

# Colorado Emergency Watershed Protection (EWP) Program Frequently Asked Questions (FAQs)

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## Program Overview

### 1. What is the overall schedule of the Colorado EWP program?

The Colorado Water Conservation Board (CWCB) and the Natural Resources Conservation Service (NRCS) have entered into a Technical Assistance agreement for the EWP Program, Phase II–2013 Colorado Flood Recovery, which has the following project milestones:

- 1) January 1, 2017: Complete designs and construction documents for EWP projects
- 2) January 1, 2018: Complete construction contracts (see note below)
- 3) April 1, 2018: Technical Assistance agreement ends

The EWP program will end 220 days following signature on the last Financial Assistance (FA) agreement. For the program to be successfully implemented, it is critical that local sponsors meet the design completion date of **January 1, 2017**. This requires completion and submittal of 30% designs no later than September 1, 2016, with final designs completed by January 2017. If a local sponsor is encountering challenges related to contracting, grant funding, and design schedule, using the CWCB Technical Assistance Team for design may accelerate the process.

### 2. What are the objectives of the EWP program and how can I best achieve them with my projects and design?

The [National EWP Program Manual](#) (510.2.A) states that the objective of the EWP program is to help “...landowners, operators, and individuals implement emergency recovery measures to relieve imminent hazards to life or property created by a natural disaster that causes a sudden impairment of a watershed.”

These projects are intended to provide long-term, strategic, watershed-based solutions that restore stream function, reconnect floodplains with streams, manage sediment movement, protect infrastructure, and improve public health, safety, and welfare. Following the scope of work provided in the Damage Survey Report (DSR) is the starting point for successful project implementation. Hiring a team of experts in stream restoration, geomorphology, engineering, and ecology will provide a solid foundation for the project design. The local sponsor can either hire their own team of experts or use the CWCB Technical Assistance Team for design services that meet these goals. The CWCB Technical Assistance Team is also available to provide technical review and oversight to ensure that projects meet EWP requirements and long-term stream restoration goals.

## Project Scopes and Damage Survey Reports (DSR)

### 3. Can we request additional Damage Survey Reports (DSR)?

Additional DSR requests can be made for projects related to the 2013 floods. However, there will be no additional funding available other than that already identified as part of the overall program. Tier II and

III priority projects are not scheduled for DSRs at this point due to funding limitations. If a watershed coalition finds that there are higher priority projects that have not yet been identified, additional DSRs can be prepared and evaluated. The DSR must meet the benefit-cost ratio for protecting life and property and be approved by the State Conservationist before moving forward.

Please forward additional requests to Jeff Sickles, Resilient Watershed Partners (RWP) Program Manager (<mailto:jsickles@engenuity-es.com>) and Chris Sturm, CWCB (<mailto:chris.sturm@state.co.us>), and we will coordinate with the NRCS about additional DSR requests.

#### **4. Can we change the project area boundaries to cover more (or less) of the river?**

Project area boundaries may be adjusted but this should be carefully considered. Project boundaries are the basis for the cultural resources and biological assessment completed by the NRCS. Any expansion of the project boundaries requires additional cultural resources and biological assessment work and could result in project delays. If the local sponsor decides to modify the project boundaries, then the adjustments must be coordinated with the CWCB and NRCS and the DSR must be updated. The updated DSR must meet the benefit-cost ratio for protecting life and property and be approved by the State Conservationist before moving forward.

#### **5. If I have a cost estimate that differs from the number in the DSR, can I use that to determine my match requirement instead?**

Yes. The DSR is an initial assessment of the cost of the recovery measures. If a more accurate cost estimate is available, then that may be used to estimate the total match contribution upon approval by the CWCB and NRCS. Ultimately, the local sponsor will have to provide 12.5% match contribution for the total cost included in the final Financial Assistance (FA) agreement.

### **Project Design and Construction Costs**

#### **6. If I have, or I will have, a 30% design, what funding options do I have to "finish" the design so that a bid package can be completed?**

Options for completing the design after reaching 30% are as follows:

- 1) CWCB Technical Assistance Team completes the design using Technical Assistance (TA) funds
- 2) Local sponsor contracts with preferred consultant and signs a TA agreement with the State to provide compensation to cover design costs.
- 3) Local sponsor pays to complete the design from available funds.

The need for design, construction oversight, and other technical services that TA funds can be used for may be considerably more than the available TA funds. The use of these funds will be carefully considered and applied strategically to achieve overall project and program goals.

#### **7. If I have, or I will have, a 30% design, can construction be bid as design-build?**

Constructing the project via the design-build process is possible; however, Financial Assistance (FA) funds may only be used to fund construction costs while design must be funded under the TA funds. Options for funding and completing the design after reaching 30% are listed in Question #6.

## 8. How do I fund construction oversight?

Construction oversight can be funded in the following ways:

- 1) CWCB Technical Assistance Team completes construction oversight using TA funds.
- 2) Local sponsor contracts with preferred consultant and signs a TA agreement with the State to provide compensation to cover construction oversight.
- 3) Local sponsor pays to complete the construction oversight from available funds.

The need for design, construction oversight, and other technical services that TA funds can be used for may be considerably more than the available TA funds. The use of these funds will be carefully considered and applied strategically to achieve overall project and program goals.

## 9. If there are increased haul and disposal costs due to the removal of mine tailings or waste rock, can EWP pay for that increase?

Any increase in project cost above the FA agreement amount requires a re-examination of the benefit-cost ratio, as well as a possible addendum to the FA agreement. An increase in project cost also means an increase in required local match. Additional costs may be covered by EWP, but within reason and on a case-by-case basis. If the issue has been identified as part of the 30% design phase and has significant cost impacts and/or the extent of the tailings and project impacts is unclear, then it may be prudent to pay for more engineering design to improve the accuracy of your cost estimates and project boundaries. In some cases, the project boundaries may need to be adjusted due to funding constraints.

## Local Match Requirements

### 10. Are there limits on how much of my 12.5% match can come from in-kind services or materials?

There is no limit to how much of the 12.5% match comes from in-kind services or materials. The [EWP Program Manual](#) (511.6.E) states: *In accordance with 7 CFR 624.6(a), sponsors must: Contribute their share of the project costs, as determined by NRCS, by providing funds or certain services necessary to undertake the activity. Contributions that may be applied towards the sponsor's applicable cost-share of construction costs include:*

- Cash
- In-kind services such as labor, equipment, design, surveys, contract administration and construction inspection, and other services as determined by the State Conservationist
- A combination of cash and in-kind services

In further discussing in-kind match with the NRCS, match for Financial Assistance (FA) agreement must be donated materials or donated labor. Design and construction oversight services must be addressed via the Technical Assistance (TA) agreement rather than the FA agreement. Note that local match consisting of cash or in-kind services or materials must be incurred after the FA agreement is signed by the NRCS.

### 11. If landowners or coalitions donate land for staging and materials storage, can that be counted as a part of my match?

No. Donation of land for staging of materials may not be considered as match for the FA agreement.

## 12. Are administrative/project management functions allowable expenses for in-kind match?

No. Administrative and project management functions are not allowable in-kind match for the FA agreement.

## 13. Can we incur match expenses prior to a grant agreement with the State?

Costs for match must be incurred after the project's FA agreement is signed. However, materials donated to a project as an in-kind contribution could be purchased by the entity donating the materials prior to creating the NRCS-CWCB agreement. The following is from 7 CFR 624.8:

*“Before the release of financial assistance, NRCS will enter into a Cooperative Agreement with a sponsor that specifies the responsibilities of the sponsor under this part, including any required operation and maintenance responsibilities. NRCS will not provide funding for activities undertaken by a sponsor prior to the signing of the agreement.”*

## Permitting

### 14. How much assistance with permitting is available? Environmental Reviews? Cultural? Local Permits? Conditional Letter of Map Revision (CLOMR)?

Permits must be submitted by the local sponsor. The CWCB Technical Assistance Team can provide assistance to local sponsors and coalitions with developing background and supporting documentation for permits. If the CWCB Technical Assistance Team is performing the design for the local project, then this information will be developed and provided to the sponsor with directions on how to complete the permit application process. For example, the team can provide the required hydraulic analysis, report, and mapping in support of the design work for a CLOMR application.

The following summarizes the permitting requirements and status for the EWP program:

- **National Environmental Policy Act (NEPA) Environmental Review:** The NRCS has completed the NEPA environmental review required for EWP, which is included in the final DSR.
- **Cultural Resources:** The CWCB Technical Assistance Team is working with NRCS and the State Historic Preservation Officer (SHPO) to develop a program-wide plan for addressing cultural resources assessments.
- **Biological Assessments:** The Biological Assessment prepared by the NRCS addresses U.S. Fish and Wildlife Services (USFWS) requirements. The Biological Assessment is being reviewed and once approved, there will be no further permit submittal requirements for USFWS. Any changes to the project boundaries as defined in the Damage Survey Report (DSR) will require additional work by the NRCS for the Biological Assessment and cultural resources consultation and could result in a project delay.
- **U.S. Army Corps of Engineers (USACE) 404 permit:** Nationwide Permit (NWP) 37 can be used for EWP projects, but still requires that the local sponsor submit the project to the USACE with a letter and/or a Preconstruction Notice (PCN) confirming that the project is indeed covered by NWP 37. The CWCB Technical Assistance Team can provide support in the forms of wetlands delineation and determinations and technical assistance on the permit application.
- **Local permits:** Local sponsors must address local permits on a project-by-project basis as required by the local jurisdiction.

- **National Flood Insurance Program:** Impacts to the floodplain must be identified and the appropriate permits completed, including application for a CLOMR, if the project will cause a rise in water surface elevation and the permit is required by FEMA and the State.

**15. Does the USACE Nationwide Permit 37 - *Emergency Watershed Protection and Rehabilitation* allow for five years of maintenance or will new permits be required for maintenance activities?**

USACE Nationwide Permit (NWP) 3 - *Maintenance* covers maintenance activities. Depending on the type of activity, notification of maintenance activities may need to be submitted to USACE. The NWP 3 details this requirement.

**16. What environmental work will need to be completed by the local sponsor? Are there outstanding needs that must be completed by the local sponsor?**

The NRCS has completed the NEPA environmental review required for EWP, which is included in the final DSR. The following items need to be completed by the local sponsor:

- An application to the USACE for the project to be covered under Nationwide Permit 37 - Emergency Watershed Protection and Rehabilitation.
- Local permits, as required
- Impacts to the floodplain must be identified and the appropriate permits completed, including application for a CLOMR, if the project will cause a rise in water surface elevation and the permit is required by FEMA and the State.

The CWCB Technical Assistance Team can provide some environmental permitting support to local sponsors, including wetlands delineation and determinations and technical assistance on permit applications.

## Operations and Maintenance

**17. How much money should I set aside for my five-year commitment to operations and maintenance (O&M) and adaptive management?**

CWCB is recommending that local sponsors plan for 5% of the total construction cost for O&M and adaptive management; however, it is not a requirement to have these funds in place at the time the Financial Assistance (FA) agreement is signed. The 5% recommendation is for planning purposes and actual O&M costs may vary. The local sponsor or coalition is still responsible for the O&M over the five-year period following construction, but can identify future funding for these activities following the signing of the FA agreement.

**For more information on EWP program requirements, see the [National Emergency Watershed Protection Program Manual](#). Still have questions? Contact Jeff Sickles, RWP program manager at [jsickles@engenuity-es.com](mailto:jsickles@engenuity-es.com) 303-872- 9109**