

Environmental Collaboration and Conflict Resolution Forum

Meeting Notes

CEQ Conference Room
722 Jackson Place, Washington, DC
Tuesday, September 20, 2016
1:00 PM – 3:00 PM EST

General Updates from CEQ

The 2015 Environmental Collaboration and Conflict Resolution (ECCR) in the Federal Government Report is now available for review. Comments are due October 14, 2016. The Forum is in the midst of active discussion about revising the approach to future reporting.

Select Agency Updates

EPA

- Successfully resolved a Title VI issue with environmental justice groups in California involving a hazardous waste landfill. EPA provided a mediator and the group came to agreement. They discussed the case in front of an independent review panel. All information is publicly available, including the [settlement agreement](#), [press release from environmental justice groups](#), and press release from the [Department of Toxic Substances Control and CA EPA](#).

DOE

- In the process of involving a third party neutral for a mediation in partnership with DOJ and other agencies regarding uranium mines in New Mexico.

Discussion Topic: Value of the Annual Report

Dana Goodson (USIECR) gave a presentation on the Value of the Report work group discussion. The presentation is attached to these notes as Attachment 2. Following the presentation, participants discussed the content. Main points of the discussion were as follows:

- Ted Boling (CEQ) mentioned that it would be helpful to have recommendations to give to CEQ leadership for the transition in order to give them some sense of the ECCR practice and where it is going within federal agencies, including the benefits and challenges.
- Conflict management and conflict resolution is a core government function. People want to know how agencies manage these conflicts. Having an agency-specific guide is helpful in detailing where each stands, what they have done in the past, and resources they have available for conflict resolution.
- It is useful to examine the state of programs and practice since the 2012 memorandum on ECCR, including how this group would re-envision the 2012 memo and how we could help advance ECCR more broadly.
- The OMB/CEQ memorandum has broadened over time. The term went from Environmental Conflict Resolution (ECR) to Environmental Collaboration and Conflict Resolution (ECCR), but it is still focused largely on third party facilitators to resolve issues. It would be helpful to look at the way most conflicts get resolved, whether it be through third parties or through other mechanisms.

- OMB would like to delve further into how the report is used as a budget justification. Do other agencies and staff not directly working on this effort know that the ECCR report exists?
- EPA uses information from the report to contribute to a joint report as part of a budget justification. This could be an opportunity to educate people who are grappling with daily conflicts, or to educate those who are new to government that this is a positive approach for dealing with conflict. The report can help to evaluate whether a situation would benefit from a third party, and lets readers know that they are not giving away authority through this process. Using the information as a tool for interagency issues is an untapped opportunity.
- DOE invites the Institute to deliver a workshop every year about ECCR generally, and in relation to specific issues. From those training sessions, the Institute has been recommended to resolve conflicts at DOE.
- FERC mentioned that there is no feedback loop to participate in the annual report. A letter to the chairman/director of agencies acknowledging that they are facilitating the use of ECCR could help incentivize use and participation in the group.
- Veterans Affairs does not use ECCR. If there is an issue with EPA, it goes through other channels rather than ECCR, so it will never have multiple ECCR cases per year. Could be that the VA ADR office is the more appropriate participant. As a transition issue, should identify offices where ECCR is not used effectively.
- What other agencies should be part of this group? USIECR mentioned the FCC.
- USACE mentioned the importance of sharing information within our own agencies. Conflicts are often resolved by other mechanisms and it might be useful to identify some of the non-third party mechanisms, and what kind of conflicts are occurring. The ECCR report distinguishes between planning, regulatory issues, and compliance. Is there something more we can do to map the technique used to resolve the type of issue? There could be a way to take better advantage of this reporting mechanism so that federal agencies work better together.
- It is helpful to draw attention to successful ECCR cases. There used to be awards distributed at the ECCR Annual Conference. The Institute has discontinued that conference due to budget cuts, but is discussing joining with other efforts in the future.
- FERC said it is important to discuss how to grow and advance the field.
- EPA brought up a question about whether there are parallel processes in government for ADR on non-environmental issues. IADWRG is a working group that writes an annual summary on when ADR is used, but it is more focused on workplace-related disputes. Could periodic interaction help streamline efforts?
- DOE said it was worth looking at the various resources that exist and how they can work together. Environmental issues require a different set of skills in mediation, so it should maintain some degree of distinctiveness. Maybe there is a way to maintain that distinct but related function.
- All changes will depend what the next administration wants. Conflict is part of the business environment and there's a need to have expertise on conflict resolution.
- OMB mentioned that the degree of usefulness of the report depends on the agency. If there is an entire office dedicated to conflict resolution, the report makes sense for a budget justification. However, if it is a small percentage of one person's time it might be less useful

for budgeting. On the policy side, information about the number of ECCR cases and how many have occurred over time is useful. The high-profile/highlighted cases are also helpful for OMB to show to its leadership.

- USIECR, on behalf of the subgroup, mentioned that it would like more in depth discussion regarding the questions for CEQ and OMB.
- Next steps for this topic:
 - OMB and CEQ will take these questions/insights back to leadership. Answers from OMB and CEQ leadership will drive the direction of the subgroup.
 - OMB wants to make sure that the value of the report to the rest of the group and other agencies is retained regardless of the process by OMB and CEQ.
 - Anticipated timeframe for providing that information is October/November.

Discussion Topic II: 10 Year Anniversary of Report

Stephanie Kavanaugh (USIECR) presented information from the Ten Year Anniversary Work Group. The presentation is attached to these notes as Attachment 3. Participants discussed the content. Main points of the discussion were as follows:

- The goal is to have the “trends” report finished by November 9, 2016.
- One theme that has come up through the discussion is that many cases have a long and winding path. The trends report will be useful in helping people to understand that it is not always a straightforward process with a successful outcome. Many outcomes are not measurable. CADR agreed and said there are some linkages to the Principles of Agency Involvement, as they highlight the multiyear journey for some cases.
- USIECR asked for volunteers to draft the ten-year anniversary trends report: USACE, DOE, and CADR volunteered.
- USACE asked participants if they know of other efforts analogous to the report. CADR mentioned government-to-government consultation, which has an annual reporting requirement. Each bureau within DOI reports upward about their consultation efforts.
- DOJ Environment Division is a proponent of dispute resolution. CEQ will make sure they are aware of the 10year report because they might want to engage.
- The 10-year anniversary and the transition are a good time to distribute information within participants’ own agencies. This is also a good time to reach out to other agencies that currently do not participate but could and/or should participate. OMB could offer a distribution list of agencies/personnel who might be interested in getting a copy of the report.

Next Steps

- CEQ and OMB will check to see if they can fit in a meeting before January. Will get back to Institute after the meeting minutes have been distributed.
- Agencies should send comments to USIECR on the draft Annual Synthesis Report by October 14.

Next Forum Meeting: Tuesday, January 17, 2017

Attachments:

Attachment 1: Attendees

Attachment 2: Value of the Report Presentation

Attachment 3: 10 Year Anniversary Trends Presentation

Attachment 1

Attendees

In Person:

Andrea Grossman (OMB)
Dana Goodson (USIECR)
Frank Sturges (BLM)
Hal Cardwell (USACE)
Jeanne Briskin (EPA)
Joe Carbone (CEQ)
Josh Hurwitz (FERC)
Julie Kaplan (DOT)
Justin Levy (DOE)
Katherine Renshaw (NOAA)
Stephanie Kavanaugh (USIECR)
Steve Leathery (NOAA)
Steve Miller (DOE)
Ted Boling (CEQ)
Tyson Vaughan (USACE)
Will Hall (EPA)

On Phone:

Catherine Johnson (VA)
Deirdre Remley (FHWA)
Jerry Bowers (OST)
Joan Olmstead (NRC)
Joy Keller Weidman (USIECR)
Melanie Knapp (USIECR)
Sarah Palmer (CADR DOI)

Attachment 2

Value of the Report Work Group

Report Out Prepared for
CEQ ECCR Forum
September 20, 2016

Objectives for Today

- Share:
 - List of identified values for key audiences
 - Recommendations
 - Draft messages & questions for OMB/CEQ
- Get feedback from Forum

- Decide on next steps

Value of the Report WG Objectives

- Identify the reasons the annual ECCR report is/can be valuable for key audiences, including OMB and CEQ
- Consider the best or alternative ways to meet audiences' information needs and provide the identified value
- Formulate proposed recommendations for the ECCR Forum on any changes to the annual report process
- Develop draft list of questions and messages for discussion with OMB & CEQ

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Value of the Report: OMB & CEQ

Who are the key audiences for the report?

What value can the report provide for each of these audiences?

- Possible value for **OMB/CEQ**:
 - Informing leadership about ECCR use
 - Ascertaining whether the 2012 memo is being implemented
 - Decision-making for agency budgets
- It is important to engage in a dialogue with OMB and CEQ to determine:
 - What information they find useful
 - What data they would need in order to take action
 - How the information would be used

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Value of the Report: Agency Leadership & Staff

Who are the key audiences for the report?

What value can the report provide for each of these audiences?

- Value for **agency leadership and staff**:
 - Reminder to staff of the value of ECCR and the importance of thinking of it when it can be useful
 - Can encourage future investments in ECCR
 - Brings ECCR to the attention of leadership, specifically on whether the organization is accomplishing its charge
 - Allows agencies to see what other agencies are doing in the ECCR field
 - Could be used to tailor in-house trainings
 - Could be a good marketing tool (if confident in quantitative measures)

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Value of the Report: ECCR Program Offices

Who are the key audiences for the report?

What value can the report provide for each of these audiences?

- Value for **ECCR program offices**:
 - Allows us to obtain information we might not know otherwise – White House request provides motivation
 - Quality of ECCR program data tends to be higher, providing valuable information for others
 - We hope it demonstrates the value of ECCR, helps expand our programs and gain champions
 - Creates ECCR community among agencies (the Forum)
 - 2012 memo provides principles of practice

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Value of the Report: Private Practitioners

Who are the key audiences for the report?

What value can the report provide for each of these audiences?

- Value for **the private practitioner community**:
 - Could be a useful tool for practitioners to learn about potential project opportunities
 - Practitioners could also provide value to agencies by suggesting potential projects
 - But – it seems private practitioners are not aware of/using the report

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Recommendations: Annual Report

If the report is not meeting identified needs/values, how would it need to change to fulfill them?

Are there better or alternative ways to provide the value that the report offers?

- **Recommendation 1**: Changes to the annual report questionnaire will not be implemented this year, but the Forum should start the process for next year
 - Use information from the 10-year trends report to assist in determining which information is valuable and how to make changes.
- Potential changes to the questionnaire and annual report:
 - a) For appropriate questions, include prior year's response in a table format and ask respondents if their response has changed since the year before.
 - b) Tailor questions to different agencies' available information, level of ECCR use, or institutional capacity.
 - c) Improve the quantitative data so it is more reliable and a useful educational tool for looking at trends.
 - d) Include the Principles of Engagement as an addendum to the annual synthesis report.

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Recommendations: Report & Forum Operations

- **Recommendation 2:** The Forum should discuss with OMB/CEQ:
 - a) Implementation of the 2012 memo
 - b) OMB/CEQ uses of the annual report data
 - c) Who should be responsible for reporting, what are the objectives around these responsibilities (e.g., to inform the participating agencies, to inform OMB/CEQ), and how they should occur
- **Recommendation 3:** The U.S. Institute should update information about agency points of contact annually.
- **Recommendation 4:** The U.S. Institute and other reporting agencies should send the final annual report synthesis to their private practitioner rosters annually.

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Meeting with OMB & CEQ: Messages

- Revisit the 2012 memo & how it is being implemented through the annual report and Forum meetings
- Ten-year trends report will provide information on how ECCR has been useful
- The Forum would like to convey message of the role and importance of ECCR to transition teams

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Meeting with OMB & CEQ: Questions

- Is your intent in requesting the report to have information for your purposes? Or is it largely to fulfill the purposes of others?
- How is the report being used now at OMB and CEQ?
- Is there something you need from the ECCR report in the future? What is the next step with the report to provide the incentives you wish to create and have information that can be acted upon?
- What agencies should be involved in the Forum?
- Who is responsible for the annual report? What are the objectives around those responsibilities? How should they occur?

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Questions & Feedback

- What additions or changes do you have to the subgroup's work?
- Per the work group's recommendation, should the Forum proceed with developing recommendations for changes to the annual report to be implemented for next year's report? If so, how should that take place?

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Attachment 3

Trends Work Group

Report Out Prepared for
CEQ ECCR Forum
September 20, 2016

Objectives for Today

- Share a draft report outline that represents our best thinking on what the report should cover and how it should be written
- Get feedback from forum
- Volunteers?

Suggested Report Title:

Bringing People Together to Resolve Environmental Challenges:
Environmental Collaboration and Conflict Resolution in the
Executive Branch – 2005-2016

Primary interest is in capturing the implementation of the ECCR policy memo over ten years, rather than focusing on trends from the annual reports.

DRAFT Report Objectives

- Tell the story of 10 years of ECCR use by federal agencies, including qualitative and quantitative trends, illustrative case studies, innovations, and any lessons learned.
- Educate federal agency staff and others on the value of ECCR and appropriate circumstances to use ECCR.
- Make the case for continued use of ECCR by federal agencies
- Provide recommendations on how to further implementation of the OMB/CEQ ECCR policy

Report Audience

- Senior agency leadership
- Forum members and their agency ECCR staff
- New Administration
- Practitioner community

Proposed Report Outline

- I. Executive Summary, including report objectives
- II. Introduction
 - Origin & background of the policy, including impetus
 - Participating agencies
 - Creation of the conflict resolution “centers”
- III. Changes in Use of ECCR
 - Agency use data
 - case numbers,
 - area of use
 - decision-making forum
 - ECCR methods used
 - Acceptance and Institutionalization of ECCR in Federal Agencies

Proposed Report Outline

V. Impact of ECCR Use in Federal Agencies

- Benefits, including case highlights
- Costs (as compared to traditional approaches)
- Challenges/barriers to ECCR use & how agencies overcome these
- Innovations (for example use of remote technology)
- 2-3 illustrative case studies

VI. The Future of ECCR in Federal Agencies

- Based on 10 years of data – what future trends are expected?
- Recommendations for furthering implementation of the ECCR policy

Proposed Process for Completion

- Forum members agree on outline
- Expand subgroup membership to 5 individuals who have the time and desire to work on the report
- Use a team approach to writing the report with specific sections written by different individuals
- Forum members volunteer to write specific sections of report
- Report should be done on or around November 9, 2016

Questions & Feedback

.....and volunteers?