

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

Synthesis of FY 2013 Reports

Submitted by Federal Departments and Agencies

Pursuant to the OMB/CEQ Policy Memorandum on ECCR of September 7, 2012

Summary

This analysis provides an overview and detailed synopsis of Federal department and agency use of environmental collaboration and conflict resolution (ECCR) for FY 2013. ECCR is third-party assisted environmental collaboration and environmental conflict resolution (ECR) to resolve problems and conflicts that arise in the context of environmental, public lands, or natural resources issues, including matters related to energy, transportation, and water and land management. In FY 2013, agencies reported 515 active ECCR efforts, of which approximately one-third were completed and the remainder continued into FY 2014. Analysis of the FY 2013 reports shows that EPA, DoD, DOI, USFS and FERC have the highest volume involvement in ECR or ECCR which has been the case since reporting began in FY 2007. Government-wide, ECCR use is greatest in the areas of planning, compliance and enforcement, and monitoring and implementing of agreements. ECCR is also used in the contexts of policy development, permitting, rulemaking, and siting and construction. This usage pattern has remained relatively constant for the past seven years.

Agencies reported a wide spectrum of benefits from the use of ECCR including: balancing of competing interests, building trust and productive relationships, more informed decisions and sometimes more creative solutions to conflicts and challenges, more efficient program delivery, and stakeholder buy-in and support of outcomes. This analysis also shows that Federal departments and agencies continue to take measures to build capacity in ECCR such as investing in training, establishing ECCR procurement mechanisms, and supporting ECCR communities of practice.

1. Background

On September 7, 2012, the Office of Management and Budget (OMB) and the President's Council on Environmental Quality (CEQ) issued a joint policy memorandum on environmental collaboration and conflict resolution (ECCR).¹ Building on 2005 OMB-CEQ guidance, the memo encourages Federal departments and agencies to increase the use of collaborative approaches and conflict resolution to manage and resolve disputes that arise over the use, conservation, and restoration of the environment and natural resources.²

2. Reporting Requirement and FY 2013 Participation

To promote and assess progress on the implementation of the ECCR policy guidance, Federal departments and agencies are required to report annually to OMB and CEQ. Specifically, Section 4(g) of the 2012 memorandum notes that:

"Federal departments and agencies shall report at least every year to the Director of OMB and the Chair of CEQ on their use of Environmental Collaboration and Conflict Resolution for these purposes, and on the estimated cost savings and benefits realized through third-party assisted negotiation, mediation, or other processes designed to help parties achieve agreement. Costs savings and benefits realized should be reported using quantitative data to the extent possible. Departments and agencies are

¹ The 2012 memorandum is available online at <https://www.ecr.gov/Resources/FederalECRPolicy/MemorandumECR.aspx>.

² Joint OMB/CEQ Policy Memorandum on Environmental Conflict Resolution, November 28, 2005.

encouraged to work toward systematic collection of relevant information that can be useful in on-going information exchange across departments and agencies as fostered by Section 4(e)."

In response to the reporting requirement, the following twelve departments and agencies submitted reports for FY 2013.

- Department of Defense (DoD)
- Department of Energy (DOE)
- Department of the Interior (DOI)
- Department of Transportation (DOT)
- Department of Veterans Affairs (VA)
- National Aeronautics and Space Administration (NASA)
- National Oceanic and Atmospheric Administration (NOAA)
- U.S.D.A. Forest Service (USFS)
- Environmental Protection Agency (EPA)
- Federal Energy Regulatory Commission (FERC)
- Nuclear Regulatory Commission (NRC)
- U.S. Institute for Environmental Conflict Resolution (U.S. Institute)

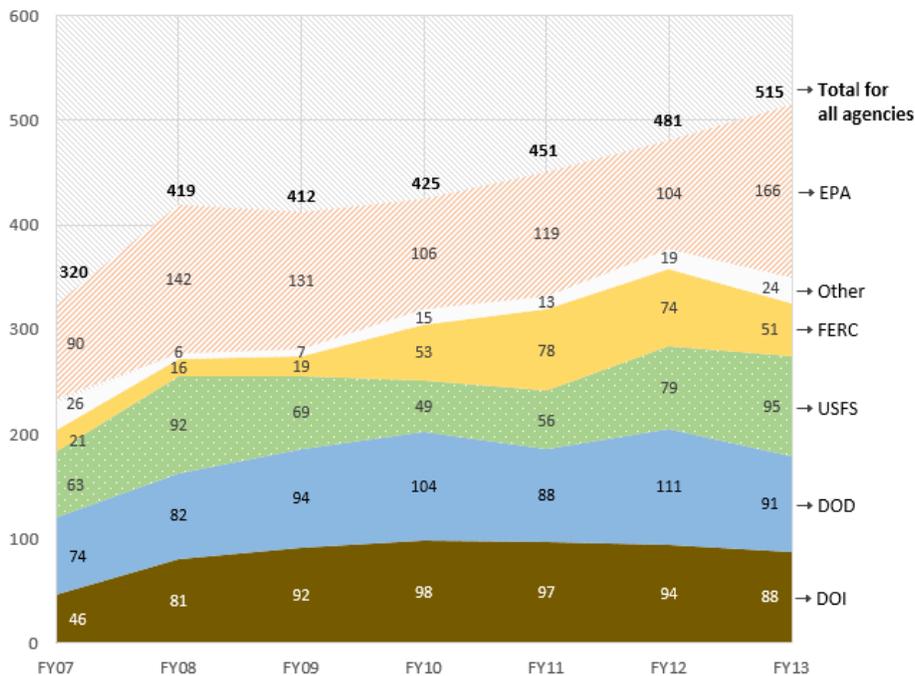
This synthesis summarizes the information in the FY 2013 reports. The individual department and agency reports are posted online at <http://www.ecr.gov/Resources/FederalECRPolicy/AnnualECRReport.aspx>.

3. ECCR Sponsorship and Participation

For FY 2013, Federal departments and agencies reported 515 instances where they either sponsored an ECCR process or participated in a process convened by another agency or entity. Of the 515 active cases, 176 (34%) were completed and the remaining projects continued into FY 2014.

EPA, DoD, DOI, USFS and FERC have consistently had the highest volume involvement in ECR or ECCR since case reporting began in FY 2007, and this trend continued in FY 2013 (Figure 1).

Figure 1. Distribution of ECCR cases in the Federal government FY 2007 to FY 2013



Overall, Federal government involvement in ECCR has increased in recent years. While there was a notable increase in case numbers (31%) between FY 2007 to FY 2008, this increase is largely attributed to refinements in case tracking mechanisms. The most recent increase in cases (7%) between FY 2012 to FY 2013 is most probably the result of the expanded definition of ECCR to include third-party assisted collaborations in the 2012 memorandum.

The total case volume reported in this briefing is based on Federal department and agency involvement in ECCR. Some double-counting is inherent where multi-agency cases are reported by each of the departments and agencies involved.³

For FY 2013, EPA both sponsored the largest number of ECCR efforts and participated in the largest number of ECCR efforts sponsored by another entity (Table 1). The EPA ECCR cases involved a diverse range of contexts, including the Comprehensive Environmental Response, Compensation, and Liability Act, the Clean Water Act 404 program, tribal relations and environmental justice, and interagency dialogues on national ocean policy, and pesticide and endangered species issues.

Table 1. Agency sponsorship and participation in ECCR efforts in FY 2013

	Highest volume	2 nd highest	3 rd highest
<i>Number of ECCR cases sponsored or participated in</i>			
Sponsored cases	EPA (141)	USFS (78)	DOI (74)
Participated in cases	EPA (25)	DoD (19)	USFS (17)

4. Applying ECCR

For FY 2013, the most commonly cited applications of ECCR were in the context of agencies meeting their responsibilities under:

- National Environmental Policy Act (NEPA),
- Endangered Species Act (ESA),
- Clean Water Act (CWA),
- National Historic Preservation Act (NHPA), and
- Tribal Consultation Executive Order.

Most reporting agencies also identified applications of ECCR aligned with their missions. Examples of specific agency activities in which ECCR was frequently applied include: site decommissioning (DOE); forest planning (USFS); aging infrastructure (USACE); renewable energy development (DOI); environmental justice (DOT); offshore energy development (NOAA); energy infrastructure projects (FERC); reactor licensing and renewals (NRC), and toxic remediation and cleanup (EPA).

5. Contexts for ECCR

In executing mission directives (e.g., flood risk management, environmental protection, energy transmission), Federal departments and agencies carry out various functions including planning, rulemaking, policy development, license and permit issuance, siting and construction, compliance and enforcement, and implementation and monitoring. Federal departments and agencies used ECCR as a tool to assist with all of these functions.

³ The ECCR case work of the U.S. Department of Justice (DOJ) and the U.S. Institute are not reflected separately as their work should be included in the reports of other federal departments and agencies which receive their ECCR services.

Of the 515 FY 2013 Federal ECCR cases, 34% (175 cases) took place in the planning context (e.g., forest, park, watershed, and infrastructure planning) (Table 2). These cases were primarily associated with agencies with significant land management responsibilities, such as DOI, DoD, and USFS. During FY 2013, 22% of all Federal ECCR activity (111 cases) took place in the context of compliance and enforcement. These cases were primarily associated with EPA and FERC, agencies with significant enforcement and compliance responsibilities.

Table 2. Functional contexts for the FY 2013 ECCR cases with details of agency decision-making context

Functional Contexts	Number and percent of cases by category	Agency Decision-Making Forums			
		Federal Agency Decision	Admin. Proceeding/ Appeal	Judicial Proceeding	Other
Planning	175 (34%)	137	4	9	25
Compliance and enforcement	111 (22%)	50	39	19	3
Implementation and monitoring	85 (16%)	30	1	0	54
License and permit issuance	24 (5%)	20	2	1	1
Siting and construction	39 (8%)	28	1	8	2
Policy development	22 (4%)	20	0	0	2
Rulemaking	26 (5%)	22	0	2	2
Other	33 (6%)	11	2	4	16
Total	515 (100%)	318	49	43	105

As part of the FY 2013 reporting cycle, Federal departments and agencies identified the decision-making forums that were addressing the issues when ECCR was initiated (Figure 2). Of the 515 FY 2013 Federal ECCR cases, 62% (318 cases) occurred in the context of a Federal agency decision, 9% (49 cases) were referred to ECCR from administrative proceedings or appeals, a further 8% (43 cases) were referred from judicial proceedings, and the remaining 21% (105 cases) were from other contexts.

ECCR cases that occurred in the context of a Federal agency decision spanned all functional areas, with close to half (137 of 318) being planning initiatives (Table 2). The vast majority of ECCR cases that occurred in the context of administrative proceedings related to compliance and enforcement (39 of 49). Close to half the ECCR cases that occurred in the context of judicial proceedings also related to compliance and enforcement (19 of 43). For the cases categorized as other, close to half of these cases (54 of 105) occurred in the context of implementation and monitoring initiatives, with most of these being Department of the Navy facilitated partnering teams working to implement environmental restoration regulations.

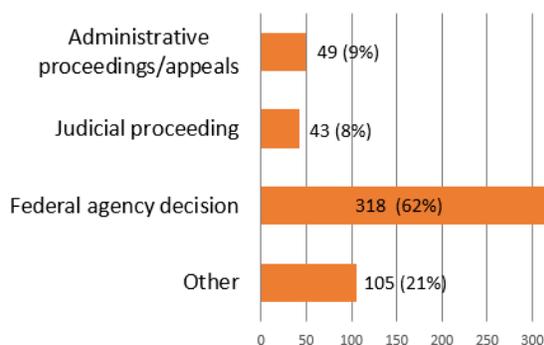


Figure 2. Decision making forums that were addressing the issues when ECCR was initiated

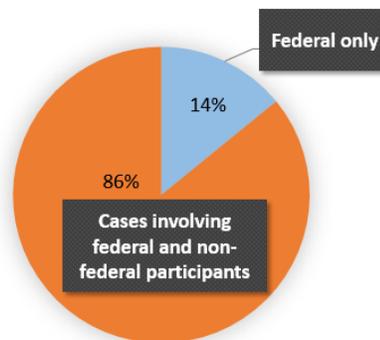


Figure 3. FY 2013 Interagency ECCR cases involving Federal only and non-Federal participants

6. ECCR Stakeholders

For FY 2013, departments and agencies reported that 86% of interagency cases involved the Federal government and other stakeholders, while 14% of cases involved just Federal departments and agencies (Figure 3). DOI was involved with the largest number of Federal-only ECCR efforts (i.e., that may have involved multiple Federal agencies but not the public), and EPA had the second highest involvement in Federal-only efforts. An example of a Federal interagency case is the DOI reported effort to implement the President’s policy to expand domestic oil and gas production safely and responsibly. In this example the DOI, EPA and the U.S. Department of Agriculture took a collaborative interagency approach to address air quality issues associated with onshore oil and gas development on public lands. Through an ECCR process, a Memorandum of Understanding (MOU) established a common process for the agencies to follow in analyzing the potential air quality impacts of proposed oil and gas activities on federally managed public lands. As a result of collaboratively implementing this MOU, DOI reported *“the signatory agencies have increased efficiency, certainty, and transparency, benefitting industry, Federal agencies, states, and Tribes.”* FY 2013 was the first year that interagency ECCR use was tracked for both ECR and third-party assisted collaborations as defined by the 2012 memorandum. Over time, we expect it will be possible to determine any trends in this area of ECCR. In the FY 2013 annual reports, several departments and agencies identified the use of ECCR to address natural resource management issues at large scales (e.g., landscape and watershed scales) requiring multi-jurisdictional cooperation and collaborative problem-solving in interagency and broader stakeholder settings.

7. Benefits of ECCR with Case Examples

Departments and agencies reported on the benefits of ECCR primarily based on observations and recorded qualitative outcomes. A limited number of agencies reported on the contributions of ECCR based on systematically collected quantitative and qualitative data.

The suite of ECCR benefits identified by departments and agencies included:

- improved communications at multiple levels of government and with the public;
- increased understanding of complex, often contentious, issues;
- narrowing of issues in dispute and identification of common ground;
- improved working relationships and trust among parties with differing or competing interests;
- process efficiencies in functional areas such as planning, permitting and licensing;

- project and program implementation efficiencies across diverse mission areas;
- more informed and sometimes more creative solutions to conflicts and challenges; and
- stakeholder understanding and support of outcomes (Table 3).

Table 3. The major ECCR benefits

Improved communications	Improvements in communications were characterized as movement of conversations through controversial topics (USFS), keeping contentious stakeholder conversations on track (USACE, USFS), and having more productive conversations that lead to more focused outcomes (EPA, USFS).
Increased understanding of issues and identification of common ground	Several agencies reported increased understanding of issues among stakeholders and Federal agencies. Collaboration yielded deeper understanding of tribal concerns (DOT, USFS), shared understanding of issues (USACE, USFS), narrowing the range of disagreement (EPA), increased understanding of areas of common ground (USFS), and agreement on key issues and the shared development of next steps (U.S. Institute, USFS). The importance of information gathering and information sharing was also reported (USACE and USFS).
Improved relationships and trust	Most agencies noted improvements in working relationships and trust. These improvements were noted amongst parties, agencies, offices, regions, between Tribes, States and the Federal Government, and between the Federal government and local communities (e.g., USFS, EPA, DOI, DOT and DoD). Relationship building and collaborative capacity building was also credited with enabling partnerships and workgroups to work together more effectively after neutral facilitation support ended (EPA, USFS).
Dispute Path Process efficiencies	Several agencies noted process efficiencies primarily in litigation-related ECCR applications. The efficiencies were manifested in reduced staff, leadership and counsel time spent on litigation (NOAA), reduction in hours litigating disputes (Army), reduction in the costs of resolving disputes (FERC), resolutions of appeals and objections thereby reducing litigation risk (USFS), and quicker case resolution compared to litigation (EPA, USFS).
Project delivery efficiencies	Project delivery efficiencies were reported. These included movement on stalled projects (U.S. Institute), expedited project delivery (DOT), increased pace of project implementation (EPA), and the ability to accomplish mission without dispute-caused interruption (USAF).
More informed solutions and stakeholder support	Agencies noted the importance of outcomes such as: more informed solutions with public and stakeholder input (USACE, USFS); more creative outcomes (EPA, USFS); stakeholder ownership of outcomes (EPA, USFS); better outcomes than administrative or judicially-imposed decisions might produce (DOI); improved conservation outcomes (DOT, USFS); furthering of agency mission by implementing projects that are supported by the agency and community (USFS); and the ability to focus more resources and energy on mission and program needs free from the distractions and demands associated with unresolved conflicts, complaints or litigation (DOI).

In addition to identifying general categories of ECCR benefits, the departments and agencies provided examples that shed light on situation-specific benefits of ECCR, including less tangible results such as trust and relationship building (Table 4).

Table 4. Examples of FY 2013 ECCR projects

<p>Collaborative problem-solving in the context of the Boise National Forest Plan amendment (USFS) <i>“Use of a third-party facilitator that all Boise Forest Coalition members supported was the key to success...allowed timely completion of work by the group, as well as relationship development...[leading to] a smooth National Forest Management Act and NEPA process that resulted in a decision upheld on appeal and was not litigated.”</i></p>	
<p>Interagency consultations between NOAA, EPA, USDA and USFWS related to pesticide registration issues and the Endangered Species Act (NOAA) <i>“[Third-party neutral facilitator] helped the participants recognize when they were coming to agreement and assisted in movement past difficult points of disagreement. The process would not have been possible without the facilitator. A sign of the success of the process is a shift in the relationship among the agencies to one of mutual cooperation.”</i></p>	
<p>Collaboration between USACE and USFWS related to Endangered Species Act compliance involving three species in the Lower Mississippi River (USACE) <i>“By solving problems collaboratively, a logical plan was developed that is cost-effective using existing authorities...and timely before adverse actions and litigation force resolution.”</i></p>	
<p>Solar project siting and related inter-governmental jurisdiction issues, protected habitat concerns, and utility interconnection challenges (FERC) <i>“The use of ECCR allowed the project to move forward without the need for litigation, and it also allowed for an agreement to be structured that addressed the interests of all the concerned parties”</i></p>	
<p>Superfund cleanup impacting a harbor abutting four Massachusetts towns, including the New Bedford commercial port (EPA) <i>“This mediation was also a reminder that, when a case is stalled and parties have different negotiating approaches, it is often impossible for them to accurately gauge the degree of each other’s flexibility and, accordingly, the potential for discovering a viable settlement option.”</i></p>	
<p>Property line dispute involving the Kirtland Air Base in New Mexico (USAF) <i>“Absent a successful settlement this case would have gone to trial in Federal Court at great expense to the parties with the outcome being determined by a Judge.”</i></p>	
<p>Collaborative problem-solving in the context of decontamination and decommissioning of the Western Valley Demonstration Project (WVDP) and the Western New York Nuclear Service Center (DOE) <i>“Effective use of ECCR techniques allowed the WVDP to overcome almost 30 years of long-held positions and conflict. As a consequence, the project is on course to reach mutual and final decisions on the ultimate disposition of the Site in 2020.”</i></p>	
<p></p>	

8. Collecting Data on ECCR Costs and Benefits

During FY 2013, two agencies, FERC and EPA increased their efforts to collect and report on quantifiable benefits and/or costs savings of ECCR.⁴ During this timeframe, the U.S. Institute also continued to systematically evaluate the outcomes of its cases. Examples from these three efforts include:

- FERC reported that during FY 2013, it implemented a survey to better understand cost savings to participants using FERC’s Dispute Resolution Division. Of the survey respondents, most indicated their organization was able to reduce the costs of resolving a dispute using the services of FERC’s Dispute Resolution Division (83%), and 17% indicated they were unsure. Of the participants who reported savings, the estimated value of savings ranged from \$1,000 to over \$1,000,000. FERC also reported that the majority of matters addressed via ECCR were completed within 6 months (77%).
- EPA implemented a new pilot survey assessing ECCR costs and duration. EPA indicated that the pilot results are suggestive of noticeable net savings of EPA staff lead time and shorter case durations when ECCR was compared to other likely decision making processes for the population of cases studied. Details on the pilot study including caveats regarding the pilot findings are noted in the EPA report. For example, EPA noted the current survey findings do not address the costs for ECCR neutral third parties nor the benefits associated with decisions reached, including EPA personnel time savings associated with implementing a decision. These are among the methodological issues EPA will work to refine in future surveys.
- The U.S. Institute systematically surveyed participants associated with ECCR cases it completed during FY 2013. Based on the evaluation feedback received, third-party assistance consistently helped the Federal agency representatives and stakeholders make progress toward addressing their challenges or resolving their conflicts. When asked to encapsulate what the collaborative processes had accomplished, the top three most frequently reported outcomes were: relationships among stakeholder’s improved, timely decision and outcomes were achieved, and conflicts didn’t escalate.

9. Agency ECCR Investments and Capacity Building

a. Training

Training remains the cornerstone of efforts to build capacity for and use of ECCR. The most frequently cited FY 2013 training subject areas related to negotiation, facilitation, collaboration, conflict management and conflict resolution. Several subcategories of trainings were in development or delivered within these common subject areas (Table 5). Additional skill-based courses or training modules included basic public participation, cultural competencies, and collaborative planning processes.

Several agencies reported systematically training staff. For example, the USFS reported delivering forest-wide collaboration training in preparation for forest plan revisions. Additionally, several agencies delivered ECCR training modules embedded in broader trainings. Agencies noted that budget constraints and travel restrictions reduced some training activities in FY 2013. A number of agencies noted the desire to deliver ECCR trainings to wider audiences of agency staff and stakeholders in the future.

As indicated by USACE, *“rather than rely on third-party ECCR, Districts and Divisions report a preference for proactive engagement approaches with sponsors, partners and the public. They develop local, state,*

⁴ The U.S. Institute’s instruments are available online at <http://www.ecr.gov/Resources/EvaluationProgram.aspx>.

regional, and national teams promoting collaborative planning to anticipate problems and identify alternative solutions early so as to reduce the risk and magnitude of future environmental conflicts.”

Several departments and agencies, including DoD and DOI, emphasized their efforts to train staff in the early identification of potentially controversial issues in order to address issues before they become significant environmental conflicts. Given the conflict prevention, management and resolution focus of agency ECCR efforts, capacity-building also includes training Federal agency staff to:

- lead ECCR efforts where conditions are appropriate,
- participate in processes as a representative of a department or agency, and
- understand when conditions (e.g., high conflict, low trust) warrant engaging a third-party neutral.

Table 5. Examples of FY 2013 training subject areas and affiliated agencies

<p>Negotiation</p> <ul style="list-style-type: none"> Basic Negotiation (USAF) Interest Based Negotiation (DOI) Advanced Interest Based Negotiation (EPA) 	<p>Facilitation</p> <ul style="list-style-type: none"> Fundamentals of Facilitation & Conflict Resolution (USACE) Facilitating Online Meetings (EPA) Public Meeting and Facilitation Skills (NRC)
<p>Collaboration</p> <ul style="list-style-type: none"> Community-based Collaboration (USFS) Designing Collaborative Processes (DOI) Advanced Collaborative Governance (DOI) 	<p>Conflict Management/Conflict Resolution</p> <ul style="list-style-type: none"> Conflict Management (DOI) Environmental Conflict Resolution (DOT) Dispute Resolution (FERC)
<p>Public Involvement/Public Participation</p> <ul style="list-style-type: none"> Basic Public Participation (DOI) Public Involvement (EPA) Emotion, Outrage, and Public Participation (DOI) 	<p>Communication</p> <ul style="list-style-type: none"> Communication Skills (DOI) Risk Communications (USACE) Difficult Conversations (DOI)
<p>Tribal Consultation</p> <ul style="list-style-type: none"> American Indian Cultural Communications (DON) Interest Based Tribal Consultation (U.S. Institute) Working with Native American Indian Tribes (DOE) 	<p>Other</p> <ul style="list-style-type: none"> NEPA Implementation (NOAA) Shared Vision Planning (USACE) Managing by Networks (USFS)

b. Other Capacity Building

In addition to training, departments and agencies identified several steps taken to invest in and build capacity for ECCR. For example, the USFS strategies and mechanisms included:

- Establishing long-term business mechanisms that ensure accessibility to ECCR services over time and that facilitate the procurement of facilitation services;
- Identifying projects that might benefit from ECCR and setting aside funds to pay for associated efforts and needed services (e.g., dedicated ECCR budgets within existing budgets);
- Development of annual reports for collaborative projects (e.g., Collaborative Forest Landscape Restoration projects) which includes tracking of expenditures by fund code and accomplishments;
- Supporting employee time and resources for ECCR; and
- Funding travel for USFS leadership and third-party neutrals to build relationships with forestry communities (USFS).

Finally, several departments and agencies highlighted their continuing support for ECCR assistance centers, including EPA’s Conflict Prevention and Resolution Center, DOI’s Office of Collaborative Action and Dispute Resolution, FERC’s Office of Administrative Law Judges and Dispute Resolution, and the USACE’s Conflict

Resolution and Public Participation Center of Expertise. These centers deliver a suite of services such as consultation, mediation/facilitation, training, centralized procurement of contracted ECCR services, support for communities of practice, as well as overall coordination of department and agency responses to ECCR-related guidance and authorities. These centers, as well as the resources dedicated to ECCR across the government, are an indicator of the Federal commitment to collaborative, constructive, and timely approaches to addressing environmental and natural resource conflicts and challenges.

This synthesis was developed by the U.S. Institute for Environmental Conflict Resolution on behalf of OMB and CEQ, and in conjunction with Federal department and agency ECCR points of contact.