# Encouraging Wetland Conservation through State Tax Credits and Conservation Easement Reform

## Background

In a monumentally significant ruling, with enormous implication to communities across the country, the U.S. Supreme Court, in *Sackett v. EPA*, found that wetlands that are not directly adjacent to navigable waters fall outside the jurisdiction of federal Clean Water Act protections. With few state or local protections for such wetlands to fill the gap, communities are left facing a potentially epic loss of wetlands and the functions they provide communities. Wetlands serve important functions for flood water storage, water quality filtration, habitat for fish and wildlife, climate mitigation and recreation. States and local communities will need to find new tools to identify and protect the most critical of these wetland resources. Yet state funding for land, water, and wildlife conservation remains at near-historical lows. This has led many lawmakers to turn to incentive-based programs centering either tax credits or more novel tax schemes to support their state's conservation goals.

Pursuing state solutions to either expand or create a state conservation easement system focused on protecting communities could be paired with an advocacy and outreach campaign to target wetlands that would promote flood protection, clean water, and preservation and enhancement of local economies.

One of the oldest conservation incentive tax credits, the charitable conservation easement, remains one of the most recognizable and generally successful programs available to private landowners. The concept follows a common model nationwide: a landowner enters into an agreement with either a land trust or local government to preserve the landscape's best conservation elements while allowing the landowner continued use of the land through a structured agreement. Several states have their own conservation easement program, which is different from the federal charitable conservation easement program. This allows the state to provide an additional incentive in the form of a state tax credit, further reducing a landowner's tax burden. In the case of the Mississippi River Basin, these easements could be targeted to specific landscapes to maximize the benefit provided by the credit to the Basin's broader conservation goals.

When a landowner and trust or agency create a conservation easement, they receive a tax benefit determined by the value of a qualifying conservation easement up to a maximum amount, as defined by the state, to offset this loss of land. Some state credits are transferable – that is, the landowner may choose to sell the credit to someone else if they don't have enough taxable income to keep the full credit; transferable credits are not as widespread and Mississippi's credit, for instance, may only be realized by the donor. [1] Transferable credits are more preferable, particularly for smaller scale landowners, and we'd encourage such credits be a component of any such targeted state easement program in the Basin.

## Policy Proposal

States should either create or adapt existing conservation easement programs to create a higher priority tier of easement, a wetlands conservation easement, that has a higher state tax credit return, with transferable credits. Only critical wetlands, identified as priorities for protecting the resiliency of the system, would be eligible. Two tiers of enrollment could be made available to incentivize participation, with both a permanent and long-term (30+ year) easement option, with a lower credit for the non-permanent option.

## Potential Hurdles

*Potential Hurdles and Political Considerations*

Some states already have state conservation easement programs that could be adapted to meet the needs of this proposal. Mississippi's Land Trust Conservation Credit, for instance, is non-transferable and up to 50% of a donor's costs is eligible for the transaction, which is capped at $10,000. Arkansas' similar tax credit is capped at $50,000. With an existing law on the books, reforms and updates are significantly easier since an amendment to the tax code is a relatively simpler campaign than the proposal of a new program entirely. [2]

One example of the successful refinement of a state conservation easement program is Colorado's Conservation Tax Credit Program. [3] First created in the early 90s, the program's formula to calculate a donor's tax benefit was recently amended to increase the potential return for a charitable donation, a move to help incentivize both the donation of larger tracts of land and to increase participation in general. [4] Similar adjustments to existing programs may be sufficient to incentivize future enrollments.

In states without a unique state conservation easement program, the heightened need for protecting wetlands for flood storage and water quality, and the fact that voluntary easements are often seen as a preferable alternative to regulations, can help make a case for developing such a program. Modeling the easement program after similar state credits – such as Mississippi's program, with some modifications – may also help make the proposal viable..

Additionally, potential challenges of landowners without a clear title (heirs property issues) should be considered. A clear title is required for a landowner to form a conservation easement with any land trust or state agency, so states should reinvigorate their attempts to provide resources for affected landowners.

Messaging

The messaging around the creation or reform of state conservation easement credits to conserve wetlands should focus on describing such an effort as a targeted tax credit to fulfill a specific purpose – building community resiliency and supporting the stewards of the land who are making the sacrifice of their lands to do so.

If paired with resources to support heirs' property issues, a state conservation easement program can also help address inequities, particularly in underserved communities. The clearing of a title will help ensure the land stays in the ownership of a particular family, and a conservation easement can help further lock in their ownership while providing long-term tax benefits. If credits are transferable, the sale of a credit can lead to wealth-generation opportunities as well.

[1] Land Trust Alliance, "Income Tax Incentive for Land Conservation." September 27, 2022. https://landtrustalliance.org/resources/learn/explore/income-tax-incentives-for-land-conservation
[2] Land Trust Alliance, "Gaining Ground – Mississippi." July 2023. https://landtrustalliance.org/land-trusts/gaining-ground/mississippi
[3] Conservation Resource Center (Boulder, CO), Conservation Tax Credits: A Landowners Guide, 2012. https://taxcreditexchange.com/resources/
[4] Brownstein Hyatt Farber Schreck, "Colorado Conservation Easement Bill Presents Taxpayer-Friendly Opportunities." July 13, 2021. https://www.bhfs.com/insights/alerts-articles/2021/new-colorado-conservation-easement-bill-presents-taxpayer-friendly-opportunities-and-clarifications