

City of Clovis
WATER ASSURANCE PLAN
Conservation Land and Water Trust

Conservation Easements

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Real property rights consist of a “bundle of sticks”



One property right is the right to use the surface



Surface rights include



- The right to exclusive use of the surface
- The right to use the surface consistent with local land use regulations, such as for agricultural production or commercial or industrial development
- Others

Subsurface rights may include



- Mineral rights
 - May be separate rights, for example, oil & gas, hard rock minerals, and construction materials
- Groundwater rights
 - If granted by State to overlying landowner
- Others

Each right in the “bundle of sticks” is independently transferrable



- Examples:
 - The landowner may lease the use of the land for crop production or grazing
 - The landowner may sell or lease the right to extract certain minerals
 - The permit holder may sell or lease his right to pump and use the groundwater

Each right in the “bundle of sticks” has a separate value



- Examples:
 - The right to irrigate crops
 - The right to exclude others, eg, hunting
 - The right to develop the surface for commercial or industrial use
 - The right to use the permitted groundwater

Clovis' challenges/opportunities

- Wells mining Ogallala Aquifer
- Replacement renewable surface water supplies decades away
 - City needs additional water supplies to sustain current and future economic base and population until Ute Pipeline on line
 - City wants to work with willing farmers and ranchers to forgo irrigation pumping to conserve groundwater for future municipal use

What is a conservation easement?

- A voluntary legal encumbrance granted by the landowner that limits one or more uses of the property to preserve or protect statutory “conservation values,” such as:
 - Open space, including farm and ranch land
 - Relatively natural wildlife habitat or ecosystem
- Conservation easement is an interest in real property granted to conservation trust or city
- *LANDOWNER RETAINS ALL RIGHTS NOT GRANTED!*

How could Clovis use conservation easements to create a Conservation Land and Water Trust?

- Obtain conservation easements with willing farmers and ranchers
 - Limit irrigation to conserve Ogallala Aquifer groundwater to meet future municipal needs
 - Secure the protection or restoration of playa lakes to recharge the Ogallala Aquifer

Pairing Conservation Easements & Municipal Option Agreements

- * How the conservation easement could work:
 - * Purpose is to conserve land and/or water
 - * Ties permitted water rights to formerly irrigated land
 - * Constrains pumping to conserve Ogallala aquifer
 - * Permits landowner to lease water for city's use
 - * Landowner retains ownership of permitted groundwater for lease to city
 - * Groundwater historically used for irrigation becomes alternate “crop” that replaces former irrigation production
 - * Water lease provides predictable non-cyclical ag cash flow

Pairing Conservation Easements & Municipal Option Agreements

- How the municipal option agreement works:
 - Secures additional municipal supplies for future
 - Essentially a municipal purchase of perpetual option from groundwater owner for right to lease water
 - Could include one-time or annual option payment
 - Would include payment per acre-foot when city uses water



Funding conservation easements with NM conservation easement tax credits

- Donated value eligible for state tax credit *and* federal charitable tax deduction
- Donation must meet requirements of IRC 170(h)
 - Conservation value defined by federal and state law
 - Perpetual
- NM state conservation easement tax credit
 - Limited to 50% of Fair Market Value of donation
 - Limited to \$250,000
 - May be sold, exchanged or transferred

How would a landowner benefit from granting a conservation easement?

- Compensation for the reduced value of their property as a result of granting the conservation easement, for example:
 - State conservation easement tax credits
 - Federal tax deductions
 - Cash payments for conservation easement
 - Cash payments for city use of water

Questions?

