

## **Environmental Collaboration and Conflict Resolution (ECCR) in the Federal Government Fiscal Year 2022 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 2022 Data Collection**

This annual reporting template is provided in accordance with the memo for activities in FY 2022.

The report deadline is Friday, January 27<sup>th</sup>, 2023.

Reports should be submitted to Steph Kavanaugh, NCECR Deputy Director, via e-mail at [kavanaugh@udall.gov](mailto: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 2022 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: US Army

Name and Title/Position of person responding: COL Blaine Markuson, Director of Dispute Resolution

Division/Office of person responding: Office of General Counsel

Contact information (phone/email): (703) 697-2463 / blaine.a.markuson.mil@army.mil

Date this report is being submitted: 23 Jan 2023

Name of ECCR Forum Representative: Major Jenna Ferrell, Environmental Law Division, U.S. Army Legal Services Agency

## 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 2022, including progress made since FY 2022.

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 2021 report to only include new, changed or actively ongoing ECCR investments or capacity building. **If none, leave this section blank.**

In FY 2022, the Army Dispute Resolution Specialist continued to maintain the Army's Alternative Dispute Resolution (ADR) program in accordance with the memorandum issued by the Secretary of the Army on 22 June 2007 and the Department of Defense (DoD) Instruction 5145.05, Alternative Dispute Resolution and Conflict Management, dated 27 May 2016 (DODI 5145.05).

- b. Please describe the trainings given in your department/agency in FY 2022. 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 2021 report to include ONLY trainings given in FY 2022. **If none, leave this section blank.**

Three attorneys from the Environmental Law Division (ELD) attended the Air Force’s Negotiation and Alternative Dispute Resolution Course on 25-29 April 2022. The course addresses interest-based negotiation, along with ADR methods, best practices, and mediation advocacy skills in a wide variety of contexts. The course is interactive and incorporates several role-playing sessions.

One attorney from ELD attended the Advocacy Center’s Federal Litigation Course, which included two hours of training on ADR Mediation. During the first hour, a U.S. District Court Magistrate Judge provided a lecture on federal litigation practices, to include a discussion of ADR. During the second hour, the judge oversaw a demonstration and practical exercises involving volunteers from the course.

Three attorneys from ELD attended the presentation sponsored by the ECCR Forum regarding Government-to-Government Consultation and Engagement with Native Nations. One attorney from ELD attended other ECCR Forum presentations, including the February ECCR Forum zoom training on *Environmental Collaboration and Conflict Resolution in Support of Federal Climate Initiatives: Gaining Traction*; the March Forum presentation on *Collaboration with Native Nations and Tribal Consultation*; and the May Forum presentation on *Presentation + Q&A: Geospatial Online Tools for Public Participation in Environmental Governance: Research on USACE and Crowdsorce Reporter*.

**3. ECCR Case Example**

Using the template below, provide a description of an ECCR case (preferably **completed** in FY 2022). If possible, focus on an interagency ECCR case. Please limit the length to **no more than 1 page**.

<b>Name/Identification of Problem/Conflict: <i>Cost Recovery Action</i></b>
<b>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.</b>
The conflict involved a claim for reimbursement of remediation costs. The matter was in litigation, and the court assigned a magistrate judge to be a mediator/facilitator to help resolve the conflict. The magistrate judge facilitated open communications between the parties to identify and narrow the issues and address potential settlement options. The case was not resolved, however, and the parties returned to litigation. After returning to discovery, the parties opted to enter a second mediation and agreed on a private mediator funded by both DOJ and Plaintiffs’ counsel.
<b>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</b>

used.

Before mediation, the parties exchanged position papers and relevant documents. During the mediation, the mediator encouraged open discussions, which generated a positive working relationship and built trust. The mediation then moved into shuttle negotiations, and the parties reached a tentative agreement regarding past CERCLA costs. The parties agreed to stay the case until Plaintiffs can determine their future costs. Once they do so, further rounds of mediation may take place.

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.

The parties were able to reach a settlement regarding past costs, which likely saved the Government money, time, and resources. Although the parties failed to reach a full settlement, they were able to narrow the remaining issues for future mediation.

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

ECCR helps the Army narrow the issues, thereby reducing the scope of litigation and saving resources and litigation costs.

### Other ECCR Notable Cases

Briefly describe any other notable ECCR cases in FY 2022. (OPTIONAL)

**The Army has no other notable cases to report in FY 2022.**

The Army's main priority is dispute avoidance through open communication with stakeholders and open meetings, collaboration, tiered partnering, consultation, public meetings, and negotiated agreements with dispute resolution provisions. This approach allows the Army to minimize the number of matters requiring ECCR. On occasion, matters in litigation are referred for ECCR, whereby parties use this process to narrow issues for either resolution or focused litigation.

#### 4. ECCR Case Number & Context Data (OPTIONAL)

Context for ECCR Applications:	Case Numbers
Policy development	__0__
Planning	__0__
Siting and construction	__0__
Rulemaking	__0__
License and permit issuance	__0__
Compliance and enforcement action	__0__
Implementation/monitoring agreements	__0__
Other (specify): CERCLA cost recovery action	__1__
<b>TOTAL # of CASES</b>	<b>__1__</b>

Report due Friday, January 27<sup>th</sup>, 2023. Submit report electronically to: [kavanaugh@udall.gov](mailto:kavanaugh@udall.gov)