Environmental Collaboration and Conflict Resolution

Quarterly Forum

Wednesday, October 29, 2014

Meeting Notes

Opening: Suzanne Orenstein (Udall Foundation) and Horst Greczmiel (CEQ) welcomed participants and reviewed the agenda. A list of participants is included in Attachment 1.

General Updates: Andrea Grossman of OMB notified the forum that the FY 13 synthesis report was sent to senior leaders in agencies by Michael Boots, Acting Chair of CEQ and Ali Zaidi, Associate Director for Natural Resources, Energy and Science at OMB. Horst Greczmiel reminded participants that individual agency reports and the synthesis are posted on www.ecr.gov, and that there is a need to identify new contacts in senior leadership positions for ECR in several agencies. Peter Williams noted that USIECR is beginning to explore performance metrics for ECR and will bring some information on that topic to the next Forum meeting.

ECCR Updates from Agencies:

USACE

- Over past years, have completed a series of collaboration workshops in regional offices and a survey of collaborative capacity, identifying various needs and recommendations for improvement. As part of building ECR capacity, USACE held a national summit of collaboration staff at the end of July using virtual collaboration tools due to travel restrictions for in-person meetings. Last week, representatives from each region reviewed the Conflict Resolution and Public Participation Center of Expertise (CPCX) strategic plan in preparation for planning for the next 5 years.
- Exploring online collaboration tools and technologies, and think it would be useful to discuss that topic during a future ECR Forum.

EPA

- Issued a new five-year IDIQ contract for EPA ADR and ECR services in June 2014.
- Continuing to provide training and skills support to EPA staff. Held a successful course recently on negotiation tips and strategies for dealing with difficult people. CPRC expects to grow its training services in coming years.

BLM

- New IDIQ contract established by CADR within the Department of Interior is very helpful in BLM ECR projects.

US Air Force

- Basic ECR skills training for environmental engineers is taking place in Texas. Hoping to follow up with additional trainings in the coming year.

US Navy

- Still recovering from budget challenges. Working on future trainings.

DOT

- New ECR contact person in DOT is Julie Kaplan, an attorney in the Office of the Secretary.
- Interested in providing opportunities for training for DOT staff.

FERC

- Mediating a precedent-setting case on a pipeline issue in Louisiana and Mississippi.
- Deb Osborne of FERC is involved in the ADR Committee of the Energy Bar Section of the ABA. Recently conducted a video training session on ADR processes regarding power lines. FERC is also continuing to provide early conflict prevention work on siting and other issues.
- Recently attended and recommends advanced mediation courses on the ethics of ADR for construction arbitrations and mediations, sponsored by ABA and the CPR International Institute for Conflict Resolution and Prevention.

USIECR

- Hiring for several new program positions which all require varying levels of ECR, contracting, and project management skills.
- Recently re-designed the Udall Foundation-USIECR website.
- Beginning to plan for the next ECR conference, which would occur in 2016 at the earliest.

NRC

- Actively working to incorporate ECR into programmatic agreements on the NHPA process and for Section 106 negotiations.
- Provided training on tribal issues and Section 106 for program offices and OGC staff.

DHS

- No new updates.

NOAA

- Former Assistant Secretary of Commerce for Conservation and Management, Mark Schaefer, recently negotiated and resolved issues related to a USACE Biological Opinion for the Mud Mountain Dam project in the state of Washington.

USGS

- Offering negotiation training to federal agencies. Recently completed training for Fish and Wildlife Service in September. Will be holding an advanced class in November.

OMB

- Working on ECCR in infrastructure permitting processes.

Institutionalizing ECCR in Agency Infrastructure Permitting Processes:

Horst Greczmiel offered a brief introduction to the interagency infrastructure permitting initiative.

- The White House is working to address the timeliness of environmental reviews for infrastructure projects and permits. Looking at steps to take at the headquarters and project levels.
- CEQ is working with OMB, which is leading the development of products and plans for coordination of project reviews to better integrate the reviews in permitting processes.
- A public website (www.permits.performance.gov) provides information on major infrastructure projects and permits in an effort to be more transparent, and to engage agencies in a more rigorous process for tracking progress. There are a wide array of infrastructure projects represented on the website.
- There is a need for collaboration at the earlier stages of infrastructure permitting within federal agencies, but also within other entities (i.e. state, private, etc.). While this initiative specifically refers to infrastructure, it can translate to other sectors of the government.
- The implementation plan guiding the interagency work is available at http://www.permits.performance.gov/pm-implementation-plan-2014.pdf.

Mark Bussow, Performance Team Lead at OMB, gave a presentation on institutionalizing collaboration and conflict resolution in agency infrastructure permitting processes.

- OMB works to support and advance operational improvement and achieve performance outcomes. The goal is to address information gaps and cross-cutting issues in a way that is efficient and timely.
- An interagency team hosted by DOT – the Interagency Infrastructure Permit Improvement Team (IIPIT) – is looking at how interagency coordination can be improved. They are focusing on the different components of the process, including the pre-application phase to catch issues early-on that could be problematic later. Also looking at the conflict resolution needs and where delays can occur due to resolvable conflict.
- Looking at dispute resolution at different levels. At the most basic level, making sure staff have the skills and support to directly resolve conflicts. Considering how to manage conflict as issues move up leadership chains.
- OMB is interested in what can be done to strengthen conflict management at the project level. Also looking for structures we can provide that would embed conflict resolution procedures into the process. At the headquarters level, need to figure out how this works if the dispute reaches the agency leadership. Likely to have additional challenges at this level because of increasing complexity and potential for conflicting missions.
- Action: Looking for feedback from ECR Policy Forum participants on what level of conflict resolution is available and appropriate; if participants have ideas and other recommendations for building additional capacity for conflict resolution in agencies please submit them to Suzanne and Horst.

Participant Discussion

USIECR

- Udall Foundation-U.S. Institute is one of the agencies involved in these interagency infrastructure discussions. Institute is working to emphasize collaboration as a tool and has developed Principles for Stakeholder Engagement in Infrastructure Permitting that project proponents could use. Kyle Hathaway (OMB) is working with Suzanne to help finalize the Principles which will be distributed to the Forum members.

- Another strategy is the use of third parties for conflict resolution as the project proceeds from the application level to the interagency level to the headquarters level. There could also be an opportunity to train staff to act as third party mediators, eliminating the need for an outside third party neutral.
  - USIECR has recommended that there be trained conflict resolution personnel in every district or region so that the conflict management part of preventing disputes can be done more expeditiously. Often it is difficult to bring neutral third parties into the ongoing discussions, and in-house staff could provide consultation and support for dispute resolution.

CEQ

- Looking to break down 'cylinders of excellence' in order to bring together different permitting processes, promote more collaborative planning, provide opportunities for all, and work to align goals.

OMB

- OMB leadership is looking to address interagency decision-making challenges but struggling because of the complexity involved. Senior leadership is pushing for more useful creative options. Conflicts that are not resolved at the lower levels can move to the political realm and become more positional, and then timely and optimal decisions are less likely to happen.
- OMB has a range of tools available. Budgetary resources, interagency guidance, executive orders, legislative proposals, and regulation are some examples.

Participants discussed the Interagency Steering Committee and Working Group that Guides Improvements in Infrastructure Permitting.

- The Deputy Secretaries constitute the Interagency Steering Committee for Infrastructure Permitting Improvements established under Executive Order 13604 and managed by OMB in consultation with CEQ.
- The interagency working group staffs the Deputy Secretary Steering Committee. A list of agency leads at this level will be distributed to participants.
- Action: OMB put out a call to agencies to provide detailers with expertise for a permitting improvement center to be housed at DOT. The center is called the Infrastructure Improvement Policy Implementation Center. Detailers are still needed, so the position description will be circulated to Forum participants.
- OMB is in the information gathering phase regarding workable conflict resolution and collaboration. Please send ideas about how ECCR can support this work to Suzanne Orenstein (orenstein@ecr.gov) and she will forward them to OMB.

Structuring Agency ECCR Capabilities in Regions

USACE

- Recently created a pilot position for a Public Involvement Specialist (PIS) to act as a collaboration expert/advocate in a specific district office. A recent USACE report showed that regions that had collaboration experts had better relationships with their respective communities and stakeholders, leading to better long-term solutions.
- Now trying to replicate this in other districts. The PIS would be the point person for advice and support to staff who are seeking ECR assistance in the district office. The position would not be located in the office of public affairs, would provide direct project support, and would be funded through the particular project.

- Struggling with how to build such a position or a network of positions; i.e. what the job classification should be, how to convince districts that this is a valuable service, etc. This is one example of the ongoing challenge of quantifying and demonstrating the value of collaboration.
- Not all of the districts have funding resources, and funding this position from the Institute for Water Resources is not sustainable. Looking for advice and suggestions about how this has worked for other agencies and how we could address USACE challenges.

EPA

- EPA has 10 regions; 9 of which have ADR specialists. Two or three regions have full time positions, but they are funded by individual media offices. EPA provides ADR support across regional offices but has not be able to get a separate ADR/ECCR specialist in each regional office. Headquarters occasionally will fund the initiation of the project (i.e. assessment, convening) and will bring the resources together from program offices to fund the rest of a project. Headquarters funding mostly serves to get projects off the ground.
- There is a positive correlation between regions where there are active regional ECR/ADR specialists and the amount of ECCR work in the region. EPA's community involvement coordinators for Superfund programs serve a similar function. EPA's Conflict Prevention and Resolution Center (CPRC) can provide more information on request.

BLM

- BLM has 12 regions, each has a dispute resolution coordinator. Extra funding is not provided, so much of the leveraged resources for the position comes through the personal motivations of staff and state directors. Working on codifying this further by defining roles, skills, and expectations.

Participants discussed how a PIS could be funded. Some of the ideas discussed were:

- Project funded—ECR is part of the project budget.
- Headquarters funding.
- Private partnerships, partnerships with industry.
- Cost-sharing authorities.
- USFS has worked on a project to grow collaborative capacity in agencies. They may have additional information about staffing, skills, how to fund.
- State and local governments sometimes require the project applicant to pay for collaboration and outreach for the project, often as part of the contract for the EIS.

Overview of BLM study on collaborative capacity for ECCR at BLM

BLM's work covers managed public lands in many different regions with a variety of different laws and rules. Over the past year they devoted resources to identifying internal collaborative capacity. They conducted an assessment of division experience with conflict resolution that looked at attitudes toward ECR, barriers, support for it, and resources needed. The researchers surveyed 6700 employees (approximately 2/3 of BLM staff) and achieved a 45% response rate. They surveyed field staff electronically and then followed up by interviewing 22 field managers via telephone. Field managers were chosen through random distribution, and the researchers used Atlas TI to do content analysis. The Final Report titled "A Survey of BLM Employees on Collaboration and Alternative Dispute Resolution" is currently going through a peer review and editing process prior to publication.

Selected findings from BLM research on capacity for ECCR:

- Found that field staff want training in collaborative competencies. Beyond the field office, most staff had little information on collaboration. This informed BLM ECCR strategic planning.
- Report assessed where field staff see barriers to collaboration, and compared them across levels. All program areas expressed support for more collaboration and ECCR, with field-level staff asking for the most support.
- Also found that field managers rely on personal and professional networks and would call people they knew when collaboration problems arose. Typically they would turn to people they met in leadership classes or in collaboration trainings. Study found that increasing capacity is achieved through strengthening networks.
- Level of conflict people are dealing with varies tremendously, and this needs to be evaluated further for additional input about capacity building.
- One challenge is that BLM staff move frequently and BLM staff develop relationships and then get promoted and move on.
- Those who are highly skilled in ECR noted the value of listening and two-way communication, admitted mistakes, appeared deliberate and intentional in how they coached or mentored, talked about finding mutually beneficial solutions, emphasized the importance of feedback, and talked freely about their networks and where they turn for advice.

Action: The final peer-reviewed report will be on the USGS Open File System. BLM will notify agencies when it is published.

Plan for Next Meeting

- The next Forum meeting will be scheduled for February after FY 14 agency annual reports are submitted.
- Tentative Plan for February Meeting:
    - Discussion of how agencies are measuring costs and benefits of ECCR and performance measures for ECR, including quantitative and qualitative metrics. Also will begin discussing metrics to use in future years.
    - Action: To prepare for this discussion, USIECR will assemble information from the FY 13 annual ECCR reports about (1) current agency metrics, (2) self-reported agency success stories that might be highlighted for agency leadership, and (3) Online collaboration tools and technologies. This information will be disseminated to participants in advance of the meeting.

Action Items

- Suzanne will circulate information for Infrastructure Permitting background, including:
    - Proposed Principles for Stakeholder Engagement
    - Proposed Principles for Dispute Resolution
    - List of agency contacts for interagency infrastructure work
    - Position description for details with the Interagency Infrastructure Permitting Improvement Center
- BLM will notify agencies when the collaborative capacity report is published on USGS.
- Participants will provide suggestions for potential forum topics by email to orenstein@ecr.gov no later than December 19, 2014.

Attachment 1: Attendees

Attachment 1

In Person:

Suzanne Orenstein- USIECR

Horst Greczmiel- CEQ

Peter Williams- USIECR

Andrea Grossman- OMB

Hal Cardwell- USACE

Rich Kuhlman- EPA

William Hall- EPA

Andrea Carson- USACE

Maria Lantz- USACE

Matt Magee- BLM

Patricia Collins- US Air Force

Amanda Myers- US Navy

Julie Kaplan- DOT

Deborah Osborne- FERC

Mark Bussow- OMB

Lauren Nutter- USIECR

Debra Drecksel- USIECR

Marisha Patel- BLM

Kyle Hathaway- OMB

Valerie Puleo- USIECR

On Phone:

Nina Burhardt- USGS

Bill Bresnick- DHS

Joan Olmstead- NRC

Steve Kokkinakis- NOAA

Bob Manley- US Navy

Amanda Myers-US Navy

Colonel Tucker on behalf of Carrie Griffel- DOD