



COLORADO

Colorado Water
Conservation Board

Department of Natural Resources

1313 Sherman Street
Denver, CO 80203

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John Hickenlooper, Governor

Bob Randall, DNR Executive Director

James Eklund, CWCB Director

TO: Colorado Water Conservation Board Members

FROM: Joe Busto
Watershed and Flood Protection Section

DATE: March 8, 2017

AGENDA ITEM: Agenda Item 7, South Platte River Easement Request – City of Englewood

Background:

The Board owns and operates a four mile long federally constructed flood control project just downstream of Chatfield Reservoir. The Board has also developed lands management and access processes. The Board has authority to grant requests for easements in the CWCB right-of-way. A 1998 Master Recreation Agreement with South Suburban Parks and Recreation covers most of the activity. However, periodically there are other requests to access the CWCB owned parcels. The 2001 Easement Guidelines and 2005 Easement Fee Structure are attached and guide fee setting methods. Staff received an easement application from the City of Englewood to use CWCB parcels next to the City owned parcels for a in-creek diversion structure, buried diversion pipe, and lowhead hydropower facility.

Discussion:

Using Method II - the Impact Method for drainage pipes sets land at \$10/square foot, with a 50% impact, times a 20,342 square foot calculation. This sets the value of this easement at \$101,710. However, due to recent cooperative projects with the City of Englewood the CWCB staff is recommending a fee using both Method II and Method III. Method III allows the board to set fees at its own discretion. Staff recommend to set the fee at one third of the Method II value. In 2011 the City allowed the CWCB to remove walls on their intake structure for recreation safety. The City just granted new trail access through this same area and the City Project will go underneath the trail. The City will also seek other local and federal approvals and permits.

Using Method III considerations this request: is minimal cost to the CWCB, is water quality benefits to Englewood, has minimal environmental impacts, has in river hydropower, and is a part of an ongoing partnership on new recreation trails to increase access to the Platte. The Easement Fee Structure states, "Should it be deemed by the Board that it is in the best interest of the general public, the Board may consider a special assessment for a City, Town or County on a case-by-case basis for an easement request."

Requested Action:

Approve the City of Englewood request for a 25-year non exclusive easement for the Big Dry Creek Diversion Structure Project in Englewood, Colorado. Using Method II and Method III fee considerations, the Board recommends staff collect a \$33,903 fee. The Board further directs staff to work with the Attorney General's Office and Englewood to prepare easement documents for Director signature.



March 8, 2017

Mr. Joe Busto
CWCB – Flood Protection Section
1313 Sherman Street #721
Denver, CO 80203

RE: Big Dry Creek Diversion – Easement Application

Dear Mr. Busto:

The City of Englewood (City) is pleased to submit the enclosed proposed easement parcels and related documents for the above referenced project for CWCB review and approval. Big Dry Creek Diversion is located approximately 150 feet upstream of the confluence with the South Platte River on Big Dry Creek. An in-creek diversion structure, buried diversion pipe, and low-head hydropower facility are the primary components of the project. Proposed modifications would improve municipal raw water intake function at Union Avenue as well as provide an emergency water source for the raw water intake from Big Dry Creek. The City submitted an application for a 5 cfs water right in December 2015 that is currently being evaluated.

The project will require authorization under Section 404 of the Clean Water Act. ERO prepared an aquatic resources effects analysis in July 2016 to provide the U.S. Army Corps of Engineers (Corps) documentation that the project would have minimal effect to aquatic resources. At the end of July 2016, the Corps responded stating to move forward with a pre-construction notification (PCN) for authorization under a Nationwide Permit No. 7 for Intake and Outfall Structures, indicating the aquatic resources analysis demonstrated that an Individual Permit would not be required for the project. ERO has prepared a draft PCN for submittal to the Corps. Once the PCN is reviewed/approved, ERO can submit the PCN to the Corps to request authorization for the project. The PCN also includes a discussion of compliance with the Endangered Species Act because no habitat for any federally listed threatened or endangered species is present in the project area. In addition, the PCN includes a description of a cultural literature and file review that was completed as part of compliance with Section 106 of the National Historic Preservation Act.

The City is requesting leniency with the easement fees and offers the following factors for consideration.

- The City is a partner with South Suburban on the South Platte River Run Project currently under construction.
- This easement request is within the existing easement granted to South Suburban.

- Incorporating the City's pipeline into the current project would minimize environmental and flood conveyance impacts.
- The City dedicated an easement at no cost to South Suburban for the South Platte River Run Project.
- The addition of hydropower to the pipeline would be utilized for security of the City facility as well as lighting for the future trail.
- The citizens of the City would benefit from improved water quality by reducing the water hardness.

The project does not impact conveyance or the 100-year floodplain of the South Platte River; however, it is within the floodplain of Big Dry Creek. A no-rise certification was completed and can be found enclosed in this package.

A copy of this application and preliminary design drawings will be submitted to the Readiness Branch (Omaha District) due to the project being located within the federal flood risk reduction project "Chatfield Downstream Channel Improvement Project".

If you have any questions or need to discuss this submittal further please feel free to call us at 303-762-2635.

Sincerely,
City of Englewood

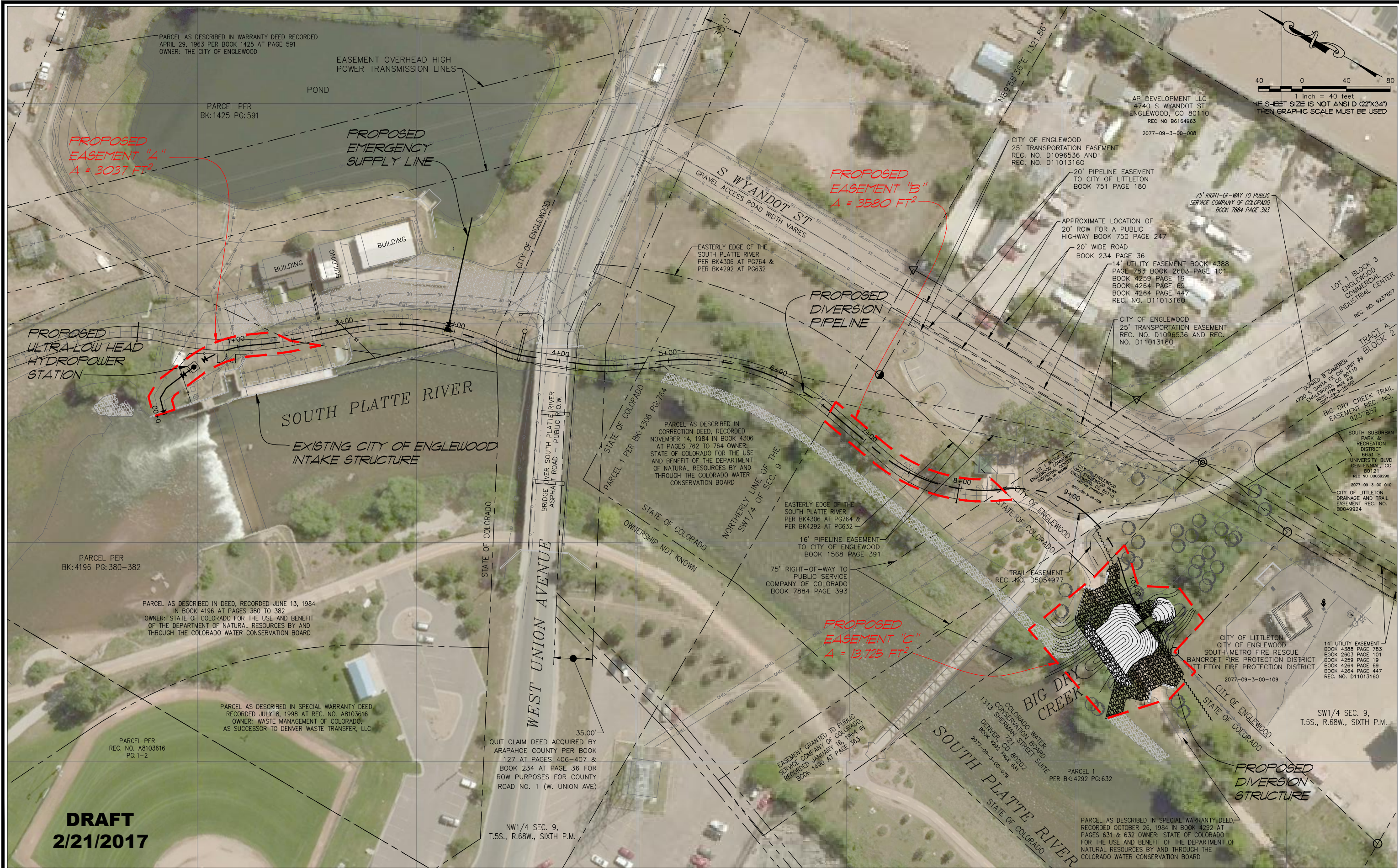
Tom Brennan, PE
Director of Utilities

Enclosures:

Easement Application Form
Proposed Easement Site Map
Pre-Construction Notification (PCN)
No-Rise Certification

Cc:

Laura Kroeger, Urban Drainage and Flood Control District
Jennifer Gitt, Readiness Branch, Operations Division, USACE – Omaha District
Brett Collins, South Suburban Park and Recreation



Number	Revision	Description	By	Date

CITY OF ENGLEWOOD
ENGLEWOOD, COLORADO

BIG DRY CREEK DIVERSION

PROPOSED EASEMENTS
SITE MAP

McLaughlin Whitewater
design group
A DIVISION OF MERRICK & COMPANY

2420 Alcott St
Denver, CO 80211
T303.964.3333
F303.964.3355

DESIGN: BAN
DETAIL: MJK
CHECK: BAN
DATE: DECEMBER, 2015

PROJECT NUMBER
6541894800
Drawing Number:
1

Colorado Water Conservation Board
Flood Protection Section
Easement Guidelines for the Chatfield Downstream
Channel Improvement Project
November 2001

Background

The Colorado Water Conservation Board has been receiving and acting on requests for easements on land owned by the CWCB as part of the Chatfield Downstream Channel Improvement Project. The Board requested that staff develop guidelines to assist with the administration of easement requests for the property owned by CWCB.

In the 1980s, the United States Army Corps of Engineers (Corps) constructed the Chatfield Downstream Channel Improvement Project (Project). The Project consisted of improvements to the flow of water in the channel of the South Platte River in Arapahoe County to provide (1) drainage (2) flood control, and (3) water flow. As part of its participation in the Project, the CWCB currently owns and controls approximately 7 miles on the South Platte River floodplain and Channel Lands through Littleton, Colorado in Arapahoe County. The CWCB's management of this land is subject to the terms of the September 7, 1977 and January 29, 1980 Agreements (Corps Agreements) between the CWCB and the Corps, which obligate the CWCB to operate and maintain the Project improvements. On May 5, 1997, the CWCB entered into a Contract for and Conveyance of Easement with the South Suburban Park and Recreation District ("South Suburban Contract") that conveyed an easement to South Suburban for certain recreational facilities.

The Board receives easement requests from utility companies, special districts, developers, engineers, municipalities, environmental and recreational groups and individuals. In evaluating such easement requests, the CWCB will use the following guidelines.

Guideline considerations

1. No easement shall be granted to any party except by action of the Board in a regularly scheduled Board Meeting.
2. The CWCB shall evaluate all easement requests in conformance with its obligations under the Corps Agreements. No easement may interfere with flood protection and public safety.
3. For all easement requests, the CWCB shall consider impacts to its obligations under the South Suburban Contract. CWCB staff should be contacted to obtain a map that shows the management areas for the Recreation Lands and Flood Conveyance Lands under the South Suburban Contract.
4. Upon receipt of an easement request, the CWCB staff will acknowledge the request by sending a confirmation letter to the applicant, scheduling a field inspection and preparing a field report that will be attached to staff's request to the Board for action on the request.

5. Formal Easement requests submitted to the CWCB must include the following items which must be received by CWCB staff no later than 30 days prior to the scheduled Board meeting at which the applicant seeks Board consideration:

- A) A completed easement application form.
 - B) A detailed explanation of the proposed purpose and use(s) of the easement.
 - C) A site-survey prepared by a licensed surveyor of the property covered by the proposed easement.
 - D) The proposed grantee shall transmit a copy of an easement request letter and full application packet to the following parties: 1) The U.S. Army Corps of Engineers-Omaha District, 2) the Urban Drainage and Flood Control District, and 3) The South Suburban Parks and Recreation District. Mailing addresses can be obtained from the CWCB.
 - E) For all drainage easement requests, a site drainage study and plan must be completed.
 - F) Easement requests within the 100-year floodplain of the Chatfield Downstream Channel Improvement Project must include a hydraulic analysis. The analysis will show any flood conveyance impacts of the proposed feature within the requested easement.
 - G) A written statement demonstrating awareness of and compliance with the applicable local, state and federal environmental and floodplain regulations pertaining to the property covered by the proposed easement.
6. Any and all easements granted shall be for a maximum term of 25 years but are eligible for to be renewed upon Board approval.
7. The CWCB may charge fees for easements in accordance with the easement fee structure, which may be amended by the CWCB from time to time.
8. In determining whether to grant an easement and in determining the fee charged for an easement, the CWCB may consider, but is not limited to consideration of, the following factors:
- A. Whether the requesting party is a:
 - 1) Governmental body,
 - 2) Private governed utility, or
 - 3) Private entity.
 - B. Whether the area under, upon, or over which the easement is requested is:
 - 1) An undeveloped area that will never be developed,
 - 2) An undeveloped area held primarily for future development,
 - 3) A developed area with minimal usage, or

- 4) A developed area with heavy usage.
 - C. Whether use of the easement by the requesting party would:
 - 1) Restrict or require a change in the current use of property, or
 - 2) Require maintenance and repairs that would interfere with other uses of property by the CWCB or other entities.
 - D. Whether the granting of the easement will adversely affect CWCB activities, functions or programs directly or indirectly related to the proposed easement property.
 - E. Whether the granting of the easement is in the best interest of the CWCB and the State of Colorado.
 - F. Whether there is a viable alternative for the easement on adjacent or nearby property not owned by the CWCB.
 - G. Whether the requesting party will agree to be responsible for maintaining improvements on or under the proposed easement property such as underground pipe, etc. for the term of the easement.
- 9. All easement documents shall be reviewed by the Attorney General's Office prior to the execution of such documents by the Director.
 - 10. The CWCB will not approve easement requests for permanent structures such as buildings, storage facilities, or decks.
 - 11. The CWCB will review easement requests that involve facilities such as drainage structures, parks, trees, benches, trails, and other public amenities on a case-by-case basis.
 - 12. The CWCB may waive all or part of the fees usually charged for an easement if it determines that an easement would benefit the State and /or the public.

Other considerations

The CWCB may grant approval for temporary construction and access easements that have no permanent impact on the property involved. The CWCB may consider factors other than those listed herein when reviewing easement requests.

STATE OF COLORADO

Colorado Water Conservation Board Department of Natural Resources

1313 Sherman Street, Room 721
Denver, Colorado 80203
Phone: (303) 866-3441
FAX: (303) 866-4474

www.cwcb.state.co.us



Attachment A Chatfield Downstream Channel Improvement Project Easement Fee Structure May 13, 2005 (Revised November 1, 2005)

Bill Owens
Governor

Russell George
Executive Director

Rod Kuharich
CWCB Director

Rick Brown
Acting Deputy Director

BACKGROUND

At the November 6-7, 1995 and January 24-25, 1996 Board Meetings, several easements across CWCB Rights-Of-Way along the Chatfield Downstream Channel Improvement Project were approved by the Board. Following the approvals, the Board directed staff to develop a fee structure to be used as consideration for CWCB granting of easement. At the March 23, 2005 Board meeting, staff was requested to review and make a recommendation on the fee structure for the "Chatfield Downstream Channel Improvement Project Easement Fee Structure" dated March 6, 1996.

DISCUSSION

CWCB staff consulted with five entities which have experience in granting easements and charging fees for said easements: 1) City of Fort Collins (Stormwater Utility); 2) City of Littleton; 3) Urban Drainage and Flood Control District (UD&FCD); 4) Colorado State Land Board; and 5) Colorado Attorney General's Office. Based on those discussions, the following fee determination methods were developed. In May 2005, the staff communicated with a number of entities that have to address the CWCB's real estate easement fee issues. These communications have aided the staff in making additions and changes to the existing easement fee structure.

Procedure for the Computation of Easement Fees for the CWCB's South Platte River Right-Of-Way.

Method I – Market Value Method

This method shall consider the fair market value of the subject site. It will require an appraisal by a licensed appraiser to determine the fair market value for the property in question. The appraisal may be based on comparable land values in the area at the time of negotiations, but it must also take into account the best and highest use of the property. The applicants must provide the appraisal to the CWCB in order to establish the fair market value for the subject property.

The cost of said appraisal shall be the sole responsibility of the applicant, and the CWCB shall have the right to independently verify the results of the appraisal at its own discretion.

The maximum term of easement is twenty-five (25) years.

The easement value is computed as follows:

Step 1 – Determine the fair market value of the subject property (unit value).

Step 2 – Determine size (area) of the impacted CWCB Right-Of-Way for the easement.

Step 3 – Compute the easement value as (market value/area) X (easement area)

Step 4 – Adjust the easement value by using the % impact table shown below in Method II.

The adjusted easement value shall equate to a total dollar value for a one-time lump sum payment to the CWCB. The easement is renewable in (25) years and the consideration for renewal will be the computed amount adjusted for inflation.

Method II – Impact Method

This method shall consider what percent impact value that will be realized to the CWCB lands for the proposed use area. The Base Real Estate Value of the CWCB right-of-way lands will be multiplied by the percent impact value. The CWCB shall establish the Base Real Estate Value for its lands based on current and recent transactions, discussions with adjacent land owners and communication with interested agencies (Urban Drainage & Flood Control District – UD&FCD, Denver Water, XCEL, Metro Cities and others who perform a similar activity.

Maximum term of easement is twenty-five (25) years.

The Value is computed as follows:

Step 1 – The Base Real Estate Value rate shall be ten dollars (\$10.00) per square foot.

Step 2 – Determine the percent (%) impact value for the requested use per complete application:

% Impact Table

Easement Use	% Impact
Drainage pipes and structural design features	50
Water and sewer line and related structures and systems	50
Recreational structures	50 to 70
Fences and paved surface area	70
Power lines	80
Private use structures (patios, decks, storage facilities, roads, etc.)	90

Value Formula: Value = (Base rate @ 10.00 sq ft.) X (Impact %) X (area in sq. ft.).

The **Value** means the dollar value for a one-time lump sum payment. The easement is renewable in 25 years and the consideration for renewal will be the computed amount adjusted for inflation.

All requests and approvals by the CWCB will have a revocable clause.

Method III – Special Use Easement

The Board may consider a Special Use Easement (Method III) on a case-by-case basis. In the event that Methods I and II do not appropriately fit an individual easement request, or if those methods result in an undue hardship for the applicant, then the Board may implement Method III at its discretion. The minimum fee for this type of easement is five hundred (500) dollars; however, the Board may decrease, increase, or waive the fee based on one or more criteria as outlined below. The criteria that the Board may consider in exercising its discretion in making fee adjustments are:

1. Costs to the CWCB
2. Benefits to the public
3. Type of activity involved
4. Right of way operation & maintenance costs and considerations
5. Positive and/or negative impacts to the environment or to the project
6. Size and physical characteristics of the parcel
7. Time or duration of the easement
8. Appurtenance of the easement to adjacent lands
9. Previous encumbrances
10. Public access