

Environmental Collaboration and Conflict Resolution

Quarterly Forum

Tuesday, June 3, 2014

Meeting Notes

Opening: Suzanne Orenstein and Horst Greczmiel welcomed participants (see Attachment 1). Horst noted that discussions planned for this meeting could help inform activities to build visibility for ECCR at the executive level of agencies in the next six months.

ECCR Updates from Agencies:

NRC:

- NRC has hired external third party neutrals to do negotiations on three licensing sites for National Historical Preservation Act (NHPA) and NEPA issues.
- Hoping to have a liaison from ACHP to work with NRC.
- Continuing to provide in-house facilitation for NRC public meetings.

USFS:

- Steven Lohr was recently named to be director of the USFS Partnership office. He was previously a Forest Supervisor in Alabama.
- USFS conducted an overall agency assessment of collaborative capacity in the past year and recently presented a report to leadership assessing how well employees are equipped to collaborate, with the goal of finding additional ways to build capacity, and identifying if various collaboration tools used can be modified for internal purposes.

Air Force:

- Travel budgets are still restricted, however there are some internally sponsored ADR trainings for AF personnel scheduled in San Antonio next month.
- Currently have a small number of ECCR cases.

DoD:

- Chris Kopocis has left the position of ADR lead for DoD and Katherine McKinnon will be acting as her replacement.

EPA:

- Conducted a cost-savings assessment for EPA's ECCR work that looks at litigation-related ADR.

- Starting to deal with succession planning as a number of employees are nearing retirement; also looking at private providers around the country because some of those that EPA consistently contracts with are also close to retiring.
- Will soon issue a new IDIQ contract.

DOE:

- Conducting a semi-annual joint DOE/DoD field attorney training workshop with an ECCR component that includes the potential application of ECCR to NEPA disputes.
- Resources are limited so DOE is looking at cross-training opportunities with other agencies to increase capacity for in-house facilitation.

OMB:

- OMB is interested in hearing how the benefits of ECCR are being captured by the different agencies.

FERC:

- Conducting a conflict prevention skills seminar in Savannah, Georgia in August as part of integrating ADR into the FERC certificate process for interstate facilities.
- FERC is also presenting a 4-hour course on conflict prevention skills at an industry conference using examples from infrastructure, construction, and operations disputes from the FERC ADR call line. The goal is to help parties address their own problems with less direct intervention from FERC.
- Proposing integrating ECCR into rulemaking for pipeline replacements and creating a notification and feedback process for complaints.
- Deb Osborne of FERC is the current chair of the Energy Bar Section of the ABA. She is planning two programs this year—one focusing on ECCR and another focused on energy issues. Participants should contact Deborah Osborne if interested in joining the Section or want to provide input (deborah.osborne@ferc.gov).

BLM:

- Working on a strategic plan to bring more ECCR to the agency. Surveyed staff throughout the agency to assess resources currently being used, what is needed, what barriers exist. USGS will be publishing this plan on their open file system within the next month or so.

Army Corps:

- Working on a 5-year plan to implement the results of the recent collaborative capacity survey. Division-sponsored workshops will develop recommendations for improvement in collaborative capacity and a national workshop will take place at the end of July.

USIECCR:

- Renovating its website and re-designing it to be useful for supporting communities of practice and to showcase the work happening throughout the federal government
- Taking a close look at the evaluation work of the Institute to see how it might be improved.

- Assessing USIECR training programs and the Institutes' role in complementing the training offered by other agencies.
- Working to further identify USIECR's niche. Learning that ECCR for issues and challenges that cut across various agencies constitutes one unique element of USIECCR's work.

CEQ:

- Regarding USIECCR's comment about the website as a community of practice, CEQ suggested that other agencies provide feedback on the structure of the community of practice. Specifically, forum members should note how the community of practice would be useful, identify which tools of practice could be used, and suggest possible sub-categories that should be highlighted.

Comments and Next Steps on Synthesis of ECCR Annual Reports

The draft of the FY13 annual report synthesis was distributed prior to the meeting. Meeting participants made several specific comments and corrections which are outlined in Attachment 2.

Additional comments should be emailed to Suzanne Orenstein by June 10 (e-mail orenstein@ECCR.gov).

Regarding distribution of the 2014 Annual Synthesis, the plan for this year is to send the report to the senior leadership of departments and agencies with a message from OMB and CEQ highlighting the importance of ECCR and attaching the 2014 report with the links to previous reports.

USIECCR will send a copy of the final report to all ECCR forum members. USIECCR will also send an email to ECCR forum members to verify points of contact from each agency and CEQ will distribute the report with a cover memo to that list.

Participant comments regarding distribution of the annual synthesis:

- USFS- Field staff would like feedback about how their contributions to the report and a copy of the final report. It would be helpful for them to see how their recommendations are contributing to the larger picture and to senior leaders' decisions.
- Army Corps- Agrees with this comment from USFS. It would be good to show those who contributed data to the report how this is part of a larger federal initiative.
- FERC- Perhaps hosting a webinar or creating a YouTube video about the report results would allow more wide-ranging dissemination.
- USIECCR- Provided a webinar presentation for Conflict Resolution Week on ECCR in the federal government that included trends and uses in federal agencies, resource needs, and what is needed to institutionalize ECCR.
- NRC- Has done webinars/teleconferences and echoed strengths of that approach highlighted by others (i.e. no travel required, reduced cost, efficiency).

The FY12 ECCR synthesis report will be put on the website as a final report to refer to when distributing FY13 report.

Proposed Meeting with Agency Leadership

OMB and CEQ are proposing a future deputy-level meeting on ECCR to highlight important ECCR issues.

Participant comments regarding the deputy meeting:

- The deputy meeting will provide visibility for ECCR and an informational component. This is a chance to make requests for your ECR program (more training, access to travel funds, more staff support, etc.).
- Participants raised questions related to how the deputy meeting will deal with the different needs and perspectives of ECCR in regulatory and land management agencies, given their different needs and strategies.
- A question was raised regarding the benefit of bringing all of the agencies together.
- Also, some agency ADR efforts cover only labor and enforcement disputes so a Deputy Secretary who attends may not be familiar with ECCR.
- It would be useful to circulate information on the outcome of the meeting with deputies to field personnel.
- Contact Horst Greczmiel by email or phone to provide any insight, input, thoughts, and what requests you have for the deputy meeting by June 30. E-mail hgreczmiel@ceq.eop.gov or call 395-0827.

Assessing Cost Savings from ECCR

At the last meeting it was decided that it would be useful to discuss further how different agencies are measuring the costs, benefits, and savings related to ECCR especially since this was the first year that this data was collected in the annual reports. During this meeting, EPA reported on the data they collected regarding this topic. A summary of their study results is included as Attachment 3.

In the discussion following the presentation, participants highlighted that this is just the beginning of a growing process for evaluating benefits, and it is important to learn from various agencies. Some mentioned challenges in conducting assessments given that they require large time investments, obtaining information can be cumbersome, and there are data validity issues, e.g. in tracking staff hours and other cost factors. Participants also raised the point that agencies are there to do core mission work and it becomes difficult to identify where the line between mission work and resources for doing analysis and evaluation should be.

Some of the suggestions for additional metrics to track included:

- identifying and quantifying resolution rates,
- correlating resolution rates with the length of time spent on a case,
- calculating some types of cost-savings, and
- identifying the costs of full time employees (FTEs) in collaboration cases versus litigation processes.

Some participants raised the point that there are major differences in evaluation cost savings between regulatory and land management agencies because land management and resource agencies use different metrics, have fewer litigation-related ECCR cases and more upstream collaboration projects.

Some participants voiced reservations about mandatory reporting of costs and benefits, as they are experiencing resource limitations for the annual data requests. However, others noted that addressing

the question of benefits is necessary preparation for discussions with the deputies and for working to obtain resources for their programs.

Plan for Next Meeting

- The next forum meeting will be scheduled for October 2014
- Topics for discussion that were suggested at this meeting could include:
 - Structuring communities of practice to address specific agency ECCR needs, e.g. land management vs. regulatory missions
 - Supporting communities of practice with web resources
 - Preparation for a deputies meeting on ECCR

Action Items:

- Comments on the 2013 synthesis report are due by June 10 to Suzanne Orenstein (orenstein@ECCR.gov); a final version will go out for review by June 15
 - Anyone wishing to add specific trainings to the illustrative table in the synthesis report should provide that information to Suzanne Orenstein by June 10.
- OMB and CEQ distribution of the FY 13 synthesis report will require the following steps:
 - Verify the key agency point of contact for the distribution (all to send Horst and Suzanne the most senior agency lead for ECCR by June 30)
 - Develop a memo from CEQ and OMB to serve as cover letter to the agency leads
 - The synthesis report will be sent to the agency leads and the ECR Forum reps in early July
- CEQ and OMB will work to plan and convene a Deputies meeting to occur after the fall ECCR Forum, probably in early November
 - Forum representatives should email Horst regarding potential topics for the proposed deputies meeting by June 30

Attachment 1: List of Attendees

Attachment 2: Participant comments

Attachment 3: EPA's Research Summary

Attachment 1

In Person:

Suzanne Orenstein- USIECCR

Horst Greczmiel- CEQ

Peter Williams- USIECCR

Deborah Osborne- FERC

Joan Olmstead- NRC

Andrea Bedell-Loucks- USFS

Rich Kulhman- EPA

Steven Miller- DOE

Mike Hickey- OMB

Stefano Costanzo- OMB

Will Hall- EPA

Jason Rubinstein- EPA

Pat Collins- US Air Force

Emily Biesecker-USFS

Steve Lohr- USFS

Felix J. Vazquez- DOE

Adam A. Orr- DOE

Wade Boswell- DOE

Lauren Nutter- USIECCR

Valerie Puleo- USIECCR

On Phone:

Steve Kokkinakis- NOAA

Matt Magee- BLM

Stacy Langsdale- Army Corps

Attachment 2

Specific Comments from Agency Representatives on the DRAFT FY13 ECCR Synthesis Report

- Figure 2 on page 4 needs clarification. Meanings of percentages are not clear and a discussion of the significance of the 'other' category is needed. For clarity, Table 3, 'The major ECCR benefits' on page 6 should read 'dispute path process efficiencies' rather than 'process efficiencies.'
- While 'Table 5. Categories of FY 13 ECCR training with agency examples' was meant to be illustrative and not comprehensive, meeting participants expressed that it should be more specific and list the agencies along with examples. If anyone has corrections to be made to the training table please e-mail Suzanne Orenstein with comments (orenstein@ecr.gov).
- The first paragraph, last sentence on page 3 regarding the increase in case numbers between FY 2012 and FY 2013 says that the increase was "*in part* the result of the expanded definition," but should instead read "*mostly* the result of the expanded definition..."
- Participants voiced the importance of word choice and its implications for gaining additional resources. Particularly, the report should be careful about words like "modestly." USIECR will try to improve the accuracy here.
- The framing of benefits on pages 5 and 7 is murky. It would make more sense to break it out into two sections: one on cost savings and one on benefits. Several participants echoed this suggestion.
- It would be useful to make it clear exactly what the expansion of the ECCR definition was.

Attachment 3

Pilot Survey of EPA Staff Case Leads on Comparative Costs and Duration of ECCR vs. Most Likely Alternative Decision Processes

(ECCR Quarterly Forum/6-2-14)

Comparing ECCR vs. Most Likely Alternative Decision Process

Asked EPA staff leads (mostly attorneys) who participated in 117 litigation-related FY 2011 and FY 2012 ECCR cases to:

- Identify the most likely alternative decision making process if ECCR had not been used: Litigation, Unassisted Settlement, or Other
- Estimate for both ECCR and the comparison process:
 - EPA staff lead hours in active periods
 - Number of EPA staff members involved
 - Non-FTE expenses (e.g., travel, contractors) in dollars
 - Duration/elapsed time to reach a decision (in weeks)

Case Characteristics

- 51 litigation cases with survey responses in which ECCR was used, neutral third parties were active, and agreements were reached
- ECCR arose from these forums:
 - Administrative Law Judges (39 cases)
 - Environmental Appeals Board (4 cases)
 - Federal Courts (8 cases)
- Mostly compliance and enforcement matters
- Most likely alternative decision processes:
 - Litigation (29 cases)
 - Unassisted Settlement (21 cases)
 - Other (1 case)

Key Conclusions

- ECCR required fewer staff lead hours and staff members than the comparison processes would have:
 - ***EPA Staff Lead Hours in Active Periods (estimated median hours)***
 - ECCR vs. All Comparison Processes (n=25)
 - 45 hours vs. 100 hours per case
 - *ECCR required 55% fewer hours per case*
 - ***Number of EPA Staff Members Involved (estimated means)***
 - ECCR vs. All Comparison Processes (n=51)
 - 2.67 staff members vs. 3.41 staff members per case

- *ECCR required 22% fewer staff members per case*
- ECCR required fewer non-FTE resources than the comparison processes would have:
 - ***Non-FTE Expenses (estimated means)***
 - ECCR vs. All Comparison Processes (n=42)
 - \$2974.52 vs. \$5903.10 per case
 - *ADR required 50% fewer non-FTE resources per case*
 - Non-FTE expenses were lower for ECCR than the comparison process in all but one case where reported for both ECCR and the comparison process (n=16)
- ECCR took less time to reach a decision than the comparison processes would have:
 - ***Duration/Elapsed Time (estimated median weeks)***
 - ECCR vs. All Comparison Processes (n=23)
 - 12 weeks vs. 24 weeks per case
 - *ECCR required 50% fewer weeks per case*

Limitations

- Did not address whether ECCR or the comparison processes or their outcomes were better
- Did not ask about the reasons for choosing ECCR over the most likely alternative process
- Cases largely reflect a particular type of ECCR – extensive use of neutral evaluation by jurists
- Survey respondent task (choosing the most likely alternative process and estimating costs/time) was complex and may affect validity of the results
- Large number of missing values in the data (survey respondents did not know answers) resulted in a small number of cases that could be compared, which may affect how representative the data are of all cases in the population
- Does not include comparative costs or time for:
 - Other EPA staff hours
 - Mediators or judicial forum
 - Non-EPA participants
 - Further decision making processes beyond the immediate comparison forum (e.g., future litigation)
 - ECCR used to help make an EPA decision (e.g., final regulation, final permit) with no litigation or for non-agreement seeking goals
- Results only valid for FY 2011-2012