

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:	Federal Energy Regulatory Commission
Name and Title/Position of person responding:	Joshua Hurwitz, Director
Division/Office of person responding:	OGC – Dispute Resolution Service
Contact information (phone/email):	Jeffrey Hoyle Jeffrey.Hoyle@ferc.gov (202) 502-6198
Date this report is being submitted:	January 28, 2022
Name of ECCR Forum Representative:	Joshua Hurwitz

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.**

In FY 2021 the Commission 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 Commission 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.

- 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 2020. **If none, leave this section blank.**

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: <i>Phytophthora Case</i>
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>Non-decisional DRS staff mediated a dispute between a natural gas pipeline company and a landowner who operated a Christmas Tree farm. The parties were actively disputing the effectiveness of restoration activities on the property for approximately a year before reaching out to DRS for assistance. The landowner alleged that 95% of new fraiser fir trees that were planted in the temporary construction workspaces died because of phytophthora root rot within the first year after construction, as opposed to 5% pre-construction. The pipeline company alleged that phytophthora was present on the property before any construction took place. Over a period of several months, DRS staff worked with the parties to identify appropriate experts to investigate the phytophthora situation on the property, schedule and conduct the necessary tests, and reach a resolution to all outstanding issues.</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>

Summary of how the problem or conflict was addressed using ECCR, including details of any innovative approaches to ECCR, and how the principles for engagement in ECCR outlined in the policy memo were used.

DRS staff engaged in shuttle diplomacy and helped the parties identify mutually agreeable experts to investigate the phytophthora problem and make recommendations on ways to mitigate or address the harm. Those experts determined that the species of phytophthora on the property only infected fraiser firs and that construction activity likely spread the existing phytophthora to other parts of the property. The experts noted that there was not an effective way to remove phytophthora once present in the soil; however, other species of Christmas Trees may be able to grow in the area.

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.

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.

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

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.

Other ECCR Notable Cases

Briefly describe any other notable ECCR cases in FY 2021. (OPTIONAL)

DRS staff mediated a dispute between a natural gas pipeline company and a farmer about damage to an irrigation dam because of a heavy rain event. The farmer operated a robust system of irrigation canals on the property which included several dams. The pipeline company used a timber mat bridge to cross one of the irrigation canals to access the right of way. During a heavy rain event that timber mat bridge was dislodged by flood waters and impacted one of the irrigation dams about a mile away. The farmer made emergency repairs to the dam and the pipeline company retrieved the timber mat and other construction debris immediately after the rain event, but the parties disputed damages for several years culminating in a lawsuit filed in state court. The parties approached DRS for assistance mediating the dispute before the state court case moved forward. DRS staff worked with the parties to identify legitimate criteria for costs to repair the dam and getting experts to inspect the dam’s structural integrity. After approximately six weeks of DRS assisted negotiations the parties reached a full settlement of all outstanding issues.

4. ECCR Case Number & Context Data (OPTIONAL)

Context for ECCR Applications:	Case Numbers
Policy development	_____
Planning	_____
Siting and construction	57
Rulemaking	_____
License and permit issuance	_____

Compliance and enforcement action	5
Implementation/monitoring agreements	_____
Other (specify): _____	_____
TOTAL # of CASES	62

Report due Friday, January 28, 2022. Submit report electronically to: kavanaugh@udall.gov