 3324 participants.
- Additionally, the BLM CADR Program and DOI CADR recognized the need to capture the institutional learning on virtual engagement to support capacity-building, to prepare for anticipated challenges, and to further the success of virtual stakeholder engagement. The CADR

program and offices jointly convened two workshops for the DOI ECCR community to share lessons learned about convening, facilitating virtual public meetings.

ENVIRONMENTAL PROTECTION AGENCY (EPA)

In FY 2021 EPA accomplished the following:

- EPA's [Conflict Prevention and Resolution Center](#) (CPRC) gained one full-time employee (FTE) in 2021 and now has a total of five FTEs.
- Twenty (20) ECCR Specialists located throughout all ten (10) EPA Regions remained active in providing ECCR services including mediation, facilitation and conflict coaching.
- All litigants before the Administrative Law Judges continued to be offered ECCR services.
- CPRC trained 512 EPA staff, and ECCR Specialists trained 162 EPA staff, in ECCR topics. All trainings were given in a virtual environment and training topics included interest-based negotiation, virtual meeting facilitation, bridging cultural divides, and engaging constructively in difficult conversations.
- CPRC delivered a new training, "Facilitating Dialogue," which helps EPA staff better manage challenging conversations with other staff and with the public.
- CPRC continued to provide ECCR training at the annual EPA Conflict Resolution Day in October 2020.

FEDERAL ENERGY REGULATORY COMMISSION (FERC)

In FY 2021, FERC established the [Office of Public Participation](#) (OPP) with the mission to facilitate public participation in Commission proceedings. The public can contact OPP for assistance navigating FERC proceedings of all types, and OPP will provide procedural guidance such as how to intervene, comment, file motions, or seek rehearing in Commission processes. Additionally, OPP will engage the public through direct outreach and solicit broader participation in matters before the Commission.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION (NOAA)

In 2021, NOAA's Office of the General Counsel, Environmental Review & Coordination Section (ERC), continued discussions with NOAA management to create a centralized ECCR program at NOAA. Other notable capacity-building investments included:

- ERC continued to support the Association for Conflict Resolution Environmental and Public Policy Section (EPP) by providing a staff member to co-chair the EPP.
- ERC provided input on ways for NOAA to incorporate aspects of ECCR into its policies for interacting with Native Nations when managing natural resources under NOAA's jurisdiction.
- The Northeast Fisheries Science Center (NEFSC) utilized ECCR services to support a stock assessment working group.
- The Southwest Fisheries Science Center (SWFSC) continued to participate in the Collaborative Science and Adaptive Management Team and its Collaborative Adaptive Management Team. The teams include California and Federal agency representatives, water users, and non-governmental conservation groups who work collaboratively on reducing scientific uncertainty about how project operations affect fish, especially protected salmon and smelt.
- Several staff participated in the Environmental Collaboration and Conflict Resolution for Federal Agencies Webinar given by the National Center for Environmental Conflict Resolution in August 2021.

UDALL FOUNDATION, [NATIONAL CENTER FOR ENVIRONMENTAL CONFLICT RESOLUTION \(NATIONAL CENTER\)](#)

The National Center provides training in ECCR to federal agencies and their stakeholders as part of their Congressionally mandated mission. In FY2021, the National Center continued to respond significant demand for virtual ECCR courses. National Center staff provided 18 virtual ECCR trainings to government, Tribal members, stakeholders, and citizens. Federal agencies receiving group trainings from the National Center in FY 2021 including:

- Six “Collaboration with Native Nations and Tribal Consultation” trainings, including for the Western Area Power Authority (WAPA), The Federal Interagency Permitting Steering Council (FPISC), and the EPA.
- Six “Understanding Conflict and Planning for Successful Collaboration” trainings, including three customized to include stakeholder engagement modules for the Federal Aviation Administration (FAA).
- Three customized trainings for NOAA, titled “Principles & Implementation of the West Coast Tribal Caucus’ Guidance and Responsibilities for Effective Tribal Consultation, Communication and Engagement.”

Additionally, National Center leadership provided 4 free “ECCR in the Federal Government” webinars in FY 2021.

U.S. ARMY CORPS OF ENGINEERS (USACE)

In FY 2021, USACE continued to fund the [Collaboration and Public Participation Center of Expertise \(CPCX\)](#) to serve as an ECCR focal point for the agency. Other notable investments in ECCR capacity included:

- CPCX and individual USACE Districts continued to identify, support, and train subject matter experts in ECCR through the District-level Public Involvement (PI) Specialist Program.
- PI Specialist responsibilities were incorporated into position descripts and individual development plans.
- PI Specialists and CPCX Liaisons at the Division-level provided facilitation assistance to internal program managers in the Tribal, Regulatory, Civil Works, Dam Safety, Public Affairs, Emergency Management, Continuing Authorities Program, and Planning Offices. They also provided support through facilitation and presentations to external stakeholders to include state water, emergency, planning, hydropower, and energy offices.
- The Public Participation Community of Practice – an interdisciplinary, cross-agency team of more than 1,500 individuals – piloted collaborative technology tools, organized an interagency virtual collaboration summit, developed risk communication support trainings, and supported webinars on environment justice.
- USACE used its Memorandum of Agreement with the Udall Foundation’s John S. McCain III National Center for Environmental Conflict Resolution (NCECR) to conduct a stakeholder assessment as part of the Columbia River Treaty review and to deliver training for USACE on collaboration with Tribal Nations.
- In FY21, CPCX resumed a full schedule of ECCR-related trainings delivering all materials virtually. Efforts included (1) 11 formal courses and trainings, (2) 11 interactive workshops, (3) 7 webinars, and (4) an enterprise-wide Summit. These events reached more than 1,500 students and participants.
- An increased area of focus this year for CPCX was supporting interagency training on collaboration. CPCX delivered multi-day workshops on Interagency Conflict Transformation for

District Regulatory programs in Honolulu and Jacksonville and a half day of Teambuilding for the USACE Infrastructure Systems – Recovery Team and their partners (e.g. FEMA).

- USACE’s South Pacific Division hosted six region virtual training webinars on ECCR-related topics.

U.S. DEPARTMENT OF VETERANS AFFAIRS (VA)

The VA did not have the need to utilize an ECCR process in FY 21, but remains committed to increasing the use of collaborative decision-making and alternative dispute resolution (ADR) processes through:

- Actively advocating for the use of mediation and other ADR processes and ensuring that reliable, credible, technical, and scientific information is available to stakeholders that are engaged in collaborative resource management efforts.
- Implementation of VA Directive 5978, which designates the Executive Director of the Office of Asset Enterprise Management responsible for VA’s ECCR Program, including (1) assuring participation of VA staff offices and Administrations in developing and implementing VA’s ECCR program, (2) promoting the use of ECCR where appropriate, and (3) tracking and reporting on the use of ECCR within VA.

Additionally, VA seeks the input of stakeholders through public meetings for actions and projects that it anticipates will generate controversy. VA also maintains an Environmental ADR Program website,

<https://www.va.gov/adr/EnvADR.asp>

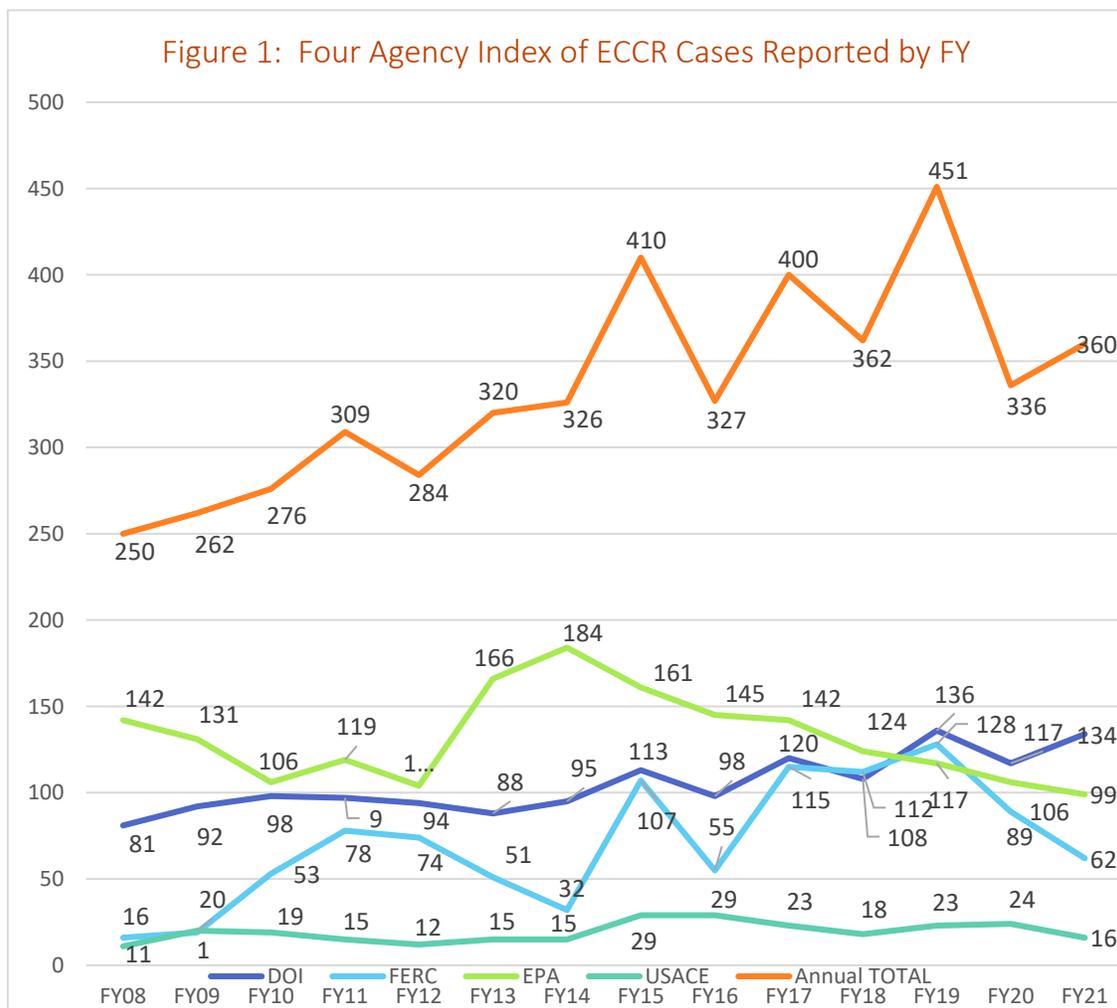
ECCR CASE NUMBER DATA

Beginning with this FY 2021 synthesis report, ECCR case numbers will be tracked using an index of data from four (4) agencies:

- Department of the Interior
- Environmental Protection Agency
- Federal Energy Regulatory Commission
- U.S. Army Corps of Engineers

These agencies have a robust history of reporting ECCR case numbers and are committed to continue voluntary reporting. Utilizing this index of four agencies with a consistent methodology for collecting ECCR case number data will ensure comparable data sets over time.

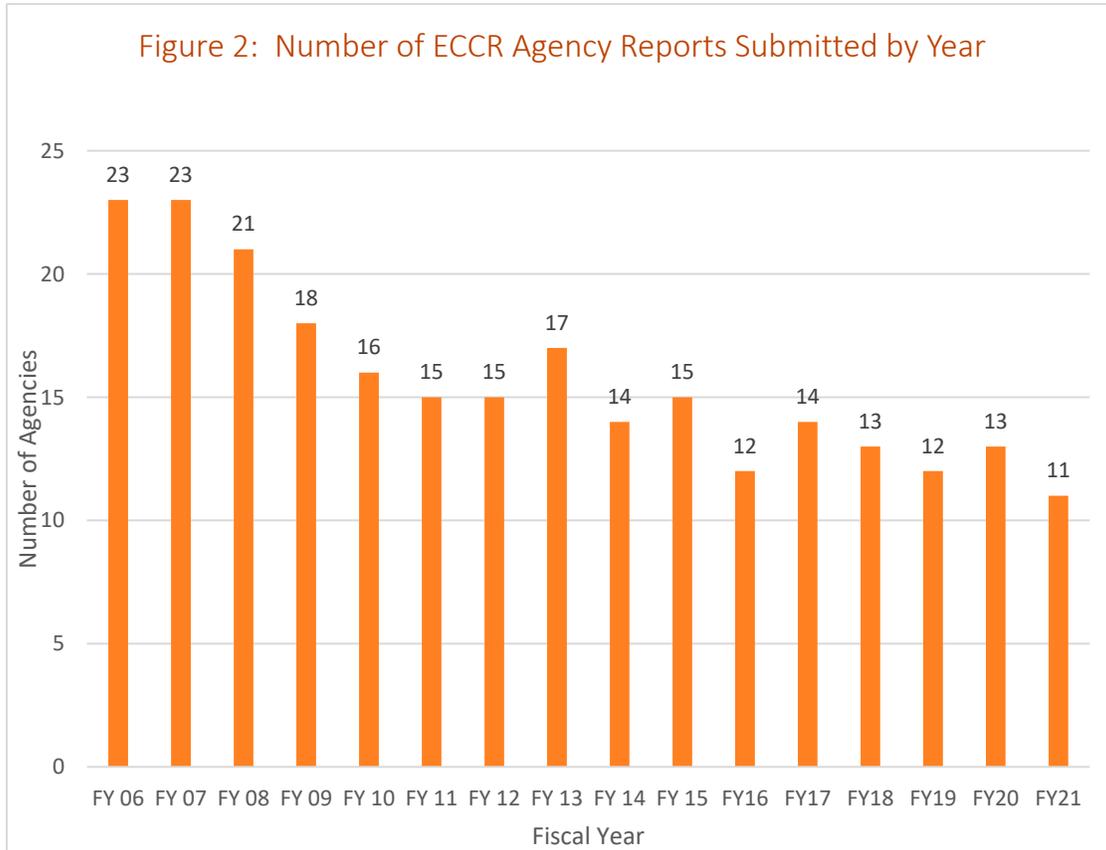
Figure 1 below shows the number of cases reported by fiscal year for each agency, as well as a total case number value. The total case trend line shows the general upward trend in ECCR cases from FY 2008 to FY 2021.



APPENDIX A: NUMBER OF FEDERAL AGENCIES REPORTING ON USE OF ECCR BY FISCAL YEAR

The number of Federal departments and agencies submitting annual ECCR reports has declined from 23 in FY 2007 to 10 in FY 2021, as seen in Figure 2, below. Nine departments or agencies have submitted reports annually since reporting began in 2006, including:

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



APPENDIX B: ECCR USE IN THE FEDERAL GOVERNMENT

Historically, agencies reported on the context for ECCR use since. Since the contexts have remained consistent over time, agencies no longer submit context data. The five most cited contexts from previous years include:

- Implementation of Environmental Laws
- Implementation of Regulatory and Administrative Rule Actions
- Natural Resource Planning and Management
- Consultation and Coordination
- Decision-making on Broad Environmental Issues

Figure 3 shows specific examples of how ECCR has been used in each of the 5 categories above.

Figure 3: Common Contexts for ECCR Use

Implementation of Environmental 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) <ul style="list-style-type: none"> •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 •Conservation and Collaboration •Regional Infrastructure Development •Water Resources (e.g., storm water, groundwater permitting; water releases, quality, and security; flood risk assessment and recovery) 	<ul style="list-style-type: none"> •Energy Development and Transmission, including Renewable Energy; Offshore Development <ul style="list-style-type: none"> •Negotiated Rulemaking •Compliance and Enforcement Actions •Permitting Review <ul style="list-style-type: none"> •Site Permits 	<ul style="list-style-type: none"> •Tribal Consultation •Joint Fact-Finding in Planning and Development •Multi-Party, Multi-Scope Issues •Multi-Agency Programmatic Agreements •Stakeholder & Community Engagement •Public Involvement <ul style="list-style-type: none"> •Collaborative discussion with Federal and non-Federal partners 	<ul style="list-style-type: none"> •Environmental Justice <ul style="list-style-type: none"> •Climate Change •Watershed-level Resource Planning •Socially and Culturally Important Species Management

APPENDIX C: ACRONYMS

ADR	Alternative Dispute Resolution
AF	U.S. Air Force (Air Force)
AFNC	Air Force Negotiation Center
Army	U.S. Army (Army)
BIA	Bureau of Indian Affairs
BLM	Bureau of Land Management
BOEM	Bureau of Ocean Energy Management
CADR	Collaborative Action and Dispute Resolution (DOI)
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)
DoD	Department of Defense
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
FACA	Federal Advisory Committee Act
FERC	Federal Energy Regulatory Commission
FHWA	Federal Highway Administration
FTE	Full-time employee
FY	Fiscal year
NASA	National Aeronautics and Space Administration
NCECR	National Center for Environmental Conflict Resolution
NEPA	National Environmental Policy Act
NGB	National Guard Bureau
NHPA	National Historic Preservation Act
NMFS	National Marine Fisheries Service (NOAA)
NOAA	National Oceanic and Atmospheric Administration
NPS	National Park Service
OMB	Office of Management and Budget
RCRA	Resource Conservation and Recovery Act
REC	Bureau of Reclamation
USACE	U.S. Army Corps of Engineers
USFWS	U.S. Fish and Wildlife Service
USGS	United States Geological Survey
VA	Department of Veterans Affairs

