



Washington State Conservation Commission

Policy #	13-05 Cost Share Assistance Policy
Applies to:	All Conservation Districts
Effective Date:	March 21, 2013

PURPOSE

This policy authorizes local conservation district boards to establish by resolution, cost-share ratios up to 100% in association with all WSCC grant cost-share funding except CREP and Irrigation Efficiencies and other programmatically prescribed cost-share limitations.

BACKGROUND

This policy is based upon resolution passed at the WACD Annual Meeting, November 28, 2012. This proposal recognizes the roles of local conservation district board of supervisors, local priorities in economic and natural resources issues, takes into consideration the ownership of the property, and is consistent with provisions of the state constitution (see page 4). This proposal enhances the ability for conservation districts to assist landowners in the development and installation of management practices and capitalizes upon the conservation district's ability to find and utilize the most appropriate methods and fund sources in achieving the desired outcome.

POLICY

Cost Share Assistance Rate of Reimbursement

- Cost Share Assistance projects on private property using SCC Funding are authorized to be reimbursed at up to a maximum of 100% of the total project costs.
- In no case shall the reimbursement exceed 100% of the total project costs, including any other source of funding for the project.

NRCS Approved Practices

- Cost Share Assistance provided shall only be for practices identified and installed on-the-ground as eligible NRCS practices.

Board of Supervisor's Resolution

- Beginning July 1, 2013 and annually thereafter, each conservation district must submit an approved board resolution to the Conservation Commission stating the rate of reimbursement for Conservation Commission funds for all NRCS practices. This will be kept on file at the Commission office and valid for 12 months.
- The board of supervisors may determine it would enhance landowner participation in a cost share eligible practice if the cost share rate for that practice is established in excess of 50-75%. This determination is to be made by resolution of the board, including a finding and description of the natural resource benefited from the cost share practice, the likelihood of increased participation, and the public benefit to be achieved should the practices be implemented.

- Conservation districts may adopt a lesser rate of reimbursement but may not exceed the Conservation Commission's authorized rate.
- The default rate if none supplied by the Board of Supervisors shall be 50%.

WSCC recommends that district avoid a practice by practice listing of the rate. WSCC requests the district consider a district-wide rate to reduce the workload and confusion at the district level.

Programs Not Covered In This Policy

- No board of supervisor's resolution stating the rate of reimbursement for Conservation Commission funds shall apply to CREP and Irrigation Efficiencies funding.
- If additional directives are issued by another entity for funds (legislature, agency) that is explicit in programmatic limitations, these directives shall supersede the board resolution.

Cooperator Labor Rate

- The landowner labor rate shall be set at a maximum of \$20.00 per hour. The landowner's minor labor <16 years of age shall be consistent with Washington's established minimum wage.
- Beginning July 1, 2013 and annually thereafter, each conservation district must submit an approved board resolution to the Conservation Commission stating the districts Cooperator labor rate, not to exceed \$20.00 per hour. This will be kept on file at the Commission office and valid for 12 months.

Publicly-Owned Property Eligibility

Publicly-Owned Property Definition: Title to property is held by federal, tribal, state, or local government, special purpose districts, including public utilities.

- Cost Share Assistance projects on publicly-owned property (federal, tribal, state, county, city) shall be presented to the Conservation Commission for approval prior to the accrual of any costs.
- If approved by the Conservation Commission, the rate of reimbursement shall not exceed 50%.

Reimbursements Not To Exceed 100%

- If cost sharing with other entities on the same project, the District must identify all funds used on the project and the costs being reimbursed by the other entities. This ensures the landowner will not be over-paid beyond the total project costs.

Existing Policy

- All other identified policies, procedures, and forms, for Conservation Commission funds used for Cost Share Assistance shall remain in effect. These policies and procedures are outlined within the State Conservation Commission Grants Procedure Manual.
 - Receipts outlining costs and landowner labor will continue to be required.
 - All cost share projects are required to be uploaded into the CPDS system along with before and after pictures, acres addressed, natural resource benefit, etc.
 - SCC Cost Share Assistance Agreements shall be printed from the CPDS system.

Random Audits

- Conservation Commission financial staff will do random audits to validate compliance with the agency policy and legal requirements.

District Staff Working on Projects

- Conservation district staff will be allowed to conduct project implementation work on the project but are prohibited from charging the same hours worked on multiple grants. These hours are to be reflected in the project breakdown, but are not to be used as part of the cost share reimbursement formula.
 - Conservation district personnel working in the field must have a current Compensation Rate Form on file with the Conservation Commission.
 - Conservation districts must ensure that any staff conducting work in the field and implementing projects have the correct Industrial Insurance codes and rates paid for those hours worked.

Landowner Authorization

- Conservation districts shall secure written landowner authorization allowing conservation district staff and contractors access to the property to conduct the implementation of the identified conservation practice.
- This authorization shall identify:
 - liability release,
 - who will be conducting the work,
 - the daily start and finish time,
 - the number of people expected on the site,
 - who the site supervisor will be,
 - work commence date,
 - work finish date, and
 - identify materials, equipment, and labor, to be supplied by the landowner.
- This authorization shall be kept in the conservation district official property file and available for review upon request.

Washington State Constitution Background and Support Documentation

The Washington Constitution, article VIII, sections 5 and 7¹ prohibits state and local governments from making gifts of public funds or property or lending their credit to private persons or entities. Exceptions to this rule generally include money or property to support the poor and infirm. Other exceptions are intergovernmental transactions or transfers to other government entities whose functions are wholly public.² The purpose of this provision in the state constitution is to prevent state funds from being used to benefit private interests without any benefit to the public.³ Even if private interests benefit incidentally, the use of public funds is not unconstitutional if the public enjoys a substantial benefit.⁴

There is a presumption that the use of public funds is constitutional and the burden of proof is on the person challenging the presumption.⁵ Washington courts have developed a two-prong analysis to determine whether there is an unconstitutional gift of public funds.⁶ First, the court asks if the funds are being used to carry out a fundamental government purpose. If the answer to that question is yes, then no gift of public funds has been made. If the answer is no, and the gift is pursuant to the government's proprietary authority, then the court looks at the consideration received by the public and the donative intent of the governmental entity.⁷

A "fundamental governmental purpose" consists of an accepted and recognized fundamental, underlying function or purpose of government being served. Funds used for these purposes are not treated as gifts, because the public benefit is the consideration.⁸ Courts have not explicitly defined "fundamental governmental purpose," but they have found that broad categories like police power, public safety, and environmental protection constitute fundamental governmental purposes.⁹

¹ "The credit of the state shall not, in any manner be given or loaned to, or in aid of, any individual, association, company or corporation." Const. art. VIII, § 5.

"No county, city, town or other municipal corporation shall hereafter give any money, or property, or loan its money, or credit to or in aid of any individual, association, company or corporation, except for the necessary support of the poor and infirm, or become directly or indirectly the owner of any stock in or bonds of any association, company or corporation." Const. art. VIII, § 7.

² *Mount Spokane Skiing Corp. v. Spokane Cy.*, 86 Wn. App. 165, 176, 936 P.2d 1148 (1997), *review denied*, 133 Wn.2d 1021, 948 P.2d 389 (1997); *Anderson v. O'Brien*, 84 Wn.2d 64, 66-67, 524 P.2d 390 (1974).

³ *Hudson v. City of Wenatchee*, 94 Wn. App. 990, 974 P.2d 342 (1999).

⁴ *King Cy. v. Taxpayers of King Cy.*, 133 Wn.2d, 584, 596, 949 P.2d 1260 (1997); *Pub. Empl. Relations Comm'n v. City of Kennewick*, 99 Wn.2d 832, 664 P.2d 1240 (1983); *City of Tacoma v. Taxpayers of Tacoma*, 108 Wn.2d 679, 704-05, 743 P.2d 793 (1987).

⁵ *Hudson*, 94 Wn. App. at 995.

⁶ See *CLEAN*, 133 Wn.2d at 469.

⁷ *CLEAN*, 133 Wn.2d at 469 (applying Const. art. VIII, § 7).

⁸ *Citizens for Clean Air v. City of Spokane*, 114 Wn.2d 20, 39, 785 P.2d 447 (1990).

⁹ *Hudson*, 94 Wn. App. at 974; *Adult Entm't Center, Inc. v. Pierce Cy.*, 57 Wn. App. 435, 441, 788 P.2d 1102 (1990).