

## **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:	Federal Energy Regulatory Commission
Name and Title/Position of person responding:	Stephen Williams, Director
Division/Office of person responding:	OGC – Dispute Resolution Service
Contact information (phone/email):	Jeffrey Hoyle <a href="mailto:Jeffrey.Hoyle@ferc.gov">Jeffrey.Hoyle@ferc.gov</a> (202) 502-6198
Date this report is being submitted:	January 27, 2023
Name of ECCR Forum Representative:	Jeffrey Hoyle

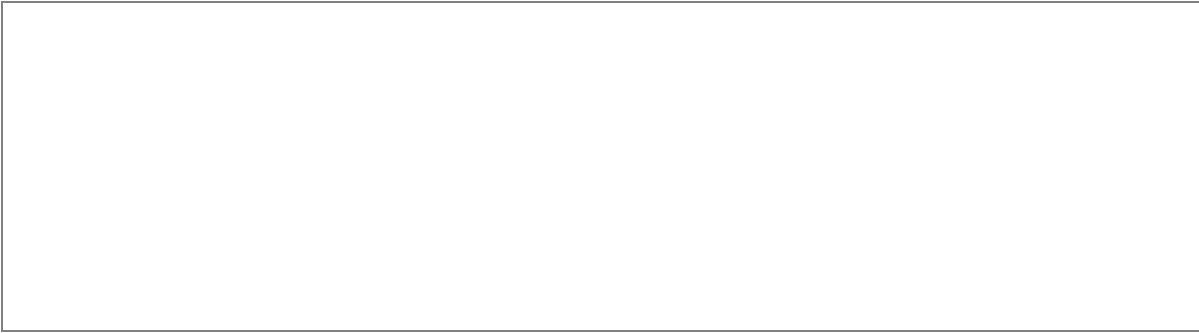
## 2. ECCR Capacity Building and Investment:

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.**



- 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.**

FERC Hydropower 101 Workshop at the 2021 Clean Currents Conference (35 participants).

A three-part FERC Hydropower Licensing 101 workshop for Department of Interior's Turbine Talks series (100 participants).

Presentation on How to Get Involved in FERC Hydropower Licensing Proceedings for the USFS Pacific Southwest Region's Sustainable Outdoor Recreation Collaborative (25 participants).

Presentation to EPA staff about FERC's Hydropower Licensing Processes and how CWA section 401 certification incorporated (4 participants).

Three FERC 101 overviews to congressional staffers (14 participants).

Instream Flows for Whitewater Boating training (12 participants).

Native Peoples of North American lecture series (75 participants).

### 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**.

**Name/Identification of Problem/Conflict: *[Hydropower Dam Nature Like Fish Passage]***

**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.**

**Non-decisional DRS staff mediated a dispute between the owner and operator of a hydropower dam and several different local, state, and federal resource agencies. The parties had previously negotiated a settlement agreement that, among other things, created specific prescriptions for a nature like fish passage during the dam's most recent relicensing process. Since then, a new owner acquired the dam and assumed the license. While planning to construct the nature like fish passage the new licensee encountered serious challenges with the prescribed design and approached the resource agencies about**

modifications. After unsuccessful independent negotiations, the parties came to DRS for third-party assistance. Over a period of nearly a year, DRS worked with the parties to identify the interests served by the original settlement prescriptions and the origins of the challenges to constructing the nature like fish passage as originally contemplated. Ultimately, the mediation process resulted in a new nature like fish passage design that met both parties' interests as well as an implementation plan and schedule to get the facility built in a timely manner and have a mechanism to resolve any future issues that may arise during construction.

This case used permanent DRS staff as mediators and was funded through the DRS budget. Each party was responsible for its own costs.

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 scheduled regular weekly meetings with all of the parties, as well as regular caucus sessions with each party individually. At first, the discussions focused on the underlying goals of the original settlement agreement and what metrics any new design would need to meet. Then the discussions moved toward identifying other potential options that could meet those needs. Once several options were identified, the parties jointly evaluated and decided on a particular design to pursue. The weekly meetings then focused on modelling and technical discussions to ensure that the new design would meet the target metrics. Once the parties were comfortable with the new design, the discussions turned to the implementation process and the required regulatory steps. The end result was an agreed upon design and schedule that laid out each step that needed to be completed, by whom, and by when, as well as creating an ongoing monthly meeting to continuously reevaluate the schedule and make any necessary changes due to unforeseen delays.

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.

This case resulted in the design, and future construction, of a nature like fish passage that will meet the requirements and further the goals of the resource agencies while being cost effective, safe, and constructable by the licensee. If the parties had not engaged in ECCR, this case likely would have resulted in protracted litigation in federal court and several different regulatory agencies. In the event of litigation, the nature like fish passage would not be constructed for many years, or possibly not at all. ECCR allowed the parties to meet their needs in a timely and durable manner.

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

Third party assisted ECCR was particularly helpful in this case because of the number of parties involved. Each resource agency, while generally sharing the mission of protecting the natural resources, sometimes had different priorities that occasionally resulted in mixed messages to the licensee. DRS staff was able to help the resource agencies navigate these competing interests and present a consistent message to the licensee.

**Other ECCR Notable Cases**

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

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

Context for ECCR Applications:	Case Numbers
Policy development	_____
Planning	_____
Siting and construction	64
Rulemaking	_____
License and permit issuance	_____
Compliance and enforcement action	7
Implementation/monitoring agreements	_____
Other (specify): _____	_____
<b>TOTAL # of CASES</b>	<b>71</b>

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