

## **Environmental Collaboration and Conflict Resolution (ECCR) in the Federal Government Fiscal Year 2023 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 2023 Data Collection**

This annual reporting template is provided in accordance with the memo for activities in FY 2023.

The report deadline is Friday, January 26<sup>th</sup>, 2024.

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 2023 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:	February 2, 2024
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 2023, including progress made since FY 2023.

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 2022 report to only include new, changed or actively ongoing ECCR investments or capacity building. **If none, leave this section blank.**

Staff participated as a subject matter expert on a committee organized by the National Park Service and River Management Society to determine core competencies and identify training that would help hydropower practitioners more effectively participate in FERC hydropower proceedings.

- b. Please describe the trainings given in your department/agency in FY 2023. 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 2022 report to include ONLY trainings given in FY 2023. **If none, leave this section blank.**

- FERC Hydropower 101 Workshop at the 2022 Clean Currents Conference (75 participants).
- Presentation entitled How Hydropower is Regulated in the US at the 2023 HydroVision International conference (80 participants).
- FERC Hydropower 101 webinar for the US Forest Service (40 participants).
- Permitting and Processes for New Pumped Storage Hydropower Systems webinar and Pumped Storage Roundtable for the Western States Water Council and the Western States Federal Agency Support Team (approximately 50 participants).
- FERC Hydropower overview for congressional staffers (4 participants).

### 3. ECCR Case Example

Using the template below, provide a description of an ECCR case (preferably **completed** in FY 2023). If possible, focus on an interagency ECCR case. Please limit the length to **no more than 1 page**.

#### **Name/Identification of Problem/Conflict: *Natural Gas Pipeline Flooding and Erosion Issues***

**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 a landowner and a natural gas pipeline company about alleged damages to a permanent access road and pond because of work to repair a slip on an adjacent property. The landowner alleged a culvert was crushed under the weight of the heavy equipment brought in to repair the slip which resulted in flooding of the road and sediment runoff into a nearby pond during any rain event. The pipeline company acknowledged the culvert was damaged but disputed the scope of work required to repair it and that sediment was deposited in the pond. The parties unsuccessfully attempted to negotiate a solution for six months before DRS staff was asked for third-party assistance. Over a period of three months, DRS staff worked with the parties to identify objective criteria for assessing the scope of the damage and ultimately reaching a comprehensive settlement that fully resolved all outstanding issues.

This case used permanent DRS staff as a mediator 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 met with each party individually to identify the interest behind each party's stated position. Both parties needed the access road to be in good repair. The landowner needed it for its farming operation and the pipeline company needed it for continued easy access to otherwise difficult to reach portions of its right of way. After laying a foundation that the parties shared a common interest, the discussion focused on identifying legitimate criteria the parties could jointly rely on for assessing the steps needed to ensure the access road could meet both party's needs. With the assistance of DRS staff, the parties jointly selected an engineering firm to prepare a report assessing the condition of the road and the pond and agreed to use the report as the basis for future settlement discussions. With the report in hand, the parties jointly met with the DRS mediator and, over the course of an hour, agreed on a settlement agreement that fully resolved all disputed issues.

**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 a settlement agreement that fully addressed the alleged flooding and sediment runoff issues in a timely and cost-effective manner. If the parties had not engaged in ECCR, this case would have likely resulted in protracted litigation. The landowner had threatened to prevent access to the road if the issues were not addressed to the landowner's satisfaction. The pipeline company had threatened to sue for access under its existing easement agreement if the landowner took any actions to limit its use of the access road. ECCR gave the parties an opportunity to de-escalate the situation and reach a mutually beneficial solution to a difficult situation.

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

Third-party assistance by DRS staff allowed the parties in this case to go from the verge of litigation to recognizing they shared a common goal by reframing the conversation from the disputed scope of damage to why each party was so invested in this matter. By focusing on shared goals, the parties were able to jointly attack the problem rather than each other and reach an agreement that satisfied everyone's needs.

**Other ECCR Notable Cases**

Briefly describe any other notable ECCR cases in FY 2023. **(OPTIONAL)**

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

Context for ECCR Applications:	Case Numbers
Policy development	_____
Planning	_____
Siting and construction	34
Rulemaking	_____
License and permit issuance	_____
Compliance and enforcement action	7
Implementation/monitoring agreements	_____
Other (specify): _____	_____
TOTAL # of CASES	41

Report due Friday, January 27<sup>th</sup>, 2024. Submit report electronically to: [kavanaugh@udall.gov](mailto:kavanaugh@udall.gov)