



**COLORADO**

**Colorado Water  
Conservation Board**

Department of Natural Resources

1313 Sherman Street, Room 718  
Denver, CO 80203

P (303) 866-3441  
F (303) 866-4474

Jared Polis, Governor

Dan Gibbs, DNR Executive Director

Rebecca Mitchell, CWCB Director

**TO:** Colorado Water Conservation Board Members

**FROM:** Andrea Harbin Monahan, Watershed Scientist  
Watershed and Flood Protection Section

**DATE:** November 18, 2020

**AGENDA ITEM:** Agenda Item 16, South Platte River Easement - City of Englewood

**Staff Recommendation:**

Staff recommends approval of the City of Englewood's request for a 25-year non-exclusive easement for the Big Dry Creek Diversion Structure Project in Englewood, Colorado. Using Methods II and III of the attached 2005 Fee Structure, staff recommends collecting a fee of \$40,425.

**Background:**

As the non-federal sponsor for the Chatfield Downstream Channel Construction Project, the CWCB owns and operates a federally constructed flood control project from the outlet of Chatfield Reservoir to the confluence of Bear Creek. The CWCB 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 CWCB-owned parcels. The 2001 Easement Guidelines and 2005 Easement Fee Structure are attached and guide fee-setting methods.

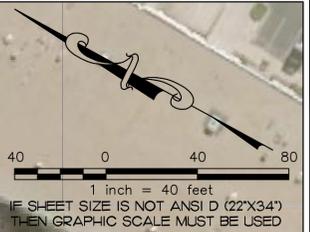
CWCB staff have received an easement application from the City of Englewood to use CWCB parcels that are adjacent to City-owned parcels for an in-creak diversion structure, buried diversion pipe, and low-head hydropower facility. The Big Creek Diversion is located approximately 150 feet upstream of the confluence with the South Platte River on Big Dry Creek, and the 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 project will not affect conveyance or the 100-year floodplain of the South Platte River.

Using Method II of the attached 2005 Easement Fee Structure, the Impact Method for drainage pipes sets land at \$10/square foot, with a 50% impact, times 24,255 square feet for this project. This sets the value of this easement at \$121,275. However, due to cooperative projects with the City of Englewood, CWCB staff recommends also using Method III, which



allows the board to set fees at its own discretion. Staff recommend setting the fee at one-third of the Method II value. This project poses a minimal cost to the CWCB, is a water quality benefit to the City of Englewood, has minimal environmental impacts, has in-river hydropower, and is part of an ongoing partnership for recreation trails to increase access to the South Platte. The 2005 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." Given these considerations, staff believes that one-third of the Method II fee calculation is appropriate.





PROPOSED  
EASEMENT "A"  
A = 4,530 FT<sup>2</sup>

PROPOSED  
EASEMENT "B"  
A = 7,171 FT<sup>2</sup>

PROPOSED  
EASEMENT "C"  
A = 12,494 FT<sup>2</sup>

BIG DRY  
CREEK

centerline of pipeline  
appears to be 1'  
outside existing pipe  
easement.

SOUTH PLATTE RIVER

SOUTH PLATTE RIVER

WEST UNION AVENUE

S WYANDOT ST

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  
Denver, CO 802  
T303.964.333  
F303.964.335

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

PROJECT NUMBER  
654 1894800

Sheet pile & Riprap  
extends beyond  
drawing number  
current easement  
boundary

## EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2020 by and between the STATE OF COLORADO, acting by and through the Department of Natural Resources, Colorado Water Conservation Board whose address is 1313 Sherman Street, Denver, CO 80203, (hereinafter, the "Grantor"), and City of Englewood, a municipal corporation and political subdivision of the State of Colorado, whose address is Englewood Civic Center, 1000 Englewood Parkway, Englewood, CO 80110 (hereinafter, the "Grantee").

WHEREAS, the Grantor is an agency of the State of Colorado created and controlled by Title 37, Article 60, C.R.S., which functions for the welfare and benefit of the State of Colorado and its inhabitants; and

WHEREAS, the United States Army Corps of Engineers ("Corps") has constructed improvements to the flow of water in the channel of the South Platte River in Arapahoe County, State of Colorado, with said improvements known as the Chatfield Downstream Channel Improvement Project ("Improvement Project"); and

WHEREAS, the primary purpose of the Improvement Project is to provide drainage, flood control and water flow regulation; and

WHEREAS, the Corps and the Grantor entered into two agreements which gave the Grantor the responsibility of acquiring land, easements, and rights-of-way for the Improvement Project and the duty of maintaining and operating the flood control works; and

WHEREAS, the Grantor has acquired certain fee title interests, rights-of-way and easements within the Improvement Project right-of-way for the purposes of construction and maintenance of the Improvement Project; and

WHEREAS, subject to the purpose and needs of the Improvement Project, the Grantee wishes to acquire and the Grantor is willing to grant a 25-year nonexclusive easement for the construction, operation and maintenance of the Big Dry Creek diversion structure, pipeline, and outfall facility including hydropower facility on the Grantor's property within the Improvement Project; and

WHEREAS, the Grantor approved granting such an easement to the Grantee at the Grantor's November 2020 Board meeting known as agenda item 16.

### WITNESSETH:

That, for and in consideration of a one-time payment of forty-thousand four hundred twenty-five dollars (\$40,425) and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, and the keeping and the performance of the covenants and agreements hereinafter expressed, Grantor grants to Grantee a nonexclusive easement upon the following property (hereinafter, the "Property") located in the County of Arapahoe, State of Colorado, to wit:

LEGAL DESCRIPTION OF THE EASEMENT AREAS ARE ATTACHED HERETO AS EXHIBIT A, FOR OUTFALL AND HYDROPOWER FACILITY, approximately 0.105 acres/4,590 sq. ft, EXHIBIT B, FOR A PIPELINE, approximately 0.165 acres/7,171 sq. ft, AND EXHIBIT C, FOR BIG DRY CREEK DIVERSION STRUCTURE, approximately 0.287 acres/12,494 sq. ft, consisting of six (6) pages

TO HAVE AND TO HOLD, subject to the covenants and agreements hereinafter expressed, for the purpose of using the Property for the Big Dry Creek diversion structure, pipeline, and outfall facility for a period of twenty-five (25) years, to commence upon execution of this Easement Agreement.

### I. GRANTOR AND GRANTEE MUTUALLY EXPRESSLY COVENANT AND AGREE:

1. If at any time during the term of this Easement Agreement Grantee does not for a period of 366 consecutive days make use of this easement for the purpose aforesaid, Grantor may in its sole discretion immediately declare such easement abandoned and shall so notify Grantee by certified mail with return receipt requested. In the event of such abandonment the consideration shall be forfeited.
2. This easement is non-exclusive and the grant of easement is subject to and subordinate to any and all use by the Grantor and any and all previously granted easements, rights-of-way, licenses and conveyances, recorded or unrecorded. It is Grantee's sole responsibility to determine the existence of any rights, uses or installations conflicting

with Grantee's use of the Property hereunder. Grantee agrees to not interfere with any use in the easement area by any other party under a previous grant, whether granted by Grantor or previous owner. Grantee understands and agrees that Grantor makes no representations concerning ownership of nor warrants title to any of the Property. To the extent that this grant of easement may encroach on lands not owned or controlled by Grantor, Grantee assumes all responsibility for any such encroachment.

3. During the term of the Easement Agreement, the Grantor shall have the right to dispose of the Property or to use the same for other purposes subject to the rights and privileges herein granted to the Grantee. Grantor reserves the right to grant additional easements to third parties, provided that said easements do not materially interfere with the easement granted herein.
4. The terms and conditions of the easement granted herein shall be in compliance with and subordinate to the terms of the September 7, 1977 and January 29, 1980 Agreements between the United States Army Corps of Engineers and the Colorado Water Conservation Board ("Agreements"), which are incorporated herein by reference. This covenant and agreement includes but is not limited to the maintenance and operational requirements on the Grantor and its designees under those Agreements and the requirement that Grantor and its designees have unlimited access to the lands covered by this Easement Agreement to perform all necessary activities. The Grantee shall cooperate with the Grantor and its designees in the performance of its maintenance and operational requirements. Noncompliance by the Grantee with this provision shall be grounds for immediate termination of this Easement Agreement by the Grantor.
5. The signatories aver that to their knowledge, no State employee has any personal or beneficial interest whatsoever in the Property.
6. If this easement is granted pursuant to §24-82-201 C.R.S., as amended, this Easement Agreement shall not be deemed valid unless and until approved by the officials and officers of the State of Colorado as required by §24-82-202 C.R.S., as amended, or such assistants as they may designate, or as otherwise required. Signature by the Grantor shall be deemed to be verification of approval of the commission or board of the agency across the premises of which this easement is hereby granted.
7. The provisions hereof shall inure to the benefit of and bind the successors and assigns of the respective parties hereto and all covenants shall apply to and run with the land unless otherwise specifically noted. Grantee may not assign its interest under this Easement Agreement without prior written consent of the Grantor.
8. The signatories aver that they are familiar with § 18-8-301, C.R.S. et. seq., (Bribery and Corrupt Influences) and § 18-8-401, C.R.S. et. seq., (Abuse of Public Office), and that no violation of such provisions is present.
9. This Easement Agreement including all exhibits, supersedes any and all prior written or oral agreements, and there are no covenants or agreements between the parties except as set forth herein with respect to the use of the Property by Grantee. No addition, deletion, or other amendment hereto shall have any force or effect whatsoever unless embodied herein in writing. No subsequent amendment hereto shall have any force or effect unless embodied in a written agreement executed and approved by the officials and officers of the State of Colorado, or such assistants as they may designate, as required by applicable laws of the state of Colorado, state fiscal rules, or policies of the Office of the State Controller.
10. Grantee shall be responsible for recording this Easement Agreement with the Clerk and Recorder's Office in the county or counties in which the Property is located. Grantee shall provide Grantor with a conformed copy of the recorded easement.
11. Any notice required or permitted by this Easement Agreement may be delivered in person or sent by registered or certified mail, return receipt requested, to the party at the address as hereinafter provided, and if sent by mail it shall be effective when posted in the U.S. Mail Depository with sufficient postage attached thereto:

Grantor:

Colorado Water Conservation Board  
Flood Protection Section  
1313 Sherman Street, Rm 721  
Denver, CO 80203

Grantee:

City of Englewood  
Utilities Department  
Englewood Civic Center  
1000 Englewood Parkway  
Englewood, CO 80110

Cc: Real Estate Programs

Attn: Manager of Real Estate Programs  
1525 Sherman Street, Suite 112  
Denver, CO 80203

Notice of change of address shall be treated as any other notice.

12. Grantor reserves all rights to any and all metallic and non-metallic minerals, ores and metals of any kind and character, including but not limited to coal, asphaltum, stone, sand, gravel aggregate, oil and gas in, on, or under said easement.
13. If any part of this Easement Agreement is found, decreed or held to be void or unenforceable, the remainder of the provisions of this Easement Agreement shall not be affected thereby and shall remain in full force and effect.
14. This Easement Agreement shall be governed by the laws of the State of Colorado.
15. The parties hereto understand and agree that liability for claims for injuries to persons or property arising out of the negligence of either party, its departments, institutions, agencies, enterprises, boards, officials, and employees is controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, et seq. C.R.S. and §24-30-1501, et seq. C.R.S. Any provision of this Easement Agreement, whether or not incorporated herein by reference, shall be controlled, limited and otherwise modified so as to limit any liability of the Grantor and the Grantee to the above cited laws.

## II. GRANTOR EXPRESSLY COVENANTS:

1. Grantee and Grantee's agents, assigns and successors shall have access at all times, subject to Grantor's security policies and procedures, to the Property for construction and maintenance of the Big Dry Creek diversion structure, pipeline, and outfall facility. Upon non-renewal, abandonment or termination of any of the Grantee's rights or privileges under this Easement Agreement, the Grantee's rights to access shall terminate.

## III. GRANTEE EXPRESSLY COVENANTS:

1. Grantor shall have, during the continuance of this easement, the right to dispose of the Property and to use the Property for other purposes provided such use does not materially interfere with the easement granted herein. In the event Grantor shall, in the future, wish to grant additional easements or rights-of-way which encroach upon the easement granted herein, Grantee expressly agrees and covenants it will consent to share the Property, provided the proposed additional easements or rights-of-way do not materially interfere with the purposes for which this easement is granted.
2. In the event of termination, Grantor may, at its sole discretion, retain all improvements without compensation to Grantee or, Grantee, at its expense, shall, upon written request by Grantor, remove all improvements constructed by Grantee from the Property within ninety (90) days of termination and restore the Property as nearly as is practicable to the condition of the land existing immediately prior to Grantee's first use. Grantor shall determine in its sole discretion whether the restoration complies with this paragraph. In the event that Grantee does not remove the improvements within such 90-day period, Grantor shall have the option to either 1) remove the improvements and restore the Property to its prior condition and bill the Grantee for the cost of removal and restoration, or 2) consider such improvements abandoned and the improvements shall become the property of Grantor. Except as otherwise provided herein, termination of this Easement Agreement shall be by operation of law. If this Easement Agreement is so terminated, consideration paid shall be forfeited.
3. Grantee use is subject to the purpose and need of the Improvement Project and the Agreements and may not use this grant of easement for any purpose other than that which is specifically described herein. If the Property is used by Grantee for any purpose other than stated herein, the easement is automatically terminated, and all of the right, title and interest of Grantee (and Grantee's successors or assigns) in and to the Property become null and void, and the Property shall absolutely revert to and revest in Grantor as fully and completely as if this instrument had not been executed, without the necessity for suit or re-entry and Grantee shall remove improvements as provided above. Grantor may terminate this Easement Agreement at any time it or the Corps determine use by the Grantee is contrary to the Improvement Project or the Agreements. No act or omission on the part of any beneficiary of this paragraph shall be a waiver of the operation or enforcement of the paragraph.
4. It shall be the sole responsibility of the Grantee to obtain and maintain all necessary and applicable local, state and federal approvals and permits for the purposes set forth herein. Grantee shall comply with all rules, regulations, laws, ordinances and policies authoritatively promulgated pertaining to the use of the easement lands, including but not

limited to local, state and federal flood plain regulations. Grantee shall comply with all applicable laws and ordinances (and all rules, regulations, and requirements of any governmental authority promulgated thereunder) controlling environmental standards and conditions of Grantee's use of the Property. If any such law, ordinance, rule, regulation, or requirement is violated as a result of Grantee's use of the Property and/or its operations on the Property, Grantee shall protect, defend, indemnify and hold harmless Grantor from and against any penalties, fines, costs and expenses including legal fees and court costs incurred by Grantor. Noncompliance by the Grantee with this paragraph and/or any such permit, rule regulation, or policy shall be grounds for immediate termination of this Easement Agreement by the Grantor.

5. Grantee agrees to indemnify, defend and hold harmless the Grantor against all liability, loss and expense and against all claims and actions based upon or arising out of injury or death to persons or damage to property, caused by any acts or omissions of Grantee, its successors, assigns, agents or contractors or arising out of Grantee's use of the Property. In the event that Grantee contracts for any work to be performed on the Property, Grantee shall require its contractors and subcontractors, except the Corps, to indemnify, defend and hold harmless Grantor, its employees and agents, and the Corps from any and all claims, damages and liabilities whatsoever for injury or death to persons or damage to property arising from the contractors' and/or subcontractors' actions or inactions. All contractors and subcontractors shall be required to abide by and follow the provisions of this Easement Agreement.
6. Grantee warrants that, throughout the term of this Easement Agreement, Grantee shall maintain continual commercial general liability insurance covering its use of the easement, with said insurance policy naming Grantor as an additional insured. Copies of the current Accord Form 27 evidencing said insurance and additional insured endorsement(s) are attached to this Easement Agreement as Exhibit D and incorporated herein. Notices of renewal of this insurance shall be provided to Grantor on an annual basis. Said policy shall provide coverage in the amounts as necessary to meet potential liabilities under by the Colorado Governmental Immunity Act (Article 10, Title 24, C.R.S.), both now and as hereafter amended. Grantee shall require each contract with a contractor to include the insurance requirements necessary to meet such contractor's liabilities. The Grantor shall be named as additional insured on all Commercial General Liability Insurance policies required of Grantee and Grantee's agents, successors, assigns, licensees, contractors, and permittees hereunder.
7. Grantee agrees that all excavations or other temporary removal of soil as required for Grantee's use of the Property for the purposes set forth herein shall be properly replaced, and Grantee shall seed, restore and revegetate the surface to substantially its condition existing prior to the disturbance as reasonably possible. Grantee shall be responsible at all times for the immediate repair or replacement of, or reimbursement for any damage to the Property due to Grantee's use of the Property for the purposes set forth herein. Routes of ingress and egress for construction or for maintenance are to be limited to the minimum necessary locations, and all work areas created must be obliterated, protected against erosion, and restored to the former condition of the land, as nearly as possible by Grantee. Grantor shall determine, in its sole discretion, whether Grantee's restoration complies with this paragraph. In the event Grantee fails to perform the restorative or revegetative work required by this paragraph to the sole satisfaction of Grantor, and after thirty (30) days prior written notice specifying with particularity the failure and indicating the remedial steps needed to cure same, Grantor shall be allowed to perform said work, and Grantee shall pay within thirty (30) days all direct and indirect costs incurred by Grantor for restorative or revegetative work including, but not limited to, regrading, filling, revegetation, erosion control, and replacing of soil.
8. Grantee shall provide Grantor with as-built drawings prepared and signed by a licensed Colorado professional engineer showing the location of any improvements constructed on the Property (including location and depth of any improvements located underground) within thirty (30) days after completion of construction of such improvements.
9. The Grantor may, in its sole discretion, require the Grantee to relocate a portion or portions of improvements on the property by giving the Grantee at least ninety (90) days prior written notice of such requirement. All relocation costs shall be paid by the Grantee. In the event that Grantee does not remove the improvements within such 90-day period, Grantor shall have the option to either 1) remove the improvements and restore the Property to its prior condition and bill the Grantee for the cost of removal and restoration, or 2) consider such improvements abandoned and the improvements shall become the property of Grantor.
10. The Grantee understands and agrees that its facilities are subject to damage and total loss without liability accruing to the Grantor as a result of flooding, as the result of maintenance and operation of the Chatfield Downstream Channel Improvement Project by the Grantor, the Grantor's designees, or the Corps.
11. Grantee shall coordinate with its contractors to obtain a temporary access permit from the South Suburban Park and Recreation District prior to construction of the Big Dry Creek Diversion Structure to be constructed on the lands described in Exhibit C.

12. The construction, storage and movement of vehicles, trucks and machinery shall be conducted at all times so as to minimize any disruption to recreational trails and paths while maximizing public safety. At all times during construction and maintenance activities, all of the recreation trails and paths shall remain open, unless adequate detours including signage and fencing are provided by the Grantee.

IN WITNESS WHEREOF, the parties hereto have caused this Easement Agreement to be executed the day and year first above written.

GRANTOR:  
STATE OF COLORADO  
Jared Polis, Governor  
Acting by and through the

Department of Natural Resources

By: \_\_\_\_\_  
Executive Director

GRANTEE:  
CITY OF ENGLEWOOD,  
a municipal corporation and political subdivision of  
the State of Colorado

By: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

APPROVED:

STATE OF COLORADO  
Department Of Personnel & Administration  
State Buildings & Real Estate Programs

By: \_\_\_\_\_  
Executive Director

# 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](http://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**

<b>Easement Use</b>	<b>% Impact</b>
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

**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.