

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

Synthesis of FY 2014 Reports

Submitted by Federal Departments and Agencies
Pursuant to the OMB-CEQ Policy Memorandum on ECCR of September 7, 2012

This report provides an overview and synopsis of federal department and agency use of environmental collaboration and conflict resolution (ECCR) for FY 2014. ECCR is defined as third-party assisted environmental collaboration and environmental conflict resolution 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. In FY 2014, agencies reported 444 active ECCR efforts of which approximately one-third were completed and the remainder continued into FY 2015. Analysis of the FY 2014 reports shows that EPA, DoD, DOI, and FERC continue to have the highest volume involvement in ECCR since reporting began in FY 2007.

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 2012 memo provides all executive branch agencies with the following direction:

(I)ncrease the appropriate and effective use of third-party assisted environmental collaboration as well as environmental conflict resolution 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.²

Reporting Requirement and FY 2014 Participation

The 2012 joint policy memorandum on ECCR requires annual reporting by federal 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. Specifically, Section 4(g) of the 2012 memorandum establishes the following reporting requirement:

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 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).

¹ The 2012 memorandum is available online here: http://www.udall.gov/documents/Institute/OMB_CEQ_Memorandum_2012.pdf

² Office of Management and Budget, & Council on Environmental Quality. (2012). *Memorandum on Environmental Collaboration and Conflict Resolution*. Washington, D.C., p. 1

The following departments and agencies submitted FY 2014 reports:

- Department of Defense (DoD)
 - Department of the Navy
 - U.S. Air Force
 - U.S. Army
 - U.S. Army Corps of Engineers
- Department of Energy (DOE)
- Department of the Interior (DOI)
- Department of Transportation (DOT)
- Department of Veterans Affairs (VA)
- Federal Energy Regulatory Commission (FERC)
- National Oceanic and Atmospheric Administration (NOAA)
- U.S. Environmental Protection Agency (EPA)
- Udall Foundation's U.S. Institute for Environmental Conflict Resolution (USIECR)
- U.S. Nuclear Regulatory Commission (NRC)

This synthesis summarizes the information in the FY 2014 reports. Individual department and agency reports are posted online at <http://www.udall.gov/OurPrograms/Institute/ECRRReport.aspx>.

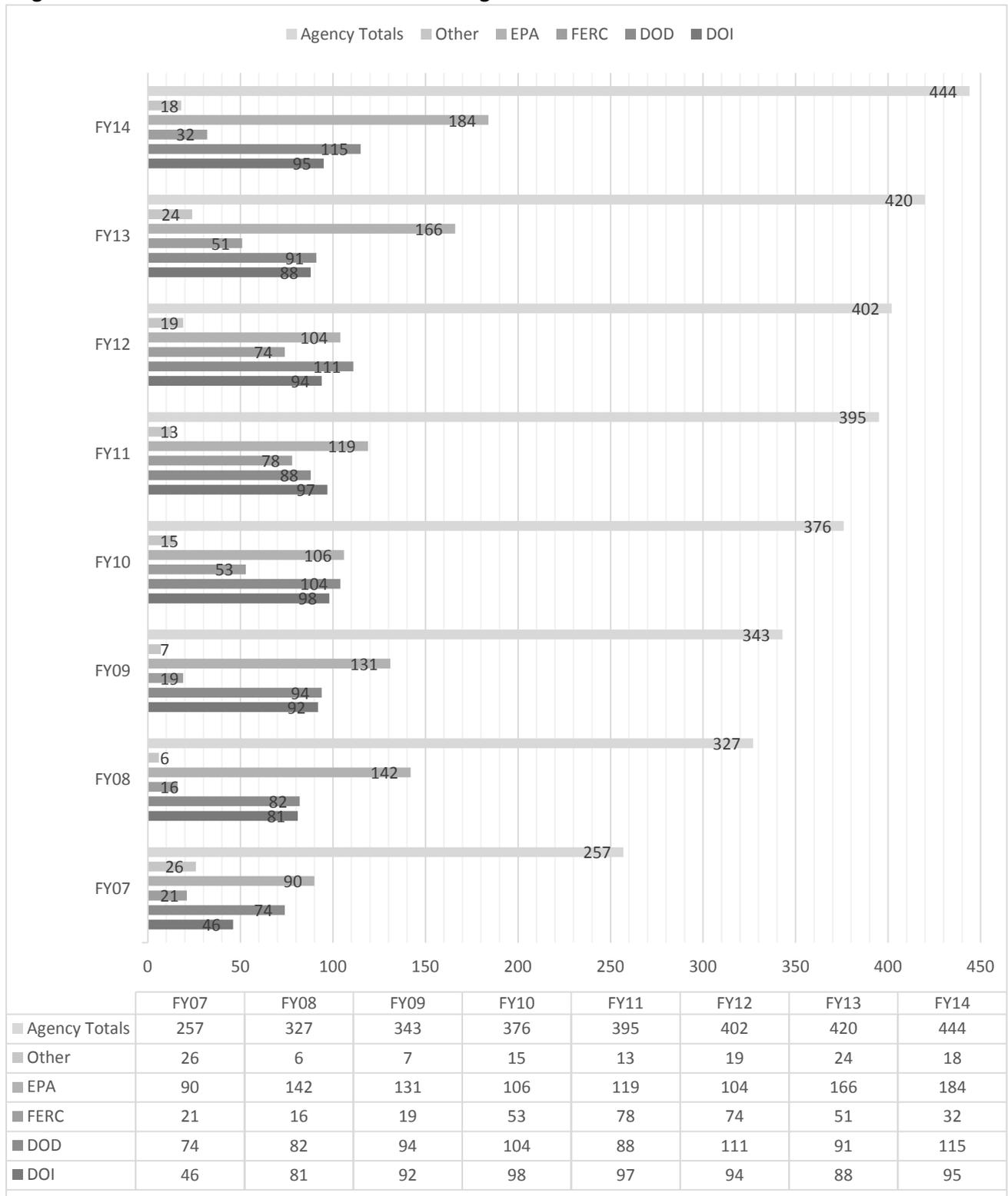
ECCR Sponsorship and Participation

For FY 2014, federal departments and agencies reported 444 ECCR cases in which they either directly sponsored or participated in a process sponsored or convened by another agency or entity. Of the 444 active cases, 146 (33%) were completed and the remaining projects continued into FY 2015. EPA, DoD, DOI, and FERC have consistently had the highest volume involvement in ECCR since case reporting began in FY 2007, and this trend continued in FY 2014 (Figure 1).

Overall, federal government involvement in ECCR has been increasing over time. Between FY 2008 and FY 2014, a steady increase in the total of reported ECCR cases occurred year-to-year, ranging from 2%-9%. In FY 2014, those agencies reporting a decline in ECCR cases most often attribute the decline to increased efforts to build ECCR capacity within the agency, within other federal agencies, or among stakeholders. The increased capacity appears to allow more frequent resolution of challenging situations before they rise to a level where a neutral third party would be useful.

Federal departments and agencies also reported on the context in which ECCR was used most commonly in FY 2014 or provided narratives stating the area or topic in which ECCR was used. A list combining these two information sources appears in Figure 2.

Figure 1. Distribution of ECCR cases in the federal government FY 2007 to FY 2014³



³ Agency totals include multi-agency cases that are reported individually by each of the departments and agencies involved, thus cases may be double-counted. USIECR’s ECCR cases are not included as they are assumed to be reported by other federal departments and agencies.

Figure 2. Five most commonly cited contexts for ECCR use in both assisted and unassisted collaborative activities in FY 2014 (shown with example topics)

Acts & Laws	Natural Resource Planning & Management	Regulatory & Administrative Rule Actions	Consultation & Coordination	Broad Environmental & Social Issues
<ul style="list-style-type: none"> •National Environmental Policy Act (NEPA) •Endangered Species Act (ESA) •Clean Water Act (CWA) •National Historic Preservation Act (NHPA) •Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) 	<ul style="list-style-type: none"> •Forest Planning •Large Landscape Conservation and Collaboration •Regional Infrastructure Development •Water Resources (e.g., groundwater permitting; water releases, quality, and security; flood risk assessment and recovery) 	<ul style="list-style-type: none"> •Energy Development and Transmission, including Renewable Energy •Negotiated Rulemaking •Compliance and Enforcement Actions 	<ul style="list-style-type: none"> •Tribal Consultation •Joint Fact-Finding in Planning and Development •Multi-Agency, Multi-Scope Issues 	<ul style="list-style-type: none"> •Environmental Justice •Climate Change

Contexts for ECCR

Federal departments and agencies carry out many activities in support of their missions. These activities include planning, rulemaking, policy development, licensing and permit issuance, siting and construction, compliance and enforcement, and implementation and monitoring. Some examples of specific agency activities in which ECCR was applied frequently include the following:

- Site remediation, decontamination, and decommissioning under CERCLA and RCRA (DOE);
- Statutory requirements under CWA, NEPA, ESA, including water resource protection (USACE);
- Planning and implementation under NEPA, resource protection under ESA, landscape-scale conservation strategies (DOI);
- Expanded use of programmatic agreements with resource agencies (DOT);
- Marine resource management (NOAA);
- Natural gas and hydroelectric licensing and permitting (FERC);
- Licensing and rulemaking (NRC);
- Environmental justice and Superfund site cleanup and remediation (EPA).

Table 1 shows specific contexts and agency decision-making forums within which federal departments and agencies used ECCR in FY 2014 as a tool to assist with these activities.

Table 1. FY 2014 Contexts and Agency Decision-Making Forums for ECCR Application

Contexts for ECCR Applications	Number and percent of cases by category	Agency Decision-Making Forums			
		Federal Agency Decision	Admin. Proceeding/ Appeal	Judicial Proceeding	Other
Planning	131 (30%)	82		5	44
Compliance and enforcement	87 (20%)	38	25	19	5
Implementation and monitoring	71 (16%)	25			46
Siting and construction	54 (12%)	24		29	1
Other	42 (9%)	18			19
Policy development	24 (5%)	20			4
Rulemaking	21 (5%)	16		3	2
License and permit issuance	14 (3%)	9	5	5	
Total	444 (100%)	232	30	61	121

ECCR Stakeholders

For FY 2014, departments and agencies reported that 82% of interagency cases involved both the federal government and other stakeholders, while 18% of cases involved federal departments and agencies only. DOI was involved with the largest number of federal-only ECCR efforts (23), while EPA had the second highest involvement in federal-only efforts (12). In FY 2014, several departments and agencies also reported that ECCR was frequently used in supporting interagency cooperation and collaborative to solve problems related to natural resource management issues at large landscape scales and joint environmental review of multijurisdictional projects.

Investment in ECCR

Departments and agencies have invested in ECCR and reinforced those investments with ECCR-related policy changes. Many of these investments build overall ECCR capacity by leveraging federal dollars and employees with non-federal and non-governmental partnerships including those with American Indian Tribes; local communities; states; academic institutions; and non-governmental, private-sector individuals, and organizations. For FY 2014, departments and agencies reported the following capacity-building and leveraging efforts as investments in ECCR:

- **ECCR Policy Improvement**
 - Integrating ECCR principles into department and agency mission statements, performance goals, and strategic planning
 - Ongoing development of internal agency ECCR guidance and support mechanisms
 - Incorporating procedures for appropriate application of ECCR into department and agency regulations
 - Dedicating specific budget allocations for ECCR services, including contracting with third-party ECCR professionals
- **Inter-Agency and Intra-Agency ECCR Coordination**
 - Inter- and intra-agency ECCR partnerships and communities of practice
 - Developing ECCR leadership and networks within departments and agencies
- **ECCR Skill-Building Efforts**

- Investment in federal ECCR Personnel through training and professional development
- In-house and external ECCR training and capacity building in the form of classes, workshops, and “clinics” in subject areas including facilitation, negotiation, conflict management, collaboration, public involvement, and dealing with difficult people
- **ECCR Capacity-Building and Leveraging Efforts**
 - Investments in rosters and IDIQ contracts for non-governmental ECCR professionals (DOI, EPA, DOT, USIECR)
 - Investments in federal in-house rosters of facilitators and ECCR professionals
 - Investments of time and resources for in-house ECCR capacity, including negotiation, partnership development, and collaboration
- **ECCR Partnership and Network Expansion**
 - Ongoing commitment to developing effective working relationships with federal, local, tribal, and community partners
 - Investments in internal programs and assistance centers that support ECCR and deliver a suite of ECCR-related services including consultation, mediation and facilitation, training, centralized procurement of contracted ECCR services, and support for communities of practice. The following programs and centers are examples of these investments:
 - Public Involvement Specialists Program (USACE-CPCX)
 - Collaboration and Public Participation Community of Practice (USACE-CPCX)
 - Conflict Prevention and Resolution Center (EPA)
 - Collaborative Action and Dispute Resolution (DOI)
 - Dispute Resolution Division (FERC)

Benefits of ECCR

In FY 2014, the majority of departments and agencies reported on the benefits of ECCR based on observations and recorded qualitative outcomes, while a select number of agencies tracked this data through formal methods that included both quantitative and qualitative data. The suite of ECCR benefits identified by departments and agencies in FY 2014 included the following:

- Improved working relationships and trust among parties with differing or competing interests
- Efficiencies in process and reduction in process time in activity areas such as planning, permitting, licensing, and remediation
- More frequent, effective communication at multiple levels of government and with the public
- Resource savings from more timely resolution, particularly in the area of enforcement actions
- Improved communication of all parties’ interests, goals, and concerns, resulting in more focused outcomes, better understanding of issues, and narrowing of the range of disagreement
- Improved outcomes: more creative solutions to disagreements, improvements in environmental conditions, increased stakeholder ownership of solutions

In addition to identifying general categories of ECCR benefits, the departments and agencies provided examples of cases and projects highlighting the benefits of ECCR. A selection of these cases is reported in Table 2.

Table 2. Examples of FY 2014 ECCR projects

<p>Reaching Agreement on Roan Plateau Naval Oil Shale Reserves Resource Management Plan Amendment (RMPA) and EIS (BLM)</p> <p><i>Each of the parties, including BLM, the consortium of environmental groups that challenged the BLM decision, and the oil and gas operators who hold the leases, successfully reached a consensus with the assistance of the neutral mediator after over six years, finding a middle ground on a very contentious issue.</i></p>	
<p>Multi-Agency Remediation of Contaminated Sediments in Washington State (EPA)</p> <p><i>The ECCR process tackled and helped solve the regulatory maze that made inaction a rational, if undesirable, response... Employing mediators with strong expertise and experience in different aspects of the work allowed each to provide positive, firm, and relevant guidance to the parties.</i></p>	
<p>Multi-Agency Collaboration on a Mitigation Banking Solution for Maine’s Sherman Marsh (DOT)</p> <p><i>The [facilitated process] helped participants gain a better understanding of each other’s views, perspectives, and needs; identify and focus on key issues to be addressed; explore options on resolutions that meet participants’ common needs; break through a stalemate; work together collaboratively; and achieve consensus.</i></p>	
<p>Oak Ridge National Laboratory - Using ECCR Principles in Pursuing Solutions to Complex Environmental Problems (DOE)</p> <p><i>Incorporating ECCR principles during the implementation of the Memorandum of Agreement (MOA) executed for the historical interpretation of the East Tennessee Technology Park as required by the National Historic Preservation Act has realized dramatic and substantial benefits.</i></p>	
<p>Collaborative Solutions to Stormwater Permitting under Section 404 of the Clean Water Act at Joint Base Lewis-McChord (DoD)</p> <p><i>ECCR generated a better working relationship between Army, the Regional EPA Office and the State regulators. The parties reached a mutually satisfactory revision of the permit and the installation was able to meet the permit requirements imposed by the state and EPA, thereby avoiding litigation.</i></p>	
<p>Multi-Agency and Multi-Stakeholder Collaboration for the Missouri River Recovery Management Plan (USACE)</p> <p><i>The beneficial key outcome is that the MRRIC provided USACE with a consensus recommendation in August of 2014 of Human Considerations objectives and metrics. ...Neutral facilitation for large groups with varied stakeholder concerns provides a number of benefits: 1) Ensures public or entity (MRRIC) has an open forum for discussing concerns; 2) Enables technical agency personnel to focus on their skill set (economics, engineering, etc.) without the worry of becoming polished at meeting facilitation; and 3) Provides resources that can assist if a meeting deteriorates or gets off course, utilizing people trained in facilitation, conflict resolution and structured decision making.</i></p>	

Analyzing ECCR Costs and Benefits

In FY 2014, a limited number of departments and agencies reported having formal methods of tracking and analyzing the costs and benefits/savings of ECCR processes, whereas the majority of departments and agencies reported on costs and benefits through other means. Some specific examples of department and agency efforts include the following:

- Capture of data relating to investments in FTEs, contracts, hours spent on a case or issue, and human resources tracked through performance plans (all reporting departments and agencies).
- Qualitative reporting of savings realized through the ability to accomplish mission without dispute-caused interruption (Air Force).
- Survey results that suggest a noticeable net savings of staff lead time and a shorter case duration by using ECCR compared to other decision making processes for the population of cases studied (EPA).
- FERC reported that in FY 2014, its Dispute Resolution Division (DRD) built a new case-tracking system to better track all case work including ECCR matters. In the case of other formal administrative or judicial forums, conflicts in this arena are tracked through a case docket system (DOI's OHA and IBLA).
- Positive outcomes generated through ECCR processes, such as cessation of litigation on regulatory matters, thereby resulting in reduced hours spent by staff, leadership, and counsel on litigation preparation, planning, and record production (NOAA).
- Estimates of costs savings reported by participants in ECCR processes led by FERC:
 - \$1000-\$25,000 21%
 - \$25,000-\$100,000 17%
 - \$100,000 - \$500,000 N/A
 - \$500,000 - \$1,000,000 4%
 - Over \$1,000,000 12%
 - N/A 46%

Table 3 lists methods for assessing use of ECCR processes and associated costs and benefits.

Table 3. Methods for assessing ECCR use, costs, and benefits

Qualitative Methods
• Annual agency ECCR reports
• Annual performance reporting to OMB
• Documentation of lessons learned
• Observation of ECCR processes
Quantitative Methods
• Inclusion of ECCR as a tracking measure in environmental project databases
• Multi-agency evaluation instruments to assess the practice of ECCR
• Dedicated evaluation programs (SEEER, PEPC)
• Tracking case sponsorship and case hours/case dockets
• Surveys to assess use, costs, and benefits of ECCR
• Use of Third-Party Neutrals
Technological Methods
• ECCR indicators and assessments incorporated into electronic tools, like e-planning, PEPC, Silver Jackets Inter-Agency Program, web-based interactive geospatial tools

Challenges with Reporting Costs and Benefits

All agencies reported challenges with generating cost and benefit information associated with ECCR. Some agencies reported challenges that can interfere with developing formal tracking methods; other agencies reported challenges associated with applying formal tracking or assessment methods.

The following are examples of reported challenges for departments and agencies with no formal methods of tracking and analyzing the costs and benefits/savings of ECCR processes:

- ECCR is often integrated into department and agency programs, resulting in challenges with separating ECCR investments from general project costs.
- Comparison of the resource costs of ECCR vs. non-ECCR processes is difficult to track due to the nature and complexity of different disputes.
- Without clear standards and criteria, reporting of benefits and costs is subjective and varies among respondents.
- Development of formal mechanisms to collect and report on quantifiable benefits and/or costs savings of ECCR may require significant investments of agency time and resources.
- Cost-tracking varies within differing agency structures (e.g., highly decentralized or highly stratified agencies).

Departments and agencies that apply formal methods of assessing costs and benefits/savings of ECCR processes reported the following challenges:

- Resource Challenges (EPA): Collecting valid and reliable quantitative information on costs and benefits for a large population of ECCR cases on an annual basis is a costly endeavor, drawing from resources that would otherwise be devoted to supporting the actual use of ECCR.
- Methodological Challenges (EPA):
 - Establishing a fair baseline for comparison at the individual case level, especially where ECCR runs parallel to and is influenced by other decision-making processes for the same matter. For example, should ECCR be compared to litigation, unassisted negotiation, or something else?
 - Once a baseline scenario has been established, what is the appropriate source of data for the relative costs and benefits of the alternative decision-making process? For example, ECCR cases can be matched to non-ECCR cases, but a failure to match on important variables can produce invalid results.
 - Retrospective reporting on ECCR and comparison cases can be unreliable.
 - Capturing the benefits, particularly environmental benefits, for individual ECCR cases. Issues here concern how such benefits can be feasibly measured and the timing of data collection.

Regardless of challenges inherent in gathering informative data about ECCR processes, departments and agencies continue to report that preparing annual ECCR reports improves the capacity to gather ECCR-related information and, thus, to find opportunities for improving ECCR effectiveness and efficiency.

This synthesis was developed by the Udall Foundation's U.S. Institute for Environmental Conflict Resolution on behalf of OMB and CEQ.