

FY 2013 Environmental Collaboration and Conflict Resolution (ECCR) Policy Report

Submitted to the Office of Management and Budget (OMB) and the President's Council on Environmental Quality (CEQ) pursuant to the OMB/CEQ ECCR Memorandum of September 7, 2012

Name of Department/Agency responding:

Udall Foundation – U.S. Institute for Environmental
Conflict Resolution

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Date this report is being submitted:

March 3, 2014

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FY 2013 ECCR Report Template

Environmental Collaboration and Conflict Resolution (ECCR)¹ Policy Report to OMB-CEQ

On September 7, 2012, the Director of the Office of Management and Budget (OMB), and the Chairman of the President's Council on Environmental Quality (CEQ) issued a revised policy memorandum on environmental collaboration and conflict resolution (ECCR). This joint memo builds on, reinforces, and replaces the memo on ECR issued in 2005.

The memorandum requires annual reporting by departments and agencies to OMB and CEQ on progress made each year in implementing the ECCR policy direction to increase the effective use and institutional capacity for ECCR.

ECCR is defined in Section 2 of the 2012 memorandum as:

“ . . . third-party assisted collaborative problem solving and conflict resolution in the context of environmental, public lands, or natural resources issues or conflicts, including matters related to energy, transportation, and water and land management.

The term Environmental Collaboration and Conflict Resolution encompasses a range of assisted collaboration, negotiation, and facilitated dialogue processes and applications. These processes directly engage affected interests and Federal department and agency decision makers in collaborative problem solving and conflict resolution.

Multi-issue, multi-party environmental disputes or controversies often take place in high conflict and low trust settings, where the assistance of impartial facilitators or mediators can be instrumental to reaching agreement and resolution. Such disputes range broadly from policy and regulatory disputes to administrative adjudicatory disputes, civil judicial disputes, intra- and interagency disputes, and disputes with non-Federal persons and entities.

Environmental Collaboration and Conflict Resolution can be applied during policy development or planning in the context of a rulemaking, administrative decision making, enforcement, or litigation with appropriate attention to the particular requirements of those processes. These contexts typically involve situations where a Federal department or agency has ultimate responsibility for decision making and there may be disagreement or conflict among Federal, Tribal, State and local governments and agencies, public interest organizations, citizens groups, and business and industry groups.

Although Environmental Collaboration and Conflict Resolution refers specifically to collaborative and conflict resolution processes aided by third-party neutrals, there is a broad array of partnerships, cooperative arrangements, and unassisted negotiations that Federal agencies may pursue with non-Federal entities to plan, manage, and implement department and agency programs and activities. The Basic Principles for Agency Engagement in Environmental Conflict Resolution and Collaborative Problem Solving are presented in Attachment B. The Basic Principles provide guidance that applies to both Environmental Collaboration and Conflict Resolution and unassisted collaborative problem solving and conflict resolution. This policy recognizes the importance and value of the appropriate use of all forms of collaborative problem solving and conflict resolution.”

¹ The term ‘ECCR’ includes third-party neutral assistance in environmental collaboration and environmental conflict resolution

This annual report format below is provided for the seventh year of reporting in accordance with the memo for activities in FY 2013.

The report deadline is March 3, 2014.

We understand that collecting this information may be challenging; however, the departments and agencies are requested to collect this data to the best of their abilities. The 2013 report, along with previous reports, will establish a useful baseline for your department or agency, and collect some information that can be aggregated across agencies. Departments should submit a single report that includes ECCR information from the agencies and other entities within the department. The information in your report will become part of an analysis of all FY 2013 ECCR reports. You may be contacted for the purpose of clarifying information in your report. For your reference, prior year synthesis reports are available at <http://www.ecr.gov/Resources/FederalECRPolicy/AnnualECRReport.aspx>

1. **ECCR Capacity Building Progress:** Describe steps taken by your department or agency to build programmatic and institutional capacity for environmental collaboration and conflict resolution in FY 2013, including progress made since FY 2012. Include any efforts to establish routine procedures for considering ECCR in specific situations or categories of cases. To the extent your organization wishes to report on any efforts to provide institutional support for non-assisted collaboration efforts include it here. If no steps were taken, please indicate why not.

[Please refer to the mechanisms and strategies presented in Section 5 and attachment C of the OMB-CEQ ECCR Policy Memo, including but not restricted to any efforts to a) integrate ECCR objectives into agency mission statements, Government Performance and Results Act goals, and strategic planning; b) assure that your agency's infrastructure supports ECCR; c) invest in support, programs, or trainings; and d) focus on accountable performance and achievement. You are encouraged to attach policy statements, plans and other relevant documents.]

The U.S. Institute for Environmental Conflict Resolution (the U.S. Institute) is a federal program established by the 1998 Environmental Policy and Conflict Resolution Act (P.L. 105-156) to help public and private parties resolve environmental conflicts involving the federal government. It is part of the Udall Foundation, an independent federal agency.

The U.S. Institute works with multiple federal agencies to build case-level and programmatic capacity for environmental collaboration and conflict resolution (ECCR). The U.S. Institute's range of services include: consultations, assessments, process design, convening, neutral selection, mediation, facilitation, training, case management, and other related undertakings covered by the U.S. Institute's enabling legislation.

During FY 2013, Institute staff provided case support for 82 environmental conflicts and challenges. The U.S. Institute also continued to manage a national roster of professionals with expertise in ECCR. This publically accessible online roster empowers all stakeholders whether federal managers or members of the public to identify qualified mediators and facilitators to assist with a spectrum of environmental conflicts or challenges.

In addition to case services, the U.S. Institute delivered 19 in-depth collaboration and conflict resolution trainings during FY 2013. The U.S. Institute's trainings ranged from basic to advanced, as well as customized workshops designed for stakeholders involved in specific conflicts. The U.S. Institute's trainings are designed to empower federal agency staff, tribal leaders, and members of the public with the skills necessary to work to prevent, manage, and resolve environmental conflicts.

In terms of ECCR leadership, to build programmatic and institutional capacity for ECCR, the U.S. Institute's FY 2013 initiatives included: assisting with implementation of the March 2012 Executive Order – Improving Performance of Federal Permitting and Review of Infrastructure Projects; Assisting OMB and CEQ with implementation of the September 2012 Memorandum on Environmental Collaboration and Conflict Resolution; and continuing to coordinate the Native Dispute Resolution Network, and to assist the dispute resolution field in developing resources and expertise for addressing issues involving Indian country.

2. ECCR Investments and Benefits

- a) Please describe any methods your agency uses to identify the (a) investments made in ECCR, and (b) benefits realized when using ECCR.

Examples of investments may include ECCR programmatic FTEs, dedicated ECCR budgets, funds spent on contracts to support ECCR cases and programs, etc.

Examples of benefits may include cost savings, environmental and natural resource results, furtherance of agency mission, improved working relationship with stakeholders, litigation avoided, timely project progression, etc.

(a) Methods for identifying investments made in ECCR

The U.S. Institute is a federal program entirely dedicated to ECCR. Through a Project Management Database (PMD), the U.S. Institute tracks the delivery of direct and contracted ECCR services and the budgets that underwrite its ECCR projects and programs. Investments are summarized and reported in federal compliance reports such as Annual Financial Reports, Annual Performance Reports, Budget Requests and Congressional Justifications.

(b) Methods for identifying benefits realized when using ECCR

Since FY 2002, the U.S. Institute has received OMB approval to administer a suite of questionnaires to evaluate the outcomes and gain stakeholder perspectives on the anticipated impacts of ECCR services. Using these questionnaires, the U.S. Institute solicits performance feedback from members of the public and agency representatives who are participants in, and users of, U.S. Institute services. Respondents are surveyed at the conclusion of services (e.g., the end of a training, the completion of a mediation).

- b) Please report any (a) quantitative or qualitative investments your agency captured during FY 2013; and (b) quantitative or qualitative results (benefits) you have captured during FY 2013.

(a) Overview of FY 2013 quantitative and qualitative investments

- For FY 2013, Congress appropriated \$3.6 million for the U.S. Institute's operations.
- Congress authorized the U.S. Institute to accept and retain fees for conflict resolution services. The U.S. Institute earned \$3.2 million during FY 2013 from reimbursable ECCR project services.
- Of the total FY 2013 project earned revenue, 23% was retained by the U.S. Institute and 77% was passed through to private sector ECCR practitioners who performed services under contract with the U.S. Institute.
- The U.S. Institute dedicated a small proportion of its overall FY 2013 budget to underwriting training and leadership initiatives. Reimbursable training and leadership services brought in just over \$200,000.
- As a service organization, personnel represents the largest expense category for the U.S. Institute. The U.S. Institute's FTE count fluctuated during FY 2013, the FTE count was 20.6 at the close of the fiscal year (September 30, 2013).

(b) Overview of FY 2013 quantitative and qualitative ECCR results (benefits)

Benefits of ECCR Training

During FY 2013, the U.S. Institute delivered 19 trainings in collaborative problem solving and conflict resolution. The U.S. Institute evaluated all completed trainings. The training evaluations measured trainer effectiveness, quality of materials, relevance of trainings, and anticipated impacts from the perspective of training participants. For example, evaluation feedback on the FY 2013 sessions indicated that 91% of respondents felt the training will have a very positive impact on their effectiveness in the future.

The following are examples of the training impacts as described by participants:

“Part of my job is troubleshooting conflicts between stakeholders. This training directly increases my ability to successfully perform my job.”

“Greater ability to work effectively with an array of stakeholders.”

“In my work – better skills set to address Tribal issues.”

“Internal agency discussions about scientific issues may be easier to resolve. Issues on contaminated sites can be better triaged, discussed, and resolved with stakeholders using these approaches.”

Benefits of ECCR Mediations and Facilitations

During FY 2013, the U.S. Institute assisted with just over 40 mediation, facilitation and assessment processes. The U.S. Institute provided services directly or through contracted private sector practitioners. Twenty-five mediation/facilitation processes were either brought to completion or the U.S. Institute’s role in an ongoing process ended during FY 2013.

Based on the evaluation feedback received on FY 2013 mediations and facilitations, third-party assistance consistently helped the federal agency representatives and stakeholders make progress toward addressing their issues or resolving their conflicts.

When asked to encapsulate what the collaborative processes accomplished, the top three most frequently identified outcomes were:

- *Relationships among parties improved*
- *Timely decisions and outcomes*
- *The conflict didn’t escalate*

These outcomes were accomplished in project contexts that included: endangered species recovery, Tribal consultation, national park overflight conflicts, toxic substance clean-up, mitigation banking, and landscape planning.

Process outcomes such as timely decisions and improved working relationships create a constructive platform for federal project and program execution. As a result of positive process outcomes (contingent on the quality and sustainability of the outcomes), federal projects and programs should progress with greater stakeholder buy-in and commitment to actions and solutions, and avoidance or minimization of instances of litigation and appeals.

In the words of FY 2013 process participants, the following are examples of process outcomes achieved and/or anticipated as a result of the ECCR efforts:

“Facilitation and mediation services greatly improved communication, efficiency and accountability of meetings, and enhanced interactions.”

“Enhanced tribal-state-federal relationship.”

“The process for mitigation banking deposits had been ‘stuck’ and this process developed consensus on key points, including next steps.”

“The facilitators (and the use of their online tools) were only used for one phase of the planning process. Once they were gone, we were back to chaos and uncertainty.” “Excellent use of technology to synthesize and summarize input from participants.”

“The structure the facilitator provided allowed us to more effectively get our work done.”

“Resources will be conserved through better and more consistent monitoring across the region.”

- c) What difficulties have you encountered in generating cost and benefit information and how do you plan to address them?

Process Costs

- To track staff time, contracted mediator/facilitator costs, and direct process costs (such as travel and meeting rooms), the U.S. Institute found it necessary to design and develop a customized project management database.
- The U.S. Institute has found it difficult to get an appreciation for time and cost investments (e.g., travel) of process participants. For example, not all participants record the time they spend participating in collaborative processes. This information is needed for extensive cost-benefit analysis. For agreement-seeking processes, the U.S. Institute does ask process participants for their perspective on whether their investments (time and money) were worth the investment.

The Costs of Conflict (associated with a given project pre-ECCR intervention)

- From case consultations and assessment work the U.S. Institute can provide qualitative perspectives on the costs of conflict associated with individual projects (e.g., characterize when a conflict has stalled a federal project, describe where unattended conflict has led to divisive polarized relationships among stakeholders). The U.S. Institute does not have methodologies to monetize these costs.

Benefits - Tracking and Measuring

- Given the unique attributes and complexities of ECCR processes, it is challenging to summarize outcomes into a few key measures, and it is difficult to create informative multi-case aggregations.
- Measuring less tangible outcomes such as relationship improvements is challenging and can be costly to measure appropriately (e.g., survey stakeholders on relationships at the beginning of processes and again at the conclusion of processes). Currently, the U.S. Institute simply asks stakeholders at the end of processes for their perspectives on changes in working relationships.
- The U.S. Institute does not have mechanisms to monetize process outcomes. The U.S. Institute can quantify some process outcomes such as the percent of cases that reach agreement and can describe process outcomes using qualitative data.
- Process outcomes are a snapshot in time and do not capture the quality or durability of agreements reached, the value of stakeholder buy-in or commitment to solutions, or the benefits of more informed decisions that balance public and private interests.
- The U.S. Institute has experienced challenges with low response rates on some process evaluations. The U.S. Institute is reviewing survey administration strategies to improve response rates.
- Measuring the absence (e.g., negative effects avoided by ECCR) of events or conditions is challenging. Negative effects avoided as a result of successful ECCR processes, such as reduced litigation and appeals are an often-cited benefit of ECCR. The U.S. Department of Justice, Environmental and Natural Resource Division, is in a unique position to provide perspective on the outcomes of similar cases that have been handled via mediation versus litigation. The U.S. Institute does not have comparison cases to evaluate. The U.S. Institute does collect stakeholder perspectives on negative effects avoided.
- The U.S. Institute experiences challenges with tracking and aligning the costs and benefits of processes because of differences in timing associated with when costs are incurred and benefits are realized. For example, while process costs may occur over a number of months, benefits such as the timely progression on an uncontested construction project may take years to confirm.
- There are institutional costs (e.g., staff time) and challenges associated with the long-term tracking of cases. To the extent possible, the U.S. Institute stays in contact with federal project managers to remain apprised of final project outcomes. However, the social, economic, cultural and environmental benefits that are enabled or enhanced through an ECCR intervention are the fundamental outcomes of the specific federal project or program. The U.S. Institute does not have a role in tracking or quantifying such final project outcomes and impacts and the extent to which they were influenced by the ECCR intervention.
- The U.S. Institute will begin the renewal process for its OMB approved information collections (surveys) in mid to late FY 2014. The U.S. Institute will work with federal partners and with OMB representatives to strengthen the ECCR data collections to meet the needs of this report.

3. **ECCR Use:** Describe the level of ECCR use within your department/agency in FY 2013 by completing the table below. [Please refer to the definition of ECCR from the OMB-CEQ memo as presented on page one of this template. An ECCR “case or project” is an instance of neutral third-party involvement to assist parties in a collaborative or conflict resolution process. In order not to double count processes, please select one category per case for decision making forums and for ECCR applications.

The U.S. Institute provided case support services for 82 environmental conflicts and challenges during FY 2013. Support services included case consultations, assessments, convening, mediator selection, process design, facilitation and mediation. Of the 82 conflicts and challenges, 43 cases received third-party assistance beyond the initial consultation, and this subset of cases is characterized below.

	Total FY 2013 ECCR Cases ²	Decision making forum that was addressing the issues when ECCR was initiated:				ECCR Cases or projects completed ³	ECCR Cases or Projects sponsored ⁴	Interagency ECCR Cases and Projects	
		Federal agency decision	Administrative proceedings /appeals	Judicial proceedings	Other (specify)			Federal only	Including non federal participants
<i>Context for ECCR Applications:</i>									
Policy development	3	3	0	0	0	2	N/A	1	2
Planning	13	11	0	0	2	9	N/A	0	13
Siting and construction	0	0	0	0	0	0	N/A	0	0
Rulemaking	1	0	0	0	1	1	N/A	0	1
License and permit issuance	0	0	0	0	0	0	N/A	0	0
Compliance and enforcement action	0	0	0	0	0	0	N/A	0	0
Implementation/monitoring agreements	2	2	0	0	0	1	N/A	0	2
Other (specify): _____	24	11	0	0	13	13	N/A	3	21
TOTAL	43	27	0	0	16	26	N/A	4	39
		(the sum of the Decision Making Forums should equal Total FY 2013 ECCR Cases)							

² An “ECCR case” is a case in which a third-party neutral was active in a particular matter during FY 2013.

³ A “completed case” means that neutral third party involvement in a particular ECCR case ended during FY 2013. The end of neutral third party involvement does not necessarily mean that the parties have concluded their collaboration/negotiation/dispute resolution process that all issues are resolved, or that agreement has been reached.

⁴ Sponsored - to be a sponsor of an ECCR case means that an agency is contributing financial or in-kind resources (e.g., a staff mediator's time) to provide the neutral third party's services for that case. More than one sponsor is possible for a given ECCR case.

Note: If you subtract completed ECCR cases from Total FY 2013 cases it should equal total ongoing cases. If you subtract sponsored ECCR cases from Total FY 2013 ECCR cases it should equal total cases in which your agency or department participated but did not sponsor. If you subtract the combined interagency ECCR cases from Total FY 2013 cases it should equal total cases that involved only your agency or department with no other federal agency involvement.

4. ECCR Case Example

Using the template below, provide a description of an ECCR case (preferably completed in FY 2013). Please limit the length to no more than 2 pages.

Name/Identification of Problem/Conflict
<p>Overview of problem/conflict and timeline, including reference to the nature and timing of the third-party assistance, and how the ECCR effort was funded</p>
<p>Santa Susana Field Laboratory (SSFL) Cleanup</p> <p>The Santa Susana Field Laboratory (SSFL) is a 2,850 acre property located in Ventura County, California, approximately 2 miles south of the City of Simi Valley and 30 miles northwest of downtown Los Angeles. Activities associated with past site operations, including large rocket engine research, assembly, and testing resulted in soil and groundwater contamination. The responsible parties for the site include Boeing, U.S. Department of Energy, and NASA.</p> <p>Over the years, conflicts emerged between various stakeholders with differing perspectives on site cleanup activities and alternatives. Stakeholder issues included environmental contamination, impacts to cultural and biological resources, water resources, air pollution, and impacts of the cleanup on neighboring communities.</p> <p>Stakeholder conflicts began to escalate 2012. At this time, the EPA transitioned its community involvement program to the California Department of Toxic Substances Control (DTSC). Subsequently, a group of stakeholders petitioned for the formation of a California statutorily prescribed Community Advisory Group (CAG) which was received and approved by DTSC.</p>
<p>Summary of how the problem or conflict was addressed using ECCR, including details of any innovative approaches to ECCR, and how the principles for engagement in ECCR outlined in the policy memo were used</p>
<p>The U.S. Institute was brought on board to assist DTSC and the CAG Organizing Committee with establishing the CAG, providing outreach and collaboration guidance, and facilitating the development of the CAG. The assistance of a third-party helped normalize the conflict, broker representative participation, and create a constructive forum for collaboration.</p>
<p>Identify the key beneficial outcomes of this case, including references to likely alternative decision making forums and how the outcomes differed as a result of ECCR</p>
<p>When asked to evaluate the third-party assisted collaborative process, the majority of responding stakeholders (86%) reported progress was made on all or most key issues, and the remainder (14%) felt progress was made on some key issues.</p> <p>In the words of one participant, the impacts/benefits of the process included <i>“reduction in very polarized community experiences ‘us versus them’...extending trust and consensus building – all to reach predominantly mutual “big goal” of cleanup and park.”</i></p>

In the absence of a collaborative forum, responding participants described scenarios such as *“continued combative non-results ... with political sparring instead of results”* and *“take longer to achieve results.”*

When asked to identify what was accomplished with the ECCR intervention, responding participants identified a number of benefits/results including: timely decisions and outcomes; improvement in relationships among parties; an impasse (stalemate) was broken; and potentially costly or divisive dispute/controversy was likely avoided.

Reflections on the lessons learned from the use of ECCR

This case example sheds light on participant perspectives on the potential cost-effectiveness of ECCR processes. In the words of a process participant *“We still need the two facilitators to be present/available a little longer for completing the CAG formation process including: all charter documents, four committees’ full establishment with operating rules, chartering next priorities steps for CAG to build functioning and credibility momentum, and ways to handle the “to be expected” internal/external obstacles. With SSFL cleanup being so divisively and inefficiently contentious for so long, it is cost efficient for CA-DTSC to invest some more funds now for the third-party facilitation essential guidance, that will expedite the process towards site remediation.”*

5. Other ECCR Notable Cases: Briefly describe any other notable ECCR cases in the past fiscal year. (Optional)

Sherman Marsh Mitigation Banking

The restoration of Sherman Marsh, a tidal salt marsh in mid-coast Maine, began with the failure of a dam under a Maine Department of Transportation (Maine DOT) bridge following a severe rain event. When Maine DOT submitted its prospectus to deposit the restored site in its mitigation bank, a high level of frustration ensued among the agencies involved regarding whether Maine DOT should receive mitigation credit for its work, and if so, how much and what type of credit. In 2013, the U.S. Institute conducted an assessment that included interviews with 16 individuals representing seven agencies and focused on exploring background issues, working relationships, and a collaborative process for resolving their conflicts. Following its assessment report, the U.S. Institute facilitated an issue resolution meeting that resulted in consensus on how to resolve the issues regarding mitigation banking credit, and generated next steps and a timeline for finalizing the mitigation banking process.

6. Priority Uses of ECCR:

Please describe your agency's efforts to address priority or emerging areas of conflict and cross-cutting challenges either individually or in coordination with other agencies. For example, consider the following areas: NEPA, ESA, CERCLA, energy development, energy transmission, CWA 404 permitting, tribal consultation, environmental justice, management of ocean resources, infrastructure development, National Historic Preservation Act, other priority areas.

The U.S. Institute works with multiple federal agencies and provides assistance across a spectrum of substantive areas including planning, regulation and management. The U.S. Institute's services are applied in the following areas of emphasis:

- Interagency/intergovernmental conflicts and challenges;
- Environmental conflicts and challenges involving levels of government (federal, tribal, state, local) and the public; and
- Conflicts and challenges where area expertise is required (e.g., conflicts involving tribes and native people, land management, water resources, transportation and infrastructure, the National Environmental Policy Act).

In FY 2013, the U.S. Institute's services supported the majority of the example areas noted in this question (e.g., NEPA, ESA, energy development, tribal consultation, management of ocean resources, infrastructure development).

7. Non-Third-Party-assisted Collaboration Processes: Briefly describe other significant uses of environmental collaboration that your agency has undertaken in FY 2013 to anticipate, prevent, better manage, or resolve environmental issues and conflicts that do not include a third-party neutral. *Examples may include interagency MOUs, enhanced public engagement, and structural committees with the capacity to resolve disputes, etc.*

Not Applicable

8. **Comments and Suggestions re: Reporting:** Please comment on any difficulties you encountered in collecting these data and if and how you overcame them. Please provide suggestions for improving these questions in the future.

In general, the Udall Foundation/U.S. Institute did not encounter any difficulties in collecting these data. Challenges specific to generating cost and benefit information are addressed as part of the Foundation/U.S. Institute's response to question 2c.

Please attach any additional information as warranted.

Report due March 3, 2014.

Submit report electronically to: ECRReports@omb.eop.gov