

STRAIGHT TALKIN' ABOUT CONSERVATION EASEMENTS:

By Andy Rieber, WLJ Correspondent

A USEFUL TOOL, BUT NOT EVERYONE'S CUP OF TEA

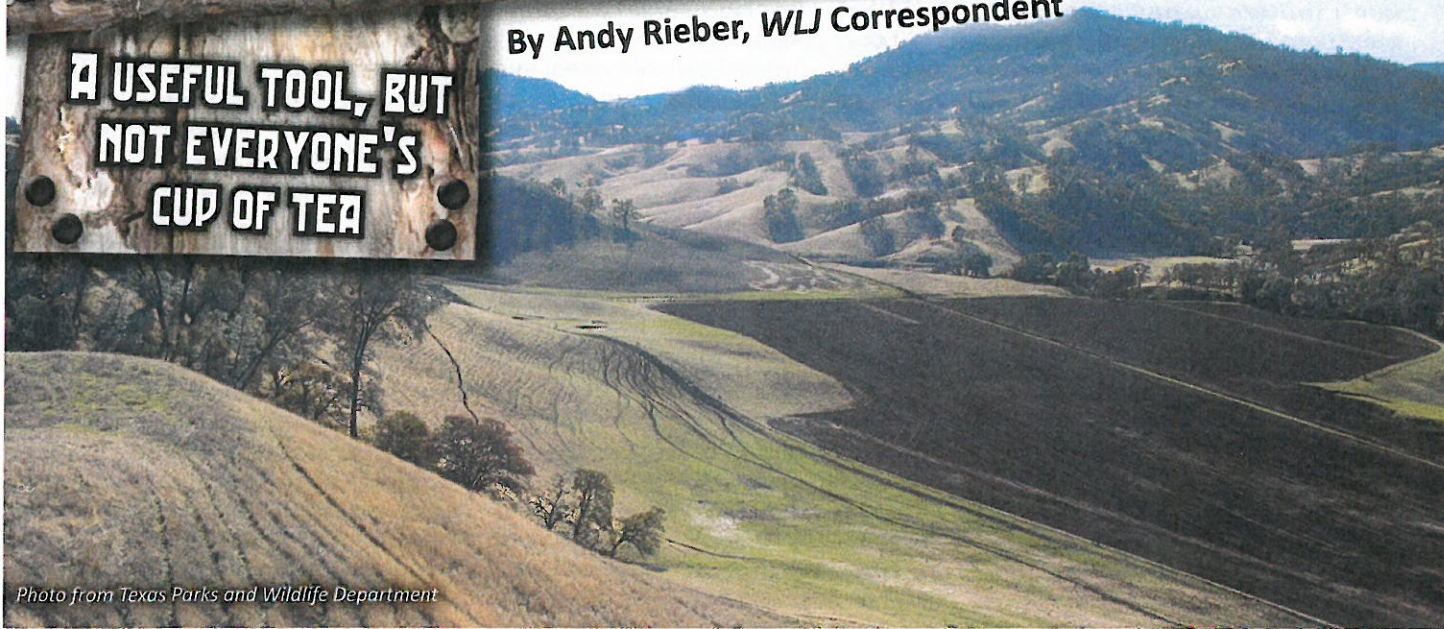


Photo from Texas Parks and Wildlife Department

Like religion and politics, conservation easements tend to make for heated dinner conversation, particularly if you're sitting at a table full of cattlemen. Why? Ranchers are protective of their rights and property, and no wonder. Owning land and grazing cattle in this industry aren't just ways to make a living, and running a ranch isn't just a job. A ranch is home. More than that, it's a life, one intimately tied to land, family history, and a unique set of values and traditions. And perhaps most importantly, it's an opportunity for kids and grandkids to carry those traditions and values of the past into the future.

Short of loss of life and limb, losing control of the family ranch represents the ultimate heartbreak for most producers. And because conservation easements involve the sale or donation of some of the rights on a piece of private property, just bringing up the idea for some people can be like hitting a raw nerve with a dentist's drill. Multiply that effect several times over when government agencies or environmental groups are brought into the picture. Easements can conjure nightmare images of meddling government busy bodies and hemp-clad tree-huggers tromping across a beloved family ranch and dictating its management to the owners, reduced to tenants on

their own land. For producers who see easements in this way, there's a straightforward response to the issue: Over my dead body.

But that's not the whole story, or even half of it. Far from being a road to ruin, increasingly, many ranchers now view easements as a legitimate option to help keep ranches in the family and in agricultural production. In reflection of this trend, easements are also growing in popularity; the California Rangeland Trust, for example, has a waitlist of 120 families seeking to have easements put on their land, a difficult number to fathom if easements are putting people out of business. As of 2010, local, state and national land trusts held conservation easements on some 47 million acres of private land, an increase of 10 million acres since 2005, and 23 million since 2000, according to a census by the Land Trust Alliance. Just get talking down at the sale barn or coffee shop, and satisfied ranchers with easements are pretty easy to come by; some even claim that without the arrangement, they would have had to sell out entirely.

But positive stories notwithstanding, there are persisting concerns that an easement is little more than a clever ploy to get well-intentioned



The Anderson Family—Photo from Texas Parks and Wildlife Department

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ranchers separated from their rights, and ultimately, their property. Given the conflicting accounts, it's often difficult to sift fact from rumor. But it's worth the effort. With more and more ranchers using conservation easements as important planning and financial tools, it's smart to have a clear view of the potential benefits that easements offer, while maintaining a realistic outlook on their limitations, and even potential dangers. So let's get the straight talk: What is an easement? How does it benefit you? What do you give up? And most importantly, whom can you trust?

What exactly is a conservation easement?

It's no news to ranchers that the land market has changed radically over the past 30 years. Even in the present economic downturn, developers are hungrily gobbling up scenic ranchland for conversion into subdivisions, ranchettes, hunting properties and other non-ag uses.

According to a study by the American Farmland Trust, between 1982 and 2007, over 41 million acres of farm, pasture, range and forestland were converted to development uses. That's more farms and ranches out of production than the entire landmass of Illinois and New Jersey combined.

Lots of people—and not just ranchers—are increasingly worried over this permanent conversion of agricultural land, open spaces and

"It's worth understanding what they are and what they're not, even if you never choose to do one."

— Chris West, executive director, Colorado Cattlemen's Agricultural Land Trust.

habitat into tracts of McMansions (or double-wides) sporting RVs, manicured lawns and backyard play sets. In the past several decades, conservation easements have emerged as one tool to help stem the tide of development and tap into the natural desire of ranchers to care for the land.

A conservation easement is a legal

agreement between a landowner and another party—like a land trust, conservation organization, or government agency—which puts limitations on future uses of the owner's property. As a landowner, you have the right to use your property in many ways: to develop it, sell off parcels or resources, build structures, and generally manage it as you like. If you enter into a conservation easement, you voluntarily agree to relinquish some of those rights.

For example, a landowner may enter into an easement giving up the right to subdivide his land, in order to preserve open space and maintain the ranch as a working landscape. A different easement may limit building structures like wind turbines, to preserve a view. Or an easement may call for management practices to help conserve a wetland, or other habitat. Each easement is unique. Some are quite simple in their requirements, while others combine a number of limitations together. Some easements apply to an entire ranch property, others only to specific areas. An easement also grants the trust, organization or agency that holds the easement the right to monitor the property, usually once a year, to ensure that the terms of the agreement are being met.

The landowner, or "grantor," and the holder of the easement, or "grantee," negotiate what restrictions will be placed in the easement based on their individual needs and goals. But limitations on land use stop with the contract. When a landowner signs an easement, he only limits or restricts uses that are specified in the contract; all other rights are retained by him. An easement contract has no power to take away rights that the landowner did not explicitly sign over.

Lynne Sherrod, Colorado rancher and western policy manager for the Land Trust Alliance, an umbrella organization representing land trusts in Washington, D.C., argues that property owners should view the development rights on their land the same as any other right that can be sold or transferred: that is, as an asset.

"Every landowner has a bundle of rights that they can do whatever they want with that property as long as it doesn't cause harm to another person, and one of those is the ability to sell or donate ...their development rights," explains Sherrod. "It's



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the same as if somebody wanted to sell hunting rights or fishing rights on their property, or sell their water rights. It's the general philosophy that landowners are able to do what they want with their land."

What are the benefits of an easement?

A conservation easement may be a nice way to benefit local communities, the general public, and the environment by conserving land. That's great. But there's obviously a cost involved for the rancher. Giving up some of the uses on your land limits your options for the future. An ease-

"Really, an easement is the only permanent planning tool. All the rest is subject to change."

—Jaques Etchegoyhen, conservation easement consultant and principal, Legacy Land and Water.

ment also reduces the value of your land, particularly if the easement is granted in perpetuity (as most are) because it limits the options of all future owners of the property. This is serious business. So why on earth would anyone choose to permanently tie up their property with an easement, even in a good cause?

Cash payment

The most straightforward benefit an easement can bring to a rancher is a cash payment. Many easements are funded by groups who wish to see the land protected in one way or another. By funding an easement, they compensate a rancher for the value he loses when he gives up some uses on the property. Counties, states, the federal government and conservation organizations are some of the most common funders of easements. For many ranchers, selling an easement on their property has been key to hanging on to the ranch and passing it down through the family. For some, it has meant the difference between paying off debt and going out of business, while it has allowed others to expand and bring family members into the operation.

Expansion was exactly what led

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Lakeview, OR, producer Larry Maxwell to set up an easement on his ranch through the Oregon Rangeland Trust (ORT) using funding from Ducks Unlimited. Though the ranch had numerous house lots on it, Maxwell was reluctant to carve up the property. But with kids to partner in, he needed to generate income and expand the ranch. Selling the easement kept the ranch intact, but helped to realize the development value, too.

"We'd be way ahead financially to

sell those house lots, but we'd just as soon keep it as a working ranch," said Maxwell. "This is one of the ways to do it, and still generate income... It helped me in the purchase of another ranch, is what it did."

Maxwell's easement prevents him from subdividing or developing his land, something he had no intention of doing anyway. He is also expected to manage some wetlands on the property so they maintain "an upward trend," a requirement Maxwell says has been easy to meet, since irrigating and grazing are the best tools for keeping the wetlands

healthy.

"We're all kind of on the same page," say Maxwell of his partners at ORT and Ducks Unlimited. "Once a year, they come around to make sure you haven't sold off any house lots" and to monitor the wetlands. "That's basically it," says Maxwell. "We like our partners."

Tax incentives/estate planning

Easements also provide significant tax benefits. In particular, by devaluing a ranch property, an easement can substantially reduce the estate tax that must be paid when the ranch is inherited. This can make the difference between heirs having to sell the ranch to pay the government or being able to keep it in the family.

Jim Bill Anderson, a cow/calf operator from Canadian, TX, made the decision to donate an easement on his property to the Texas Agricultural Land Trust after witnessing the dissolution of a friend's ranch upon his death.

"After that was said and done, after a lifetime of work... it all went to the IRS," Anderson recalls. "That made an impression on me. ...I sure didn't think much of that."

Donated easements like Anderson's also come with additional tax benefits because they are considered a charitable donation by the IRS. The benefit is typically a one-time federal income tax deduction, but depending on the state you are in and other factors, there may be additional income and property tax deductions, as well.

Philosophy

Obviously, cash payments and tax breaks are important incentives for doing an easement. But according to many ranchers who have gone through the process of putting one together, an easement can't just be seen as a cash cow if it's expected to work. You've got to look beyond the monetary side of things to make one successful.

Anderson calls this the "philosophical" side of easements; it's got to have value to you not just in terms of dollars and cents, but because the easement fits with your ideas about how the land should be managed on a permanent basis. Preserving that, in itself, must have value.

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"I have an affection for the land, always have," explains Anderson. "I didn't want to see it chopped up and sold off two generations from now."

Clearly, not every rancher will have the same future vision for their land. For some ranchers, it will always be more important to keep financial options open than to guarantee that the land stays undeveloped. That, says Anderson, is fine. But he strongly cautions

anyone against doing an easement if they are only in it for monetary gain.

"If all you want is money out of your ranch, then you don't want an easement," says Anderson. "If you want to maintain a lifestyle, an easement may be the way to go."

Sherrod of the Land Trust Alliance concurs.

"After the money goes away, the easement stays, and you and your family still need to believe that this was the right thing to do," Sherrod

points out. "If you don't feel it in your heart, then you shouldn't even be contemplating doing a conservation easement."

Who are you doing business with?

By granting an easement, you sign a contract with another party that can permanently affect how you and your heirs use your property. It's a binding business agreement, so before you ever consider signing on the dotted line, due diligence is essential. You need to ask yourself: Who will be holding the easement? Each easement holder—whether it's a land trust, conservation organization, or government agency—has a mission it is trying to accomplish. Are their goals for the land the same as yours? Don't assume that they are, regardless of what is said informally. What really matters, in the end, are the restrictions stated in the easement itself. If you and your attorney determine that these requirements don't work for your ranch over the long term, don't sign.

Several types of entities can "hold" easements, which means that they sign easements with landowners, and then monitor and administer them. For example, land trusts are non-profit organizations dedicated to land conservation through holding and sometimes funding easements. Some land trusts are national, while others are community-based. And each one has its own mission and goals which will be reflected in the easements it offers.




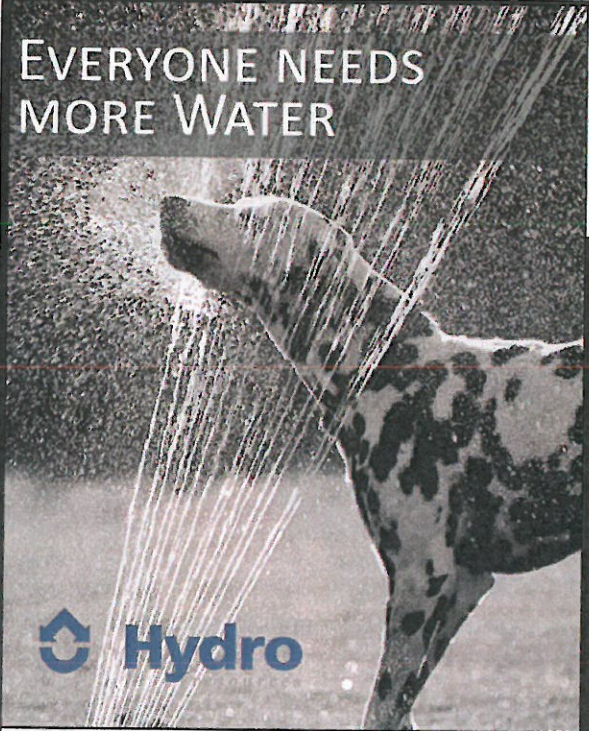
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"With money comes strings. ...[I]f somebody is allowing you to have a big chunk of money to purchase an easement, then probably they have certain requirements they would like to see happen."

— Lynne Sherrod, western policy manager for the Land Trust Alliance

A unique category of land trust that has emerged over the past 10 to 15 years is the agricultural or rangeland trust. These trusts were created by state cattlemen's associations specifically to preserve ranching and agricultural land uses, and to meet the needs and goals of ranchers who want

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to utilize easements on their land. Unlike other land trusts, these trusts are run by ranchers to serve ranchers' interests exclusively. Though they don't have money to fund easements, they do provide an invaluable service by helping to source funding and by holding and administering easements for ranchers.

"When people come to the Rangeland Trust, they want [us] to assist them with the process, help obtain the funding, and ultimately hold the easement and do the monitoring of that easement," explains Scott Stone, rancher and chairman of the California Rangeland Trust Board of Directors.

"I can say with 100 percent clarity that the [California] Rangeland Trust has the best interests of cattlemen in mind," continues Stone. "You're not going to find somebody from Defenders of Wildlife on our board. They have to be working ranchers."

Currently, California, Oregon/Washington, Montana, Colorado, Texas, Kansas and Wyoming have rangeland trusts.



Fall replacement heifers—Photo from Texas Parks and Wildlife Department

Other entities like conservation groups (The Nature Conservancy is a prime example) and government agencies (like the Bureau of Land Management, or state fish and wildlife departments) also hold and fund easements. While some ranchers have had positive experiences granting easements to these entities directly, it's essential to realize that their mission may be to preserve habitat, or certain species or open space, as opposed to preserv-

ing ranching as an ongoing land use.

By contrast, explains Stone, "[i]f you have an easement with the Rangeland Trust, it is a *grazing easement*. There are additional benefits for habitat and watershed protection and open space and all those things, but it is first and foremost a grazing easement. It is meant to utilize the ranch for that purpose, and to keep these working families on the land."

Most of the easement horror stories

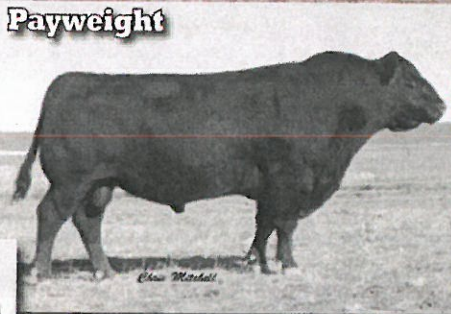
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out there, and there are a few, are the result of landowners rushing into an agreement without the necessary caution and legal expertise, particularly when dealing with an entity having non ag-related goals.

ORT Executive Director Frank O'Leary steered one rancher away from signing a habitat easement with a government agency that would have prioritized wildlife over cattle.

"There was a provision in the ease-

ment that stated if ...the cattle were infringing on the forage for the deer, he would have to remove the cattle from the range," said O'Leary. "The landowner hadn't reviewed the document closely, and had no idea that provision was [there]."

The moral of this story, according to Sherrod, is obvious. "Landowners should never, ever consider contemplating a conservation easement unless they have legal representation that understands the power of this tool and the long-term ramifications," Sherrod warns. "I cannot

stress that strongly enough."

Fifteen years in the conservation easement business has given Chris West, executive director of the Colorado Cattlemen's Agricultural Land Trust, a healthy respect for sizing up the mission of potential easement funders. "The people who get into the most trouble are people who rush into it and don't take the time to think things through," West emphasizes. "A wildlife organization or wildlife agency is going to have a much different set of goals, and that set of goals is going to come up in their conservation easement."

Sometimes, according to West, those requirements are simply not feasible for ranchers. "There's a lot of potential funding out there that comes from wildlife-oriented sources, and there's some that we as a rangeland trust just won't touch."

The point here is not that ranchers should never grant easements to government agencies and conservation groups directly. Many have, and successfully. But when entering into an easement without the help a cattlemen's rangeland trust, the organization you are working with is going to be looking out for their own interests, not yours. They will also probably not understand what kind of restrictions work well for ranchers, and which are not feasible.

"The problem with going direct to the funders," explains Stone, "and I'm not slapping the funders because they're there to work with us, but, who's looking out for the rancher if you're just dealing direct?"

Regardless of what organization you are working with, you (and your attorney) have got to make sure any contract you sign gives you the flexibility and options you need to keep ranching profitably on your land. When working without the help of a cattlemen's rangeland trust, there's even more reason to be vigilant.

Where to start

What's your first move if you want to determine if an easement is right for your family? First, take the time to find a land trust that is philosophically aligned with what you want to do with your property. A cattlemen's rangeland trust is the obvious place to start, if you have one in your state. If you don't, the Land Trust Alliance represents over 1,700 land trusts nationally, and can give

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you suggestions. Talk to a number of them, look at their basic easement template, and visit with ranchers who have done easements with them.

"When I decided I wanted to do this, I [shopped around] a lot. You don't want to do this casually," explains Jim Bill Anderson. "I really researched it."

"This is not a silver bullet. It's not a perfect thing. It's not for everybody..."

— Lynne Sherrod, western policy manager for Land Trust Alliance.

Next, make sure you have the time and resources to put together an easement properly. Like many long-term legal arrangements, easements involve consulting expenses and can take a year or more to put together. Specifically, talk with different land trusts to find out what costs are involved and whether funders will be able to cover some of them for you. A landowner should also "run the numbers" with an accountant famil-



Jim Bill Anderson—Photo from Texas Parks and Wildlife Department

iar with all current tax laws applying to easements to determine whether the economic benefits of doing an easement outweigh the costs. Don't automatically assume that they do.

"No matter what easement it is, it always costs more and takes longer than you originally expected," remarks Stone.

Last, examine your motives. If you are selling the easement, as opposed

to donating it, the income may be very important. But it shouldn't be your only motivation. Behind any monetary benefits, there should be a permanent vision for the use of your property. In other words, you need to have a "philosophical" understanding, as Anderson puts it, that by conserving the land, you're not just getting a payment or tax benefits, you're doing something right. ☐

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