

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

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

**Synthesis of Fiscal Year 2023 Agency Reports** 

Submitted by Federal Departments and Agencies
To the John S. McCain III National Center for Environmental Conflict Resolution
Morris K. Udall and Stewart L. Udall Foundation
Pursuant to the OMB-CEQ Policy Memorandum on ECCR of September 7, 2012

# 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. The memorandum provided guidance to urge Federal agencies to increase their effective use of environmental collaboration and conflict resolution (ECCR) and build institutional capacity for collaborative problem solving.

On September 7, 2012, OMB and CEQ reinforced the importance of ECCR use by Federal agencies by issuing a new, superseding memorandum. The 2012 joint memorandum<sup>2</sup> (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 guidance 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 <u>ECCR in the Federal Government Agency Reports</u> are intended to increase the effective use of and institutional capacity for ECCR by providing information on cost savings and other benefits.

<sup>&</sup>lt;sup>1</sup> Office of Management and Budget, & Council on Environmental Quality (2005). Environmental Conflict Resolution Memorandum. Washington, D.C. The 2005 memorandum is available online here: <a href="https://ceq.doe.gov/docs/ceq-regulations-and-guidance/regs/OMB\_CEQ\_Joint\_Statement.pdf">https://ceq.doe.gov/docs/ceq-regulations-and-guidance/regs/OMB\_CEQ\_Joint\_Statement.pdf</a>.

<sup>&</sup>lt;sup>2</sup> 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: <a href="http://www.udall.gov/documents/Institute/OMB">http://www.udall.gov/documents/Institute/OMB</a> 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 (National Center) has collected individual agency reports and developed an annual synthesis report of ECCR in the Federal Government.<sup>34</sup>

Eleven agencies reported on their use of ECCR in Fiscal Year (FY) 2023, including:

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

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

<u>Appendix A</u> shows the number of agencies reporting on ECCR use since formal reporting began in FY 2006. <u>Appendix B</u> shows the most commonly cited contexts for ECCR use (historic data). Acronyms can be found in <u>Appendix C</u>.

In line with previous years, reporting agencies shared data that demonstrate three key benefits of ECCR use: cost savings to the Federal Government, improved interagency and stakeholder relationships, and better outcomes. The FY 2023 ECCR Case Examples section below summarizes 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. The <a href="ECCR Capacity Building and Investment in FY 2023">ECCR Capacity Building and Investment in FY 2023</a> section below details these agency capacity building efforts.

Benefits of Environmental Collaboration and Conflict Resolution

EFFICIENCY Cost savings, timely

process, minimizes

litigation

BETTER OUTCOMES Better, more durable

outcomes

IMPROVED RELATIONSHIPS Good gove

Good governance, increased capacity to serve citizens

<sup>&</sup>lt;sup>3</sup> Individual department and agency reports as well as annual synthesis reports are available online at: https://udall.gov/OurPrograms/institute/ECRReport.aspx.

<sup>&</sup>lt;sup>4</sup> The National Center streamlined the ECCR in the Federal Government Synthesis Report (Synthesis Report) in Fiscal Year (FY) 2021. The new format focuses on case studies that illustrate the benefits of ECCR use, document ECCR investments and capacity-building across Federal agencies, and index ECCR case numbers. Agencies that commonly submit ECCR in the Federal Government Reports provided significant input on these updates, and the updated format of the Synthesis Report reflects that feedback.

## FY 2023 ECCR Case Examples

Federal agencies utilized ECCR to achieve multiple benefits in FY 2023. Of the eleven agencies that submitted an agency report in FY 2023, seven provided case studies to demonstrate how benefits were realized through ECCR use. Case studies serve as tangible examples of the conditions and contexts in which ECCR provides benefits. The cases also illustrate the diverse scope and scale of ECCR processes, and various formats for ECCR processes.

These cases, outlined below, serve as examples of how ECCR use enabled the Federal Government to save money and time, avoid litigation, improve strained relationships, and realize better environmental outcomes.

#### RESOLUTION THROUGH FACILITATION TO AVOID LITIGATION

#### U.S. AIR FORCE (AF), ALASKA NOTICE OF ACTIVITIES AND USE LIMITATION DISPUTE

For several years, the state of Alaska has requested Department of Defense (DoD) military departments to record a Notice of Activities and Use Limitations (NAUL) for its properties where land use controls were selected as part of remedial actions for the site. State regulators requested use of a state template containing language that DoD found legally objectionable and therefore unauthorized. After years of separate engagements between Military Departments, Alaska regulators, and the Environmental Protection Agency (EPA), an agreement had not been reached. The U.S. Air Force (AF) maintains a contract for facilitation and engaged a neutral third-party to assist the military services, Alaska regulators, and EPA in reaching agreement on the notice.

The facilitator assisted all parties in specifying and communicating their needs and the basis for their requirements or objections. The facilitator was able to identify areas of agreement and resolve areas of disagreement based on the stated needs of the parties and achieved resolution. The resulting agreement allowed an approach that could be used across all of DoD, ending years of stalemate, and preventing further elevation and potential litigation.

In addition to benefits identified above, an agreed upon template allows for expeditious implementation of cleanups across DoD installations in Alaska, improved working relationships, and the ability to focus resources on innovative cleanup efforts.

As described in the 2012 ECCR policy memorandum, this case demonstrates that utilizing a trained facilitator to confirm the good faith commitment and willingness of all parties in the resolution process and provide a balanced inclusion of the interests of the parties using a well-defined and transparent process can lead to successful resolution of longstanding environmental conflicts.

#### **IMPROVED COMMUNICATIONS AND RELATIONSHIPS**

# DEPARTMENT OF THE INTERIOR (DOI), TRIBAL ROUNDTABLE FOR BSEE'S NATIONAL TRIBAL ENGAGEMENT PROGRAM

The Bureau of Safety and Environmental Enforcement (BSEE) utilized multiple third-party neutrals to support the development of a Tribal Roundtable. The Tribal Roundtable was held to support the launch of BSEE's National Tribal Engagement Program (NTEP). NTEP outlines BSEE's policies to fulfill legal obligations in identifying, protecting, and conserving Tribal trust resources, and was created to improve and enhance coordination and consultation with Native Nations and Alaska Native Claims Settlement Act (ANSCA) Corporations. NTEP serves as a testament to BSEE's commitment to the trust relationship BSEE has with Tribes and Tribal members. The Planning Team held a series of Tribal Roundtable planning meetings, starting on

March 3, 2023; the inaugural Tribal Roundtable was held on June 25, 2023; and the Final Report was issued on August 31, 2023. The objective of the roundtable was to:

- Establish relationships that lead to better coordination between Tribes and BSEE.
- Roll out the National Tribal Engagement Program.
- Provide more information on renewable energy, carbon sequestration, and oil spill response plans.

The Tribal Roundtable was an opportunity for BSEE to have a facilitated discussion with Tribal Nations, ANCSA Corporations, and the Native Hawaiian Community. The discussion focused on providing an opportunity to discuss BSEE's mission, the new NTEP program, carbon sequestration, renewable energy, and oil spill preparedness. The Tribal Roundtable also created a forum to address any concerns or questions the Tribes may have about BSEE's work. Programmatic support provided through the ECCR process enabled the NTEP to identify opportunities and access resources to engage interested parties in non-adversarial problem-solving processes to produce durable policies, decisions, and solutions.

The conversation, made possible through the facilitated Tribal Roundtable, made clear the importance of Nation-to-Nation engagement in safeguarding waters that impact Tribal communities, livelihoods, and ancestral claims, and underscored the significance attached to the waters. The primary benefit derived from this ECCR process was the creation of a forum to share information about BSEE and the NTEP with Tribal Nations, ANCSA Corporations, and the Native Hawaiian Community. BSEE received direct feedback from Tribal Nations on their concerns with BSEE's activities. This knowledge is important for the NTEP as NTEP members begin to attend conferences, plan engagements and consultations, and reach out directly to Tribal Nations. Using an ECCR process to create the NTEP provided an avenue for direct feedback from Tribal Nations that would not otherwise exist.

#### **SIGNIFICANT TIME AND COST SAVINGS**

DOI OFFICE OF HEARINGS & APPEALS (OHA) MEDIATION: PETAN COMPANY OF NEVADA, INC. ET AL. V. BUREAU OF LAND MANAGEMENT (BLM)

This matter involved complex grazing appeals process that had been pending on the Departmental Cases Hearings Division's (DCHD) docket since April 17, 2015. Consistent with the parties' settlement agreement, in September 2023, the Administrative Law Judge remanded the grazing decision (effective at the conclusion of the 2023 grazing season) so that BLM could act consistently with the terms of the settlement agreement prior to the start of the 2024 grazing season. Because Office of Hearings & Appeals (OHA) in-house mediators were utilized, no special funding source was required.

This highly complex case evaded judicial resolution since 2015, but was quickly resolved because skilled, inhouse mediators helped the parties find common ground and reach a mutually beneficial outcome.

Any final judicial ruling in the matter would likely have been appealed to the Interior Board of Land Appeals (IBLA). Because of the voluminous records and the complexity of the dispute, the IBLA would have spent significant time and effort resolving the appeal. Instead, through mediation, the parties reached a mutually beneficial outcome, and the Department was spared a significant amount of time and work. This case is a good example of a conflict that evaded judicial resolution for eight years but was resolved through mediation in just a few months.

#### **BUILDING TRUST AND RELATIONSHIPS FOR DURABLE SOLUTIONS**

DEPARTMENT OF THE INTERIOR (DOI), BUREAU OF LAND MANAGEMENT (BLM) LAHONTAN CUTTHROAT RECOVERY IMPLEMENTATION

Recovery of threatened Lahontan cutthroat trout (LCT) has been ongoing since 1970. Today, the species continues to decline across its range due to non-native competition, habitat degradation, and climate change and will likely be up-listed to endangered soon if this trend persists (FWS status review 2022). An up-listing decision would create a host of additional social, economic, and ecological challenges for all parties involved. Most recently, the LCT Coordinating Committee (CC), the oversight group chartered to organize interagency collaboration around conservation, developed Updated Goals and Objectives (UGOs) to guide conservation of LCT using the best available science and methods. To address variables in LCT habitat conditions and threats across its historic range, the UGOs divide the range into 10 LCT Management Units to allow for flexibility in planning and to focus conservation efforts. In a move away from the LCT recovery approach that had been in place since the 1990s, the non-prescriptive UGOs provide flexibility and encourage collaboration with local partners to identify where and what recovery actions are best suited to recovering LCT in each management unit. Upon completion of the UGOs in 2019, the U.S. Fish and Wildlife Service (FWS) contacted Department of Interior (DOI) Office of Collaborative Action and Dispute Resolution (CADR) for impartial facilitation support. Two Bureau of Land Management (BLM) CADR in-house facilitators assisted the group: one focused governance structure and the other focused on external partner engagement through 2022. Since 2022, a BLM CADR facilitator has organized the state-wide effort. In addition to covering the salary and travel of the neutrals, the BLM provided funds to the Nevada Department of Wildlife (NDOW) in 2023 to hire a local, junior level facilitator to assist the LCT recovery effort.

Various ECCR activities have been employed by the neutrals between 2019-2023, including helping the CC use a 2012 situation assessment of the Humboldt River South Fork subbasin to inform the development of local collaborative Recovery Implementation Teams (RIT) in the design and implementation of a rolling five-year conservation action plan for LCT recovery in the area. In 2023, situation assessment findings informed the reorganization of the existing LCT Governance Structure to reflect the move from planning to implementation of conservation actions. Facilitation was used to help define the governance relationships between the CC, the RITs, and other recovery partners. Third-party neutrals facilitated meetings between the various governance groups, Tribes, and recovery partners. Neutrals also oversaw the process design for reorganizing the existing structures, and the compilation of publicly available annual reports and website dedicated to LCT recovery information. Through these ECCR mechanisms, neutrals have sought to increase transparency, efficiency, and trust within the LCT recovery process. Neutral facilitation also supported the completion, by BLM, of a draft programmatic environmental assessment (EA) in FY 2023 working in partnership with FWS, NDOW, U.S. Geological Survey (USGS), and the University of Nevada Reno. Once finalized in 2024, this EA will provide a mechanism to expediently adjust grazing management to meet LCT habitat recovery objectives on forty LCT occupied BLM grazing allotments in Nevada.

There have been significant changes in the way key recovery partners collaborate and coordinate LCT recovery within the last five years. The CC has made tremendous progress in completing the UGO document within two years. In FY 2023, neutral facilitation allowed for a deliberate reorganization of the LCT Governance Structure, and a move away from the overly prescriptive 1995 FWS recovery plan toward a flexible, locally driven, and collaborative approach to LCT conservation.

This initiative is exemplary of the long-term commitment to outreach and engagement; to collaboration among all recovery partners, including the public; and to a science-based focus—all of which are necessary to

overcome threatened and endangered species challenges. It also demonstrates that collaborative efforts, like the LCT Governance Structure, need to be flexible enough to adapt over time to reflect and respond to the changing conditions that occur when dealing with complex, landscape-scale ecological issues that also have social and economic costs and benefits that are not equitably distributed. Last, it proves the importance of ECCR processes and facilitators in guiding and shaping these types of efforts.

#### IMPROVED CONSERVATION DELIVERY THROUGH COLLABORATION

#### DEPARTMENT OF THE INTERIOR (DOI), FWS CASCADES TO COAST LANDSCAPE COLLABORATIVE

The Cascades to Coast Landscape Collaborative (CCLC) is a partnership developed to bring people together to practice landscape conservation using spatial mapping. Early on, the CCLC brought in a facilitator to organize the diverse partners into action. Recently, the CCLC has collected habitat connectivity data and developed tools like a Conservation Blueprint and the Conservation Program Explorer tool, which seek to raise awareness of available programs and connect landowners to agencies and organizations that implement programs. CCLC has been working on socializing these resources with partners like the Washington and Oregon Departments of Fish and Wildlife. In FY 2023, the CCLC initiated a new two-year facilitator engagement through the Office of Collaborative Action and Dispute Resolution (CADR) Indefinite Delivery/Indefinite Quality (IDIQ) contract. The ECCR effort was funded through the U.S. Fish and Wildlife Service (FWS) Science Applications program; additionally, Washington Department of Natural Resources has dedicated funding to build out the Conservation Program Explorer tool further.

By using a facilitator throughout, the CCLC has maintained energy and momentum. For many members, participating in the CCLC is an ad-hoc responsibility. By using a dedicated facilitator to organize partners, members of the CCLC can use their energy to drive forward collaborative priorities. Additionally, by selecting a facilitator with a pre-existing relationship to the area and partners involved, trust was maintained and accelerated. Principles for engagement in ECCR that were used included integrating ECCR objectives into agency strategic planning and spending funds on contracts to support ECCR cases and programs.

Key beneficial outcomes of this process include continued momentum and reduced burden on FWS staff and improved conservation delivery, and more partners engaged. For example, a nonprofit, Conservation Northwest, is now funding a feasibility study on wildlife crossings based on spatial models developed through this effort and Washington state is putting together a statewide connectivity action plan, which is derived from habitat connectivity data collected by the CCLC.

This collaborative process has highlighted the importance of three lessons. First, collaboration moves at the pace of partners; it is important to reframe expectations on the length of the process when collaboration is a key component. Second, as the partnership expands, the CCLC may need to adapt to different focal areas. Finally, facilitators are invaluable to the collaborative process because they have dedicated capacity to move the work of the group forward.

#### **COST SAVINGS AND AVOIDANCE OF LITIGATION**

FEDERAL ENERGY REGULATORY COMMISSION (FERC), NATURAL GAS PIPELINE FLOODING AND EROSION ISSUES FERC non-decisional Dispute Resolution Service (DRS) staff mediated a dispute between a landowner and a natural gas pipeline company concerning 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.

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.

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.

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.

### INTER- AND INTRA- AGENCY COLLABORATION FOR CONFLICT PREVENTION

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION (NOAA), NATIONAL MARINE FISHERIES SERVICE (NMFS) IDENTIFICATION OF AQUACULTURE OPPORTUNITY AREAS (AOAS)

NMFS Office of Aquaculture engaged in extensive intra- and inter- agency collaboration on National Environmental Policy Act (NEPA) timeline being developed to produce two Programmatic Environmental Impact Statements (PEISs)—one for the Southern California Aquaculture Opportunity Areas (AOAs) and the other for the Gulf of Mexico AOA. In the NMFS Southeast Region, staff used a third-party neutral to facilitate interagency dialogue to develop a list of reasonable alternatives being considered for the Gulf of Mexico AOA. In the NMFS West Coast Region, staff used facilitation to build inter-agency partnerships regarding aquaculture topics including AOAs.

Staff in the NMFS Southeast Region held three workshops with a facilitator who employed various ECCR techniques to help staff, stakeholders, and other State and Federal government agency staff develop reasonable alternatives considered for the Gulf of Mexico AOA Programmatic Environmental Impact Statement. The key beneficial outcome of this case was strengthened inter-agency relationships not only in the NMFS Southeast Region but also in the NMFS West Coast Region.

#### **BUILDING TRUST AND RELATIONSHIPS FOR DURABLE SOLUTIONS**

U.S. ARMY CORPS OF ENGINEERS (USACE), INTERNATIONAL RED RIVER WATERSHED BOARD (IRRWB)

### INDIGENOUS NATIONS ROUND TABLE

On January 16-17, the International Red River Watershed Board (IRRWB) Indigenous Nations Round Table brought together thirty-eight representatives of Indigenous Nations from both sides of the Canada-United States border whose traditional territory is located within the Red River Watershed (North Dakota). The IRRWB Indigenous Collaboration Task Team (ICTT) obtained a facilitator who assisted the group to identify priorities, identify opportunities for Indigenous knowledge to be integrated into IRRWB activities, and develop thirteen actionable recommendations, four of which have already been accepted by the IRRWB for inclusion in its work plan. This facilitator was instrumental in planning and leading the Indigenous Work Group (IWG). The International Joint Commission (IJC) - Canada Section paid for the Indigenous facilitator.

The St. Paul District IJC Team for the IRRWB was instrumental in supporting the workshop and overseeing the process for Board discussion and approval of the recommendations. The MVP IJC Team is led by the District Commander, U.S. Co-Chair of the IRRWB, and includes the districts Tribal Liaison and a public involvement specialist as Secretary to the Board who helped coordinate the Outreach and Engagement Committee and ICTT work that led to the formation of the Indigenous Work Group and the Indigenous Nations Round Table. The key beneficial outcomes of the facilitated roundtable were full participation from all the Indigenous communities in the Red Basin; building trust that culture and ideas are respected and allowed to develop both in parallel and in collaboration with the existing IJC Board system; and ongoing support from the IWB and ICTT for advancing the remaining nine recommendations and implementing the first four.

#### **ECCR** approaches:

- Contract with facilitator with cultural and language ties to the participants.
- Form an advisory / work group exclusively of people from within the cultural target group to inform the event planning, do the outreach to the communities to encourage participation.
- Compensate members of the advisory group and event participants for travel expenses and stipend for time to acknowledge the worth of their expertise and contributions to the IJC objectives.
- Exclude participation of people from different cultures so that those attending are comfortable speaking freely in a manner that is meaningful to them.
- Incorporate a meal into the event.
- Invite Board members / IJC Commissioners and advisors of other cultures to participate in a Meet and Greet following the event to hear firsthand impressions from the participants willing to engage in discussion about the event and their hopes for future collaboration.
- Allow time for "representatives" to consult with their communities/councils both before and after the event to be prepared to participate and approve the final products for distribution.
- Allow sufficient time to build relationships, trust, and to allow for other cultures governance systems to
  operate as usual. Sometimes building trust means NOT being in the room while the core work is being
  done by groups that are traditionally marginalized by the existing system of governance.

#### BETTER OUTCOMES FOR IMPROVING ASTHMA OUTCOMES IN CHILDREN THROUGH COLLABORATION

ENVIRONMENTAL PROTECTION AGENCY (EPA), NORTHWEST TRIBAL INITIATIVE ON IMPROVING ASTHMA

#### **OUTCOMES IN CHILDREN**

This case stands out among the multiple successful ECCR cases and projects this year due to the many and diverse stakeholders involved, the building of significant trust through the process, and the critical beneficial impact to the environment the project is expected to have.

Tribal representatives in EPA Region 10 (Idaho, Oregon, Washington, and Alaska) consistently voice concerns about respiratory health disparities, especially for children with asthma and those who experience frequent lower respiratory tract infections. EPA Region 10 is working to fulfill its Tribal trust responsibility by responding to these



Several members of the Northwest Tribal Initiative discuss topics at the Northwest Tribal Summit on Improving Asthma Outcomes in Children. Photo: EPA Region 10

needs and facilitating partnership discussions to identify and support implementation of sustainable, culturally appropriate solutions through its Northwest Tribal Asthma Initiative. This work has been a high priority since its inception, funded by multiple program offices, and it continues to align with multiple national policy directives related to healthy housing, asthma disparities, and children's health. Since 2014, EPA has maintained an active interdisciplinary team of stakeholders known as the Northwest Tribal Asthma Team, which engaged Tribal leaders around shared goals and objectives.

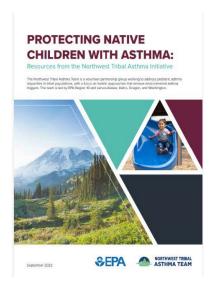


Photo: EPA Region 10

EPA's Conflict Prevention and Resolution Center (CPRC) supported EPA Region 10 staff in this work by providing a culturally competent facilitation team through its contract. Health outreach specialists also joined the project team, and together the team:

- Planned, facilitated, and documented recurring meetings of the Northwest Tribal Asthma Team.
- Identified and engaged key stakeholders throughout Region 10 regarding ways to support and advance in-home asthma management for Native Americans, approaches to integrate community health workers into these programs, and opportunities for sustainable financing.
- Supported pilot projects, including the EPA grant-funded Tulalip Tribes of Washington State pilot, the Indian Health Service Yakama Service Unit administered project, and the Nez Perce Tribe's project with the Nimiipuu Health Center.
- Engaged with environmental health specialists on the development, delivery, and evaluation of in-home asthma management in Tribal communities during the COVID-19 pandemic.
- Researched and developed a collection of resources for stakeholders addressing key topics in Tribal asthma, with a focus on holistic approaches that address environmental triggers.
- The successful engagement of key stakeholders and opportunities to work together through the Northwest Tribal Asthma Team resulted in materials that EPA can share and distribute to advance in-home asthma care.

IMPROVED OUTCOMES: JOINT DEVELOPMENT OF A COLLABORATIVE CAPACITY BUILDING PROGRAM

UDALL FOUNDATION, NATIONAL CENTER FOR ENVIRONMENTAL CONFLICT RESOLUTION, LEECH LAKE BAND OF

OJIBWE (LLBO) AND THE CHIPPEWA NATIONAL FOREST (CPF) JOINT COLLABORATIVE CAPACITY BUILDING

PROGRAM

The National Center supported the Leech Lake Band of Ojibwe (LLBO) and the Chippewa National Forest (CPF) from 2021 continuing through fiscal year 2023 to develop a joint collaborative capacity building program (Program) for CPF and LLBO personnel. The Program, which included a series of capacity building workshops and webinars facilitated by the National Center, was designed to address ongoing tensions and develop a long-term strategy to implement the current Memorandum of Understanding (MOU) between CPF and LLBO. The MOU defines a collective approach for managing Leech Lake Reservation Trust Lands, and includes topics related to natural resource management and maintaining Ojibwe cultural lifeways. The MOU also clarifies regulatory jurisdiction on the National Forest System and addresses economic development, employment, training, and education related issues.

National Center staff interviewed individuals from LLBO and CPF and produced an assessment report in 2022 that informed the Program development process. From Spring 2023-January 2024, National Center staff facilitated a Planning Team consisting of CPF and LLBO staff to develop the components of the Program, including two workshops, and multiple webinars. In July 2023, the National Center facilitated a two-day pilot workshop at the Leech Lake Tribal College in Cass Lake, Minnesota for an audience that included leaders from LLBO and CPF. Building on lessons learned from the pilot, a second workshop was held in January 2024 for a larger group of 50 LLBO and CPF staff and leaders. Workshop content included modules from the National Center's standard collaboration training courses and customized scenarios developed by CPF and LLBO personnel. The National Center also supported the development of three customized 60–120-minute webinars in the Fall of 2023. These webinars featured LLBO presenters who shared information related to cultural context, worldview, historical trauma, racism and racial dynamics, law, and the Tribe's history. A fourth webinar on Interest-Based Negotiation was recorded in Fall 2024 by the National Center. This recording and all materials are permanent resources that CPF and LLBO can use to support ongoing collaboration, learning, and growth.

# ECCR Capacity Building and Investment in FY 2023

Federal departments and agencies reported a wide variety of investments to build capacity and sustain the use of ECCR in FY 2023, 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.

#### Department of Energy (DOE)

During FY 2023, DOE site and program offices maintained and enhanced their awareness of ECCR methods and opportunities through:

- Monthly environmental attorneys' conference calls. On average, 10 participants join the monthly calls.
- Annual joint DOE/DOE contractor environmental attorney training, including a one-hour ECCR and Tribal Engagement training from National Center staff. A total of 166 site and program office representatives participated in the annual training conducted on September 27, 2023.

#### <u>Department of the Interior (DOI)</u>

The Department of the Interior (DOI) continues to provide programmatic and institutional capacity to encourage the broadest possible appropriate and effective use of ECCR processes through the following programs and offices: the Office of Collaborative Action and Dispute Resolution (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.

- Thirteen (13) Full-Time Employees (FTEs) in DOI's Office of the Secretary (12) and BLM (1) supported ECCR services and programs, and internal collaboration and conflict management activities that build capacity for employees' engagement with the public.
- Twenty-three (23) collateral duty BLM-CADR coordinators worked in the BLM State or center offices to provide ECCR support, guidance, and capacity building to BLM employees and stakeholders in the field and district offices.
- In FY 2023, CADR continued its work supporting an ECCR community of practice with representatives
  from Bureau of Land Management (BLM), Bureau of Ocean Energy Management (BOEM), Bureau of
  Reclamation (USBR), 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.
- The CADR Office and the Interior ECCR Community of Practice (CoP) developed and hosted two educational webinars: "Examining the Power Dynamics and Outcomes of Oregon Forest Collaboratives" and "Collaboration and the Federal Advisory Committee Act."
- CADR staff members regularly represent DOI on several interagency groups and participated in a variety of interagency efforts to build common understanding and jointly advance collaboration and ECCR. Examples include the ECCR forum led by OMB/CEQ, "Accessibility in ECCR" Working Group, and the Interagency Alternative Dispute Resolution (ADR) Working Group.
- BLM CADR program worked with the University of Utah, S.J. Quinney College of Law to offer their regular six-month ECCR Certification course exclusively to BLM employees. Thirty-three (33) employees were certified in ECCR by February 2024.
- The course, *Effective Public Engagement and Collaboration* was developed for BOEM by CADR ECCR IDIQ Contract practitioners and adapted for BLM as an in-person three-day intensive workshop.
- BOEM Pacific Region personnel participated in a multi-day ECCR focused negotiation training to more effectively engage and collaborate with their stakeholders.
- The CADR office delivered its foundational course "Getting to the CORE of Conflict and Communication" to 560 employees from all Bureaus and Offices in DOI's eight (8) geographic regions of the U.S.
- CADR team members also delivered a "Dynamic Facilitation Skills" training to 317 employees across
  DOI. Other offerings included training for the 100 Interior facilitation and mediation roster members,
  and Future of Work-related offerings that reached 222 participants. In total, DOI CADR training
  offerings reached 3,499 participants.
- The BLM CADR program offered the following trainings to its employees: Conflict Resolution Skills for Environmental Professionals attended by fifty-four (54) participants, Developing and Maintaining High Performing Teams attended by fifty-five (55) participants, Persuasive Speaking on Environmental Risk & High Stakes Topics attended by fifty-two (52) participants, and Planning Public Engagement & Communicating Science & Policy Training attended by twenty-five (25) participants.

• FWS, through the Partnership and Community Collaboration Academy, co-hosted two trainings with a significant ECCR component: Four (4) FWS personnel attended Managing by Network and nineteen (19) attended Collaborative Conservation Partnerships in Practice.

#### **Environmental Protection Agency**

The Conflict Prevention and Resolution Center (CPRC) is EPA's resource for ECCR. As of FY 2022, EPA's CPRC moved to the newly established Office of Environmental Justice and External Civil Rights which leads an increased use of ECCR for environmental justice and civil rights matters. EPA found that it can use ECCR to help build their agency's capacity in environmental justice through practices such as facilitated dialogues with EPA staff and other stakeholders to address long-term problems and ensure a healthy environment for future generations. In FY 2023, EPA accomplished the following:

- CPRC trained 674 EPA staff, in thirteen (13) sessions, totaling over sixty-eight (68) hours of training.
- ECCR Specialists trained an additional 303 EPA staff in three (3) training sessions.
- ECCR Specialists in Region 1 led training on active listening.
- ECCR Specialists in Region 4 led collaboration and conflict resolution training as part of the Environmental Justice Academy.
- ECCR Specialists in Region 5 led an interest-based negotiation training.
- CPRC continually improved its trainings after each delivery and developed two (2) new role-play exercises for its popular training, *Negotiate Better: An Interest-Based Approach (IBN)*.
- CPRC and ECCR Specialist trainers unveiled a Superfund-focused role-play for the IBN training, which was delivered to Region 7 Superfund attorneys, and a Title VI-focused role-play, which was delivered to the Office of External Civil Rights Compliance. The new role-plays support negotiations practice for two (2) of CPRC's key EPA clients.
- CPRC staff and ECCR Specialists taught other core trainings, such as *Designing Effective Public Involvement* and *Facilitating Dialogue*, both virtually and in-person on multiple occasions.
- All litigants before the Administrative Law Judges continued to be offered ECCR services.
- CPRC is staffed with six (6) full-time employees to support ECCR services.
- ECCR services are provided across the EPA by thirty (30) skilled ECCR Specialists, who are in all ten (10) EPA regions and work closely with CPRC staff.
- EPA's network of ECCR Specialists grew from twenty (20) to thirty (30) staff.

#### Federal Energy Regulatory Commission (FERC)

In FY 2023, FERC accomplished the following:

- 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.
- Hosted a *Hydropower 101 Workshop* at the 2022 Clean Currents Conference for seventy-five (75) participants.
- Presented on *How Hydropower is Regulated in the United States* at the 2023 HydroVision International conference for eighty (80) participants.
- Presented the *Hydropower 101* webinar for the U.S. Forest Service to forty (40) participants.
- Presented on *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 to approximately fifty (50) participants.
- Presented FERC Hydropower overview to four (4) congressional staffers.

#### National Oceanic and Atmospheric Administration (NOAA)

In 2023, NOAA's notable capacity-building investments included:

- NOAA's Office of the General Counsel, Environmental Review & Coordination Section (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.
- NOAA's Office of the General Counsel, Environmental Review & Coordination Section (ERC), developed
  a survey to facilitate the collection of information used to compile the FY 2022 ECCR Synthesis Report.
  ERC found that this mode of data collection was easy and convenient based upon survey participant
  feedback. As such, ERC will use the ECCR Forum survey method to collect information for future ECCR
  reports.
- NOAA's Office of the General Counsel, Environmental Review & Coordination Section (ERC) continues
  to meet with NOAA staff and staff from the Udall Foundation's National Center for Environmental
  Conflict resolution on a quarterly basis to discuss ways to better incorporate environmental
  collaboration and conflict resolution principles into NOAA practices and projects, including those
  involving Native Nations.
- One (1) person attended the Udall Foundation, National Center for Environmental Conflict Resolution: "Understanding Conflict and Planning for Successful Collaboration" training.
- One (1) person attended the Udall Foundation, National Center for Environmental Conflict Resolution: "Crafting Collaborative Solutions to Environmental Conflicts" training.
- One (1) person attended the Udall Foundation, National Center for Environmental Conflict Resolution: "How Federal Indian Law and Policy Empower your ECCR Toolkit" webinar.
- One (1) person attended the Udall Foundation, National Center for Environmental Conflict Resolution: "Federal Permitting Improvement Steering Council (FPISC) - Effective Collaboration & Consultation with Native Nations in FAST-41 Training".
- One (1) person attended the Udall Foundation, National Center for Environmental Conflict Resolution: "Connecting Generations Federal Indian Law 101 Resource" webinar.
- One (1) person attended the Udall Foundation, National Center for Environmental Conflict Resolution: "Connecting participants and ECCR practitioners through Stories from the Field" webinar.
- One (1) person attended the Udall Foundation, National Center for Environmental Conflict Resolution: "Correlations between ECCR and the Overall Health and Well-Being of Native Communities" webinar.

#### <u>Udall Foundation</u>, National Center for Environmental Conflict Resolution (National Center)

The National Center <u>provides training in ECCR</u> to Federal agencies and their stakeholders as part of their Congressionally mandated mission. In FY2023, the National Center provided ten (10) ECCR trainings to government, Tribal members, stakeholders, and citizens. All National Center trainings are grounded in the effective skills and practice of ECCR.

Additionally, National Center leadership and team members provided six free webinars on various ECCR topics during FY 2023: Indigenous Data Governance, Environmental Collaboration and Conflict Resolution in Support of Federal Climate Initiatives: Success Stories, How Federal Indian Law and Policy Empower your ECCR Toolkit, Connecting Generations Federal Indian Law 101 Resource, Connecting participants and ECCR practitioners through Stories from the Field, and Correlations between ECCR and the Overall Health and Well-Being of Native Communities.

#### U.S. Army Corps of Engineers (USACE)

In FY 2023, USACE continued to fund the <u>Collaboration and Public Participation Center of Expertise</u> (CPCX) to serve as an ECCR focal point for the agency. The interdisciplinary team of seven staff members supported CPCX for an equivalent of three to four FTEs. CPCX increased the number of courses and webinars delivered, including training and coaching sessions on *Designing for Diversity*. National trainings included:

- Eleven (11) courses
- Twenty-one (21) webinars
- Five (5) online coaching sessions
- Quarterly newsletters emailed to the Collaboration and Public Participation Community of Practice consisting of over 3,000 persons

Webinar participation counts for all twenty-one (21) webinars totaled 2,173 participants and 201 students graduated from the eleven (11) courses. The target audience was USACE staff for most of these activities, although some interagency partners participated as well.

Related investments in ECCR capacity included:

- USACE headquarters designated a full time Environmental Justice (EJ) Program Manager.
- CPCX delivered a "Designing for Diversity" training program that helped almost 400 staff plan equity-centered outreach and engagement for projects.
- Every Civil Works district and division office appointed one (1) or two (2) Environmental Justice Coordinators and completed EJ Strategies.
- CPCX and individual USACE districts continue to identify, support, and train subject matter experts in ECCR through the district-level Public Involvement Specialist (PI Specialist) program. PI Specialists increase district collaborative capacity by transferring skills via formal and informal training for staff and leadership. During FY 2023, many new members were selected to fill vacant or replace seats, with about 30 seats filled at the end of the FY.
- The Tribal Nations Technical Center of Expertise maintains an IDIQ contract with nine (9) organizations experienced in working with Native American communities around the country who provide third-party neutral support.
- Fifty-six Silver Jackets teams (50 states, DC, the Navajo Nation, and 4 territories) across the country identify flood risk priorities and look across partner agencies and organizations Silver Jackets are interagency teams that are State-, Territory-, or Tribe-led teams that promote significant interagency collaboration on flood risk and other natural hazard issues and support ECCR activities.
- Kansas City District invested in training eight (8) staff in *Partnering and Facilitation Training* and then promoted these graduates as an internal resource for supporting internal and external meetings.
- San Francisco District hosted a district-wide webinar on CPCX 101 and twenty (20) people attended.
- Many individual staff members also attended external training in facilitation, risk management, public participation, and environmental collaboration.

# U.S. Department of Veterans Affairs (VA)

The VA did not have the need to utilize an ECCR process in FY 2023, 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, the VA seeks input from stakeholders through public meetings for actions and projects that it anticipates will generate controversy. VA also maintains an Environmental ADR Program website, <a href="https://www.va.gov/adr/EnvADR.asp">https://www.va.gov/adr/EnvADR.asp</a>.

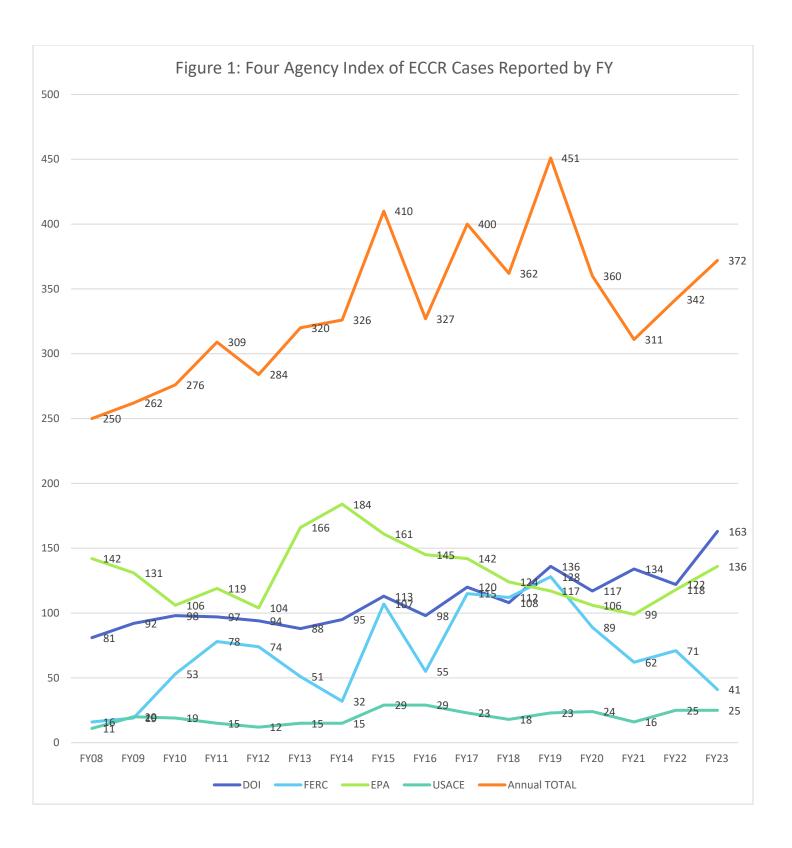
### **ECCR Case Number Data**

Beginning with the FY 2021 synthesis report, ECCR case numbers are tracked using an index of data from four (4) agencies: Department of the Interior, Environmental Protection Agency, Federal Energy Regulatory Commission, and U.S. Army Corps of Engineers. These agencies have a robust history of reporting ECCR case numbers and are committed to continuing 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 2023. Both EPA and DOI significantly increased their use of ECCR: there were 136 EPA cases and projects in FY 2023, up from 118 in FY 2022; there were 163 DOI cases and projects in FY 2023, up from 122 in FY 2022.

Page **15** of **20** 

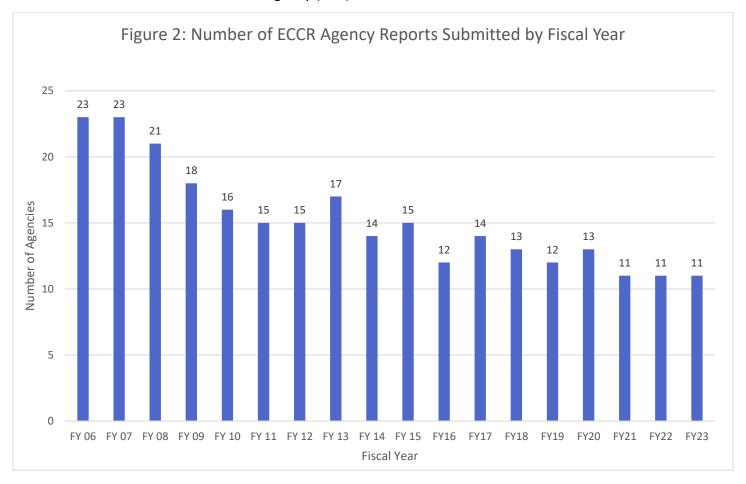
<sup>&</sup>lt;sup>5</sup> FY 2021 case numbers were updated from 360 to 311.



# Appendix A: Number of Federal Agencies Reporting on Use of Environmental Collaboration and Conflict Resolution (ECCR) by Fiscal Year

The number of Federal departments and agencies submitting annual ECCR reports has declined from twenty-three (23) in FY 2007 to eleven (11) in FY 2023, as seen in Figure 2, below. The case number index data over the same period of time demonstrates that the decline in number of agencies reporting is likely not due to an indication of the decreased use of ECCR by Federal agencies. A number of factors could influence the decline in reporting agencies, including bandwidth for data collection and reporting and limited agency benefits to reporting. Nine (9) departments or agencies have submitted reports annually since reporting began in FY 2006, including:

- Department of the Interior (DOI)
- Department of Energy
- 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: Environmental Collaboration and Conflict Resolution (ECCR) Use in the Federal Government

Historically, agencies reported on the context for ECCR use since FY 2007. 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 specifical examples of how ECCR has been used in each of the 5 categories above.

Figure 3: Common Contexts for ECCR Use

#### Natural Resource Regulatory & Implementation of Consultation & **Broad Environmental** Planning & Administrative Rule Coordination Issues **Environmental Laws** Management Actions Energy Development Forest Planning •Tribal Consultation Environmental Justice National **Environmental Policy** and Transmission. Conservation and • Joint Fact-Finding in •Climate Change including Renewable Act (NEPA) Planning and Collaboration Watershed-level Energy; Offshore Development Endangered Species • Regional Infrastructure **Resource Planning** Development Act (ESA) Development •Multi-Party, Multi- Socially and Culturally Negotiated •Clean Water Act •Water Resources (e.g., Scope Issues **Important Species** Rulemaking (CWA) storm water, Multi-Agency Management Compliance and Programmatic groundwater National Historic **Enforcement Actions** permitting; water Agreements **Preservation Act** releases, quality, and Permitting Review (NHPA) Stakeholder & security; flood risk Site Permits Comprehensive Community assessment and Engagement Environmental recovery) Response, Public Involvement Compensation, and Collaborative Liability Act (CERCLA) discussion with Resource Conservation Federal and nonand Recovery Act Federal partners (RCRA)

## Appendix C: Acronyms

ADR Alternative Dispute Resolution

**AF** U.S. Air Force (Air Force)

ANSCA Alaska Native Claims Settlement Act
AOA Aquaculture Opportunity Areas (NOAA)

**Army** U.S. Army (Army)

**BLM** Bureau of Land Management

**BOEM** Bureau of Ocean Energy Management

BSEE Bureau of Safety and Environmental Enforcement (DOI)
CADR Collaborative Action and Dispute Resolution (DOI)

**CC** Coordinating Committee (DOI)

**CCLC** Cascades to Coast Landscape Collaborative (DOI)

**CERCLA** Comprehensive Environmental Response, Compensation, and Liability Act

**CEQ** Council on Environmental Quality

**CoP** Community of Practice

**CPCX** Collaboration and Public Participation Center of Expertise (USACE)

**CPRC** Conflict Prevention and Resolution Center (EPA)

**CWA** Clean Water Act

**DCHD** Departmental Cases Hearings Division (DOI)

DOD Department of Defense
DOI Department of the Interior
DOL Department of Labor

DRS Dispute Resolution Service (FERC)
EA Environmental Assessment

**ECCR** Environmental Collaboration and Conflict Resolution

**EJ** Environmental Justice

**EPA** U.S. Environmental Protection Agency

**EPP** Environmental & Public Policy (Association of Conflict Resolution)

ERC Office of the General Counsel, Environmental Review & Coordination Section (ERC)

**ESA** Endangered Species Act

**FERC** Federal Energy Regulatory Commission

**FPISC** Federal Permitting Improvement Steering Council

**FWS** U.S. Fish and Wildlife Service

FY Fiscal Year

ICTT Indigenous Collaboration Task Team (USACE)

IDIQ Indefinite Delivery/Indefinite Quality
IBLA Interior Board of Land Appeals (DOI)

**IBN** Interest Based Negotiation

IJC International Joint Commission (USACE)

IRRWB International Red River Watershed Board (USACE)

IWG Indigenous Work Group (USACE)

LCT Lahontan cutthroat trout

**NAUL** Notice of Activities and Use Limitations

NDOW Nevada Department of Wildlife
NEPA National Environmental Policy Act

NHPA National Historic Preservation Act

NMFS National Marine Fisheries Service (NOAA)

NOAA National Oceanic and Atmospheric Administration

NPS National Park Service

NTEP National Tribal Engagement Program
OHA Office of Hearings and Appeals (DOI)
OMB Office of Management and Budget

PEIS Programmatic Environmental Impact Statement

PI Specialists Public Involvement Specialists (USACE)
RIT Recovery Implementation Teams (DOI)

**Synthesis Report** ECCR in the Federal Government Synthesis Report

**UGOs** Updated Goals and Objectives (DOI)

**USACE** U.S. Army Corps of Engineers

**USBR** Bureau of Reclamation

USGS United States Geological SurveyVA Department of Veterans Affairs