

## Colorado Water Conservation Board Conservation Easement Grant Policy

POLICY NUMBER: 24

SUBJECT: CONSERVATION EASEMENT GRANT POLICY

EFFECTIVE DATE: 1/29/2021

REVISED DATE: N/A

**POLICY:** Conservation easements can play a critical role in meeting several Colorado Water Plan and Basin Implementation Plan objectives. Colorado Water Conservation Board (CWCB) funding may be used to fund conservation easement purchase expenses where such conservation easements further state and regional goals. The CWCB shall require all applicants applying for grants for conservation easement purchases to submit specific documentation as outlined in this policy and grant program criteria prior to receiving funding.

**PURPOSE:** The Conservation Easement Grant Policy is intended to establish a uniform process for grantees applying for CWCB financial assistance for conservation easement purchases. The policy does not apply to CWCB grants seeking funding only for activities supporting the development of a conservation easement.

**APPLICABILITY:** The Conservation Easement Grant Policy applies to ALL conservation easements funded by CWCB Programs.

**PROCEDURE:**

**Application** - In addition to the required application, scope of work, and budget documents, applications for financial assistance to purchase a conservation easement **MUST** provide the following information for evaluation:

- **Property and Vicinity Maps** - Maps are required and must match the legal description provided by the applicant. The vicinity map must display identifiable landmarks and show boundaries of the property and its relationship to the surrounding landscape. The vicinity map must also depict the surrounding land ownership and the current development and infrastructure on the property. The property map must clearly identify the property's boundaries, associated surface and groundwater structures, and areas of decreed surface and groundwater use if applicable. The property map must identify the location of existing physical and legal access to the property and any building envelopes proposed. Building envelopes are areas within a conservation easement boundary, which are reserved for existing and future building sites and

subject to the rights and restrictions defined by the conservation easement. Applicants must provide additional maps such as wildlife habitat and historically irrigated acreage maps that may be helpful in reviewing the application if available at the time of application. If these maps are not available at the time of application, applicants should provide additional information in the application regarding wildlife habitat and irrigated acreage or provide detailed maps prior to contracting.

- **Legal Description** - An accurate and complete legal description of the property is required. Legal descriptions for most properties can be found in the property's vesting deed(s). If more than one parcel is involved, applicants must include the legal descriptions for each parcel offered in the application. If they exist, applicants shall include legal descriptions for any building envelopes, rights of way, etc.
- **Letter of Intent** - Each application must include a letter of intent, or other documentation, signed by the landowner and the applicant and describing the terms and conditions of proposed transaction by both parties. A
- **Title Report or Title Commitment:** Applicants must provide a either a title commitment or recent (within five years) title report or documentation including information containing the legal description of the property, chain of title, mineral estate ownership, mortgages, liens, and other encumbrances. Applicants must disclose any future uses of the property that may be inconsistent with the identified conservation values and defining any encumbrances that may affect closing.
- **Water right/well permit information** - If the conservation easement will encumber water rights, the applicant must provide CWCB with a letter that summarizes the water rights or well permits involved in the conservation easement purchase transaction. In developing water right and permit information, applicants are strongly encouraged to discuss the proposed project with the applicable Division of Water Resources (DWR) staff. The following information regarding water rights/shares/well permits must be provided:
  - A description of the project watershed and basin, including whether the basin is over-appropriated and other important aspects of regional water management that the project will comply with or support.
  - A description of how the water rights/well permits are related to the property's conservation values. Are the water rights associated with the property sufficient to support the conservation values protected in the easement? If applicant is considering including alternative transfer method language, will temporary leasing impact conservation values?
  - Describe the extent of actual historical use of and the physical and legal reliability of the water right(s) or any ditch or reservoir company shares. Provide copies of the water decree or well permit. Provide water rights title report and note any outstanding chain of title or encumbrance issues. Provide a plan for maintaining beneficial use of and monitoring the encumbered water rights.

- If the land and water resources to be protected through the purchase of a conservation easement are within the service boundaries of a public or private water management entity, applicants must provide a copy of the relevant entity articles of incorporation, bylaws, regulations, or other formal guidelines to demonstrate that the water management entity does not preclude the encumbrance of water rights or shares in a conservation easement. All applicants are strongly encouraged to consult with water management entities to identify any issues or concerns, such as impact to ditch operations, prior to submitting an application for CWCB funding, and to submit letters of support from the water management entity. Water management entities may include mutual ditch and reservoir companies, acequias, irrigation districts, Federal water projects, or any other organization whose independent management actions are directly tied to the management or ownership of the water rights associated with the property.
- **Project timeline:** All applications must include a proposed timeline of major project milestones including an anticipated closing date. Describe the expected timeline for completion and explain any concerns or constraints on the timing of closing, including any factors that may delay closing, or relevant deadlines involving any landowner financial obligations. All applications must identify the required match for the grant program as either secured or pending.

Other documents that applicants are strongly encouraged to provide at the time of application or prior to Board approval include:

- **Concurrence Letters:** From local government entity (e.g. municipality or county) or Basin Roundtable representing the region/basin in which the protected property is located. Letters should either approve or not oppose the conservation easement project.
- **Letters of Support:** From Federal, state or local government natural resource entities, including Basin Roundtables, which speak to the conservation values being protected under the conservation easement project. In particular, evidence that the conservation easement will protect important agricultural and water-related conservation values.

**Certification:** All applicants seeking CWCB funds for the purchase of a conservation easement must be certified and regulated by the Colorado Department of Regulatory Affairs (DORA). This requirement applies to nonprofit entities and state and local governmental entities that hold easements.

**Document Review:** Once a grant containing the purchase of a conservation easement is approved by CWCB, applicants must provide additional documentation for the document review. The Attorney General's Office (AGO)/Assistant Attorney General (AAG) shall review the documents pertaining to the transaction to ensure the proper documents are in place to convey the conservation easement. The AAG will provide CWCB/DNR staff with timely, written updates regarding the document review process as issues are identified, and provide written confirmation when the document review process is complete. Given the complex nature of conservation easement purchases, final approval and contracting of any CWCB grant including the purchase of a conservation easement is contingent on the completion of the due

diligence process. If concerns are identified during the due diligence process that cannot be reconciled, CWCB reserves the right to stop the contracting process, at which time the applicant may be required to resubmit a new application or seek alternative funding.

If a conservation easement is receiving funding from another entity, such as Great Outdoors Colorado or Colorado Parks and Wildlife, CWCB/DNR staff may also choose to rely on the due diligence review of those entities. The applicable CWCB project manager will work with the applicant to collect the relevant due diligence documentation and negotiate any necessary changes to adhere to this CWCB Conservation Easement Grant Policy.

The following documents are required for the document review and must be submitted between 60-90 days prior to closing for timely document review and grant contract execution:

- **Notice to Ditch or Reservoir Company/Water Right Holder:** If the conservation easement purchase includes shares in a mutual ditch or reservoir company a conservation easement that encumbers those shares may be created only after sixty days' notice and in accordance with the applicable requirements of the mutual ditch or reservoir company including, but not limited to, its articles of incorporation and bylaws in accordance with state law (§ 38-30.5-104(5) C.R.S.). Applicants must provide documentation of notice to CWCB.

**Purchase and sale agreement or other documentation** which sets forth the terms and conditions associated with the conservation easement purchase. The terms of the agreement must be consistent with the goals of the project in the application to CWCB.

- **Baseline documentation report** which provides an assessment of the natural resource values and existing conditions on the property encumbered by the conservation easement. Land trusts will provide a baseline checklist along with the report.
- **Phase I Environmental Site Assessment or other environmental assessment** which may disclose any contamination, unsafe conditions, potential clean-up costs, potential liability to the purchaser such as recognized environmental conditions or potential environmental concerns on the property and concludes whether the presence of any hazards would preclude any uses described in the grant application. Additional assessments may be required.
- **Mineral remoteness report** prepared by a geologist if the title commitment identifies mineral rights that have been severed from surface ownership or if the mineral rights are intact but the landowner wants to retain them. CWCB will support projects with mineral rights, but will consider if mineral development will affect the conservation values underlying the easement. A Surface Use Agreement which sets out strategies to mitigate the risks of mineral right development to conservation values may need to be required.
- **Draft deed of conservation easement** to ensure that it protects the conservation values of the property, furthers Colorado Water Plan and Basin Implementation Plan objectives, and is consistent with the grant application.
- **Title Insurance Policy** insuring the property interest in an amount at least equal to the purchase price, but recommended up to the appraised fair market value.

- **Current, qualified appraisal** from an independent, certified, qualified appraiser licensed in the state of Colorado who follows state and Federal requirements in preparing appraisals of conservation easements. Appraisals must be received prior to closing. If closing has not occurred within one year of the appraisal, CWCB will require a new appraisal. Note, CWCB's contribution may pay up to the final appraised value of the conservation easement. If the appraised value is lower than the value included in the grant request, CWCB will offer the amount equal to the percentage requested of CWCB.<sup>1</sup>
- **Draft settlement statement**

CWCB understands that many conservation easement transactions involve closing dates that are important for a variety of funding or other reasons. CWCB will make every effort to meet these deadlines but will not compromise the quality of the document review to meet a scheduled closing or other deadline. To ensure timeliness, applicants are encouraged to communicate with CWCB staff about important deadlines and to submit each document as it is developed to CWCB project managers to avoid unnecessary delays prior to closing.

**Grant Execution and Disbursement:** Project managers, upon completion of the document review, will work with DNR purchasing to execute a final grant contract in advance of closing. Contracts for the purchase of conservation easements are expected to be executed within one year of award. Depending on CWCB staff capacity and the document review process, contracting for conservation easements purchases may require additional processing time. CWCB will make a disbursement only upon receiving a title insurance policy, draft settlement statement, and any other documentation reflecting the final appraised value of the easement and stating both the seller/grantor and easement holder have committed to the conveyance of the conservation easement.

**Management plan and reports:** All applications for the purchase of a conservation easement must describe a clear vision of the future of the protected property and describe proposed monitoring and stewardship activities and overall management to protect/enhance the property's conservation values. In particular, applicants shall describe how on-going management and stewardship of the property will help achieve and maintain Colorado Water Plan and Basin Implementation Plan objectives and water-related conservation values. Applicants must also provide information to CWCB regarding whether they have the resources to maintain and monitor the property in perpetuity. Grantees shall create a management plan in conjunction with the seller/grantor and deliver to CWCB within six months of closing. Grantees shall also provide six-month progress reports during the course of the contract. Grantees shall provide annual reports detailing its monitoring of the easement in perpetuity.

### **Evaluation Criteria for CWCB Conservation Easement Projects**

Grant applications for the purchase of conservation easements must address the respective grant criteria and guidelines for the program (e.g. WSRF, WPG) under which the applicant has applied for and be evaluated against other grant proposals. All CWCB-funded conservation easements must further Colorado Water Plan or Basin Implementation Plan objectives.

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<sup>1</sup> For example, if the easement purchase value in the application is \$200,000, and applicant requests CWCB provide \$100,000 (applicant providing 50% match), the applicant is requesting 50% from CWCB. Therefore, if the appraisal is \$150,000, CWCB may only offer 50% of the appraised value (\$75,000).

In reviewing conservation easement applications, CWCB **shall** consider the following project characteristics:

- The conservation easement will help protect significant water-related conservation values such as maintaining intact riparian and floodplain corridors, wetland ecosystems of regional significance, sustainable aquifers, and other critical watershed functions such as source water protection. CWCB will give addition weight to applications providing information detailing specific stewardship and restoration activities for the protected property that will enhance ecosystem services such as water quality, watershed and forest health, and climate resiliency. CWCB also supports conservation easements that preserve culturally significant landscapes and water use practices and community-assets such as urban open space, drinking water sources, and green infrastructure enhancement.
- The conservation easement will help sustain working agricultural landscapes and rural communities by keeping water in agriculture or encourage voluntary water conservation approaches that reduce pressure on water systems. Applicants are encouraged to work with landowners to include flexible language in conservation easements that allow for voluntary, temporary, and compensated water transactions, including leases benefiting instream flows, so long as the proposed transaction will not affect the underlying conservation values of the conservation easement and the long-term viability of the protected agricultural landscape. Furthermore, all ATM Grant applications including a conservation easement must be part of a broader scope of work that ultimately includes the development of an ATM transaction.
- The conservation easement will help promote restoration, recovery, and resiliency of endangered, threatened, and imperiled aquatic and riparian dependent species and plant communities. The protected property will protect and enhance river-based environments and recreational opportunities, such as self-sustaining fisheries, that support local and statewide economies.
- The conservation easement is furthering critical interstate or intrastate water resource management objectives including, but not limited to, the sustainable management of groundwater resources and compact compliance.
- The conservation easement is part of a broader, watershed or regional-scale landscape protection strategy that has collaborative support. All conservation easements should be highly leveraged with Federal, state, local and private funding.
- The conservation easement does not allow for any activities that undermine the underlying conservation values of the easement. Examples may include, but are not limited to, surface mining, oil, and gas development activities that affect the surface of the land covered by the conservation easement. Also, if the applicant speaks to strategies to mitigate those risks, such as Surface Use Agreements.