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**On the Cover:
"Throwing a Fit"
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Forever and Ever, Amen

Land trusts and the frightening thought of perpetuity

By Tim Findley

In May of 1999, Earth First! founder and environmental renegade Dave Foreman was promoting his almost unbelievable concept of a Wildlands Project to a New Mexico State University audience .

“Conservation easements are the key to the corridors,” he told them. “Once the easements are legally in place, we can impose habitat restrictions for wildlife thus ending grazing and other agricultural practices. If the landowner refuses, the easement management loophole will allow us to sue the landowner and impose those restrictions.”

Well out of Foreman’s grasp in the gorgeous blue-green meadows of the Upper Elk River near Steamboat Springs, Colo., rancher Jay Fetcher could smile coolly at such wild threats. Fetcher donated 1,300 of his acres as a conservation easement in “perpetuity” to American Farm land Trust in 1994, and nearly 10 years later feels more secure than ever about his decision .

“It’s still my and my family’s land,” he says, “and it will be for as long as I can imagine.

“The high western slopes of the Rockies stand like wild cathedrals around his home. Sometimes up there in remotely hidden groves and mountain gulches, rutting elk charge headlong at each other, meeting in a clattering thud that reverberates down the canyons . Though they have never met, and neither has much respect for the other, it is something like that between Foreman and Fetcher. Symbolically, the political echoes suggest a head-butting contest over who will sire the next generation in control of rangeland and forested areas in the West.

Foreman, ever cocksure of the righteousness of his and Reed Noss’s plan to expand wilderness corridors over half of the continental United States (RANGE, Fall 2003), believes that conservation easements in the hands of powerful allies like The Nature Conservancy will be one of his tools to eventually eliminate working use. He has yet, however, to define what he sees as the loophole making that possible.

Fetcher, active in the Colorado Cattlemen’s Association and founder of the Colorado Cattlemen’s Agricultural Land Trust, is just as certain that an easement is one in a bundle of property ‘sticks’ that ranchers themselves will use to beat back gluttonous developers and carnivorous environmentalists alike.

If you’re careful, if you deal with the right people and understand what you’re doing, it will work,” says Fetcher, whose Cattlemen’s Agricultural Land Trust is now being copied by similar resource producer organizations all over the West.

By accepting a conservation easement that limits the use of their property, the owners are juggling a sub-cold concept of “perpetuity” that doubters say may someday burn them,



"...when 10 years have passed, the ground will be yours."
--SUSAN FENIMORE COOPER

and that other critics regard as a dangerous trend in altering American concepts of private property and freedom.

“Nincompoops, short sighted nincompoops!” snaps Carol W. LaGrasse of the trust-busting Property Rights Foundation of America based in Stony Creek, N.Y. “They’re making themselves tenants on their own land.”

“If they are forced to sell, then that’s forever too,” counters University of California scholar and associate dean of ecology studies Lynn Huntsinger. “An easement at least assures a future of stewardship instead of development.”

Against relentless urban sprawl and unreasonable green political agendas, the unsettled answer to forever in the rural West seems to rely, as perhaps it always has, on the next generation of agrarian families willing to carry on the fight and work the land. But if they don’t, or they can’t, the bet against the house for the future of the West in easements might well be the bluff that decides the game.

Making the Diggery Do

Land trusts, with their implied superior social authority over property use, are not new. In Great Britain, for example, the British Land Trust has since 1895 expanded its preservation authority over more than 600,000 acres of English castles and estates, especially along the coastline.

Even before that, however, the concept of funded groups leveraging community standards over private property emerged in the United States soon after the Civil War. Much of it came from the concepts of a sad-eyed intellectual spinster with a whip-snapping wit and a busybody’s attitude. She happened to be the prim New England daughter of America’s classical frontier novelist, James Fenimore Cooper. Offspring and prodigal of the mind that created “The Last of the Mohicans,” Susan Fenimore Cooper formed a fad of “Village Improvement Societies” and in 1869 published what amounts to a “McGuffey’s Reader” on the subject of land trusts in Putnam’s Magazine.

The erudite, if rather elitist, young woman seen posed in a lacy-necked collar was blunt in her contempt for French and English country towns. “In the days of Shakespeare, and Bacon, and Spenser, your Hobbinol and Lobbinol, and Diggery, your Mopsa and Dorcas, were all dull and loutish, scarcely knowing B from bullsfoot,” she wrote. “All the difference of centuries lay between the burgher of the city and the boor of the village.” What she meant by Hobbinol, Lobbinol, Diggery, etc., we could probably put in contemporary terms as “crackers” and “rednecks” and “rubes.” “Bullsfoot” has its own connotation.

But Susan had an oddly Yankee affection for the American village of her time, where new technologies such as steam engines, telegraph wires, and gaslights were bringing “every real advantage of modern life.”

“In former centuries,” she wrote, “he was a wise man who left the village for the city. Today, he is wise who goes to the city as to a market, but has a home in the country.” All the country towns of her time really lacked, she said, was certain “finishing touches” which could be brought about, “requiring only a moderate fund placed in the hands of judicious persons ÷ requiring, in short, a local Society for Village Improvement.”

Well in advance of zoning laws and public parks, Ms. Cooper rallied her followers in New England to tap into public and private funds that would back their authority over improvement of private lands for the benefit of the community.

“Your object is good, praise worthy, desirable; move onward, therefore, and begin your work, though it be on a small scale. If you work prudently, before five years are over, the indifference and the opposition will be sensibly

weakened; when 10 years have passed, the ground will be yours.ä

She had no idea, of course, of 21st century technology reaching far beyond her suburb and village into the äHobbinolä and äDiggeryä who labor still on her fatheräs lost frontier, but her advice captured the interest of both the virtuous and villains who followed it.

Tokyo Prime

As recently as 1965, there were still fewer than 150 land trust organizations in the United States, almost all of them in eastern regions, and most, like The Nature Conservancy, were ostensibly dedicated to äsavingä open lands. But scarcely 30 years later, as the Clinton and Babbitt administration welcomed a surge of environmentalism, there were more than 1,500 land trusts all over the nation, with what some said was a new trust formed almost every week to take advantage of government grants and what some called the äguilt moneyä of major corporate donors.

In the doomsday view of the Land Trust Alliance (LTA), which presents itself as the umbrella group of the land trust movement, civilization may in future generations come to äTokyo Primeä when the earth is all one big interconnected city÷the overpopulated extreme of Cooperäs technological äadvantages.ä By then, it will be too late, the LTA says, which is why äeven moreä land trusts are necessary now to protect against what the LTA claims is the äloss of 3,000 acres a dayä in the United States alone. Unclearly, that loss is to housing and urbanized development. The six to 10 million acres the LTA says is already protected by trusts, including at least half a million acres in easements, will hardly be enough. In LTA logic, after all, although the government already owns nearly half of it, there are still around 180 million acres out there and only some 2,000 land trusts available to hold off Tokyo Prime.

They are not like banks, or, legally at least, like federal agencies. State and federal laws, as well as their own non profit charters, generally restrain the trusts from going out looking for business among stressed and vulnerable landowners. But rules are often stretched, especially by the ubiquitous and corporate-operated Nature Conservancy, which seemed in the ä90s to be everywhere and frequently in close company of federal cohorts.

TNC and the other big trusts dealt strictly in äwilling sellersä they claimed to be their äpartners,ä even though the sellers were most of ten made willing by pressure from the government or the conservation organization itself, and sometimes by a combination of both. The idea of easements all owing property owners to continue to work their land while relinquishing the right to develop it became popular only after TNC and other groups had gorged them selves on outright purchases of ranches, farmland and other property that was frequently flipped back or traded to the government for a windfall to the non profit trust. That, in part, was how TNC became a legal ächarityä with \$3.3 billion in assets including more than 11 million acres of land in the United States alone. Its domestic success made it possible for TNC as an internationally recognized non government organization (NGO) to acquire millions more acres worldwide while remaining a tax exempt ächarityä virtually unaccountable to any public scrutiny. Yet, by the mid-1980s it was becoming clear that just buying up land and trading it among themselves was a burden , both for the conservation trusts and for the government . Ideally, the concept of offering the owner a way to save his land, but limit its use and its value, could accomplish the same purpose without as much political or social liability. And, thanks to new environmental priorities, federal funds, as well as limitless private



Jay & Gael Fletcher: "It's still my family's land, and it will be for as long as I can imagine." (Photo by Jeremy Gree)

grants, were available to cover the cost. What makes the difference now is not so much that sellers are really any more willing, but that the buyers are no longer just the government or TNC.

Willing Sellers

It was just that sort of dilemma that faced the half dozen property owners near the Upper Elk River when they met on Jay Fletcher's deck in 1993. One of them, Steve Stranahan, ran a 500-acre dude ranch. Another, Mary Mosher, was a grandmother in her eighties who was considered the outspoken conscience of the entire Routt County valley. Others were like Fletcher, struggling to continue with the family ranch despite the relentless approach of more 30-acre vacation sites and one - horse view ranchettes that moved closer every season. In a way, it was Fletcher's own father's fault. He had been among the group in the 1960s who saw the future in selling the 10,000-foot slopes of Storm Mountain as a new, Texas - developed ski resort. They did not anticipate the metamorphosis that resort-town growth would bring to the once-isolated mountain town of Steam boat Springs and in sprawling miles beyond it into the awesome stream-fed meadows that couched ranches much like their own. Property values soared over the next 20 years with the influx of new condominiums and vacation homes. Even local school teachers could no longer afford to live in a town ever more dominated by antique shops and upscale restaurants. Limousines sometimes double-parked in a street where farmers used to race their sleighs. In summer, brightly colored hot air balloons lolled in the canyon altitude



"If they are forced to sell, then that's forever too."
--LYNN HUNTSINGER

above lawn-edged stretches of the Yampa River. From a character-laden mountain village that was a center for ranching and mining, Steamboat was transformed into a franchise-familiar international playground. Money was everywhere, but like the bubbling sulfur vent that gave the town its name, Steamboat Springs seemed gone and going worse. Lynne Sherrod tells a revealing story of the time when her rancher husband went to their familiar veterinary office in Steamboat to get some medicine for a sick steer. He was met by a new receptionist who asked him first, "And what is the animal's name?" Dumbfounded, Delbert Sherrod stared at her and said, "No, see, it's a steer." "I understand," said the patient young woman, "but what is its name?" "Oh, this is precious," Sherrod groaned. Dutifully, the young lady tapped on the keys of her computer. "I'm sorry, I just don't find a 'Precious' here," she said. Perhaps scenting blood, The Nature Conservancy had moved in soon after the developers, and acquired a working ranch along the highway south of town. As they did in every western state and almost anywhere "willing sellers" might be found, TNC established itself as a helpful presence in Steamboat and Routt County, always apparent at any community meeting.



"The one thing I could not let happen was to be the one in my family who was forced to sell it all."

--TIM KOOPMAN

But Fetcher had by chance been given the opportunity to see the pitfalls of dealing with such wealthy trusts at a conference 10 years before that meeting on his deck. He suggested to the six neighbors that they form a compact of mutual interest in preserving the Elk River valley and its productive values, and that they first try for help from a group that at least made overtures to preserving working land. The agreement they worked out with American Farmland Trust in Washington, D.C., was the first of its kind. Fetcher himself donated 1,300 acres of meadowland at the heart of the valley that when valued for the production of pasture and hay was worth around \$500 an acre, but when appraised for development was worth at least \$7,000 an acre. As an easement donation to the non profit Farmland Trust, he was able to write part of it off his taxes, but he was also sacrificing its highest appraised value. You could say he lost millions in the promise never to sell it for any purpose other than agriculture or conservation. Or you could say that the legacy he plans to leave to his children is beyond appraisable value. Maybe unaware of how much someone like Foreman might someday bring to the match, Fetcher concedes that, "the value I gave up in today's market is very real."



This cow stands on land just one big commuter hill away from the intensely developed San Francisco Bay area. Upscale is just a fence line away. (Photo by Tim Findley)

But markets change, especially as large private lands become harder to acquire.ä

Mary Mosher faced a \$300,000 tax liability she would pass on to her grandson when she left him the land. With the non profit easement on her 880 acres, it melted away before she died recently at the age of 88, happily leaving him the ranch, minus any possibility that he could sell it for development.

There are no restrictions on grazing, and Fetcher was all owed to set aside three homesites on which his family could build .Once a year, someone from the American Farmland Trust comes out to look it over. Fetcher drives them around, assuring them that it is still an intact unit of a healthy, working ranch. But Fetcher is reluctant even to tell the trust representative how many cattle he runs, because he doesnât have to. âItâs ours,â he says. âI donât feel like a tenant at all, and neither do my kids.ä

In the years since the bonanza bubble of dot-com wealth began to fade, growth in Steamboat has slowed. But the town has had a megadose of Fenimore improvement, and technology brought along with it easily defies even the 20-foot snows that still come in winter. Tokyo Prime is preconnected, even to the ranches them selves.

You canât buy back character. Perhaps that is one reason why, from canyons and valleys and open fields all over Colorado, t h e Cattlemenâs Agricultural Land Trust continues to hear by e-mail or letter from more of the â Diggery ä eager to follow Fetcherâs lead and protect what they have. As far as California, others have begun to duplicate the opportunity.

A Salamander's Tale

Stand beside Tim Koopman on a tawny slope of slippery late summer grasses and watch his daughter, two more rolling hills in the distance, as she runs to the head-tossing roan that taunts her like a friend.

Below that view, deep in the valley, a busy ribbon of U.S. 680 hums with traffic between San Jose and Pleasanton . In their cars they watch forward, oblivious to the charming little drama of the teenager and her horse on the hills above them, and unaware that they are being seen without being noticed. Stand there and glance at the soft glow from a tough man's face as he watches his daughter with pride. Thereâs something fragile there that knows about forever. Koopman is counting on her and her older brother to carry on with this ranch that has been in the family for four generations, since Timâs great grandparents came ashore at Half Moon Bay. Even where the freeway runs was once a part of it until Koopmanâs father sold the right-of-way under threat of condemnation. It is a clutch of cupcake canyons just one big com muter hill away from one of the worldâs most intensely developed regions around San Francisco Bay, and Koopman knows well what it is worth. âI still wear my boots with cowpie in the heels and my same old hat when I go to town,â he says. âI know how they look at me, and I donât care. I was here long before they called the moving van.â The nearby former farm town of Sunol still holds on to some scruffy patchwork charm maintained largely by time travelers from the counterculture of the â60s who secured an enclave there. But the business town of Pleasanton, just a drive away, is an upscale cover story, built to speak of yuppie success in the computer bonanzas of t h e 1980s and â90s. It is as near as money could make it over the last 20 years to pastoral perfect. Koopman, on the other hand, is still more like a work in progress. They live across a fence line from each other.



Tim Koopman shows visitors the sinkhole created by the



earthquake of 1906. It is a stock pond and springtime home to the salamander that saved Koopman's ranch.



"God only made so much land. It makes me feel better knowing that at least some of it will never change."

--DEVERE DRESSLER

In a way, it was just that sort of ready-money sprawl that saved Koopman's ranch in the 1990s. That and the some-say-threatened tiger salamander.

Koopman had learned a lesson when his grandfather died in 1968 leaving a simple will, but no estate plan. Officially, California has no death tax. In fact, the state's Williams on Act was intended to preserve agricultural land from development by assessing property taxes on production rather than speculative value. Nevertheless, the federal government established an inheritance tax liability on the ranch amounting to over \$125,000. In part to help meet the crippling expenses that were soon compounded by drought, Koopman left the ranch, earned a degree, and began teaching vocational science. He was the first of his family to even temporarily leave the land, and it was nearly 10 years before he came back to Sunol, far better educated and, so he thought, far better prepared to contend with the traps of property ownership.



Modern homes are going up on fresh-scraped sagebrush across the valley from Devere Dressler's ranch. Most of the family lands have been sold.

But when his father died unexpectedly in 1991, followed by his mother only three years later, Koopman was confronted with federal and state tax audits demanding over half a million dollars in taxes on the increasingly valuable land. Even the family trust he had prep a red fell short of estate planning capable of heading off the catastrophic tax bill.

Koopman felt he had few options. He was already working full-time as a watershed resource manager for the nearby facilities of the San Francisco Water Department in addition to running the ranch on his own. His attempt to subdivide a portion of his property into five-acre parcels was rejected by Alameda County authorities in Oakland, even though they granted just such a zoning adjustment to a nearby 40-acre housing subdivision.

"I was ready to do whatever I could," says Koopman, "but the one thing I could not let happen was to be the one in my family who was forced to sell it all."

At the same time, Koopman had become one of the leading voices in the California Cattlemen's Association and would later take a leading role in the California Rangeland Trust (CRT). The fledgling outfit was learning rapidly about methods and means of other trust organizations, among them the preservation of habitat for threatened or endangered species. Trades could be made, they discovered, in matching habitat to mitigate the loss of it in one place with an easement to preserve such habitat "in perpetuity" somewhere else.

Koopman's grand father once told him that the sinkhole just up from the old road had appeared there when the hill side sluffed off in the 1906 earth quake. Except for the driest of summers, it held a small amount of water year-round that Koopman used as a stock pond. It was also, as he discovered in his boyhood, the spring time home for black-and-gold-striped tiger salamanders. Just, in fact, like a swampy area standing in the way of another new upscale housing development elsewhere in the valley.

It became one of the first mitigation deals brokered by CRT. Koopman was paid to keep some 30 acres in perpetuity as a salamander habitat, mitigating the loss to similar critters in the path of development. Happily, everybody agrees they get along just fine with grazing cattle around their water hole. The easement prevents those acres from ever being sold for development or for any reason other than conservation. As a result, the appraised value dropped—and so did Koopman's tax bill. Other than that, nothing really had changed. In effect, the ranch was saved, thanks to a salamander and the 1906 earthquake—as well as to developers themselves.

Such clever solutions are not so easily found. As much as the conditions of subdivision expansion, crippling estate taxes and the division of family interests represent the common denominators of most cases, Koopman and other leaders of CRT have discovered that each problem seems to require a unique solution.

First the family, then the land

Devere Dressler is in a direct line of sons you might imagine as descendants of "Bonanza" Ben Cartwright himself. The Dressler ranch, settled in 1862, is still in the right place, centered on the bright and beautifully maintained Victorian where Dressler and his family still live. You can imagine it as once the main house of a private domain, almost an empire that stretched from above and beyond the eastern toes of the Sierra near Carson City, Nev., and south to the rich desert-to-alpine valleys of Bridgeport, Calif. Dressler's grandfather, Fred, was the classic American rancher businessman, a member of the Cowboy Hall of Fame who was both greatly respected and sometimes feared. He is still a legend in Nevada.

"Just the same, he told my dad and my aunt that he didn't want them to become ranchers and go through the same things as he did," Devere Dressler recalls. "Makes you wonder, doesn't it?"

The "empire" of thousands of acres, if that's what you could call it, has been peeled away in chunks beginning with Fred's decision in 1987 to sell most of the Sierra valleys to the Trust for Public Land, which in turn traded it on to the California Department of Fish and Game and the U.S. Forest Service. Fred's intention was to preserve the land from development with enough money earned to balance out the liabilities of estate taxes on the remaining property he would pass on to his two kids. But not long after that, Dressler's aunt decided to divide it again with the sale of her share to private interests. Not because of that, and beyond the family's control, more and more 20-and-30-acre sites of what Dressler calls "Weed-ettes" were moving in along the front range, driving higher land prices ahead of them. Dressler's own two sisters felt it was time to sell their interests.

If the Dressler ranch really could have been a "Bonanza" model of another time, the dramatic sequels in the contemporary story might be as a soap opera set in a real estate office. Dressler, knowing his own family had divided interests about keeping the land in ranching, was, like his grandfather, determined to at least maintain the open-range integrity of the 6,300-acre Bridgeport valley. It was an awesome prize forming a natural migration route into Yosemite itself, and perhaps the last pristine valley without development on the Sierra's eastern slopes. On TV, Ben and the boys might have gone guns blazing to save it. In reality, Dressler went to the new California Rangeland Trust to help solve his worries for land and for family.

Partnered for the purpose with the American Land Conservancy and using funds from the California Department of Fish and Game as well as the Wildlife Conservation Board and the Department of Transportation, the deal paid of

of his sisters and awarded two willing new ranchers with land that "in perpetuity" may never be sold for any other purpose.

"God only made so much land," says Dressler. "It makes me feel better knowing that at least some of it will never change."

From the charmingly mature front yard of Dressler's home you can vaguely see the contrasting wooden skeletons of expensive modern homes going up on fresh-scraped sagebrush far across the valley. Dressler, still in business with his father, has 500 acres and some leases he works as rangeland, but the personal empire of his family is scattered.

"Perpetuity is a long time," he muses. "But it seems even more like forever when you just sell it away. It's a decision of the heart."

Peers for the Purpose

Nita Vail could readily understand that. The spectacular century-old ranch her family once owned on California's Santa Rosa Island is now federal domain after a years-long struggle to save it.

Vail, though never far in her heart from the bitterly lost ranch of the coast of Santa Barbara, is now the executive director of the California Rangeland Trust, and its leading spokesperson.

In the half dozen years since it was founded on Colorado's lead, CRT has become California's largest agricultural land trust, holding more than 70,000 acres in easements. Vail, a rancher's daughter, has learned to speak in terms of real estate and demographics.

"In California and throughout the West," she writes in the trust's news letter, "ranching returns on a per-acre basis are small compared to most other land uses. On the other hand, ranching alters the native landscapes less than other land uses, so the land is relatively valuable in conservation terms."

The way to take advantage of that, she says, is a "peer relationship" offered by the CRT in easements that are monitored by fellow cattlemen, instead of by environmental groups.

Though among the latest of ladies running trusts, including Lynne Sherrod in Colorado, Vail bears no resemblance at all to Susan Fenimore Cooper. Except, perhaps, that she should, and does, definitely know the difference between "B" and "bull'sfoot."

"We don't have the money of the big trusts and we don't have all their political power, but we have determination," she says. "We will do whatever we can to save ranching." ■

Tim Findley's first reporting job in 1962 was for The Steamboat Pilot in Steamboat Springs, Colo.

Analysis

BY TIM FINDLEY

In Colorado, Jay Fetcher goes out of his way to say he knows, "some very good people in The Nature Conservancy." In California, Devere Dressler waves aside even the most radical plans of Dave Foreman to create wilderness corridors across the West. "It's just talk," Dressler says. "It'll never happen."

There is a neighborly sense among the stable cattlemen's organizations and other producer groups these days of just wanting to get along with environmentalists in a mutually beneficial way. "Actually, we're all environmentalists, and I think we're learning to trust each other a little more," says Tim Koopman, who regularly leads ecology students from UC Berkeley on inspection tours of his ranch. Even the National Cattlemen's Beef Association is happy to have a chief Washington lobbyist who was formerly a TNC executive.

So, maybe with sacrifice of an easement here and there and some donated land in return for tax advantages, and a little education in place of rhetoric, what Wyoming Senator Malcolm Wallop characterized at the beginning of the 1990s as "War on the West" might finally seem over. Did somebody win? Cynics and critics of the "get along" drift in state and



"We will do whatever we can to save ranching."--NITA VAIL

national agricultural organizations put themselves in a minority corner trying to sound an alarm while most of the herd seems to be dozing. But many of these outriders suspect the West is being lulled into a political trap set further up the trail.

In Montana last summer, The Nature Conservancy slipped back into its old "Nature's Landlord" outfit by trying to fatten its coin purse with nearly half a million dollars in "mitigation fees" for wildlife displaced by highway development into Yellowstone. Representatives of TNC insisted that federal money should go to support a TNC "grassbank" it already owns some 30 miles from the construction. In Oregon, TNC leaders loudly protested that the state would be made "a laughing stock" after State Senator Ken Messerle (R-Ore.) blocked an attempt of the Conservancy to cash in on nearly \$2 million in federal funds for conservation easements on two more regions. "Oregon is already 60 percent public land," said Messerle. "How far do we want to go down that line?"

The huge Baca Ranch in Colorado, on a pivot of the imaginary Wilderness Project, still awaits sale by TNC to the federal government. Yale University was sucked in by a "Nature's Landlord" front to use endowment funds that helped in the TNC purchase, then was heavily criticized last year for taking part in a scheme to sell water from the aquifer below the ranch. To satisfy other environmental critics, the university said it would donate its profits from the water to an environmental cause. Who did they donate the \$4 million to? The Nature Conservancy, of course.

Once again in this session of Congress, The Nature Conservancy arrogantly ignored an impending investigation of its past business dealings to take the lead in pressing for legislation that would give the land trusts even greater advantages over "willing sellers." The so-called "Faith Based Initiative" amending the tax code is supposed to encourage more charitable work by private schools, churches and orphanages. But TNC is the nation's 10th largest charity and its corporate-connected leaders want the \$948 million tax break in the bill to include a discount of 50 percent for a willing land seller—but only if the buyer is a non profit land trust or the government itself. In effect, tax payers would cover the cost of TNC and other trusts to set their own price on the value of private land.

Many well-meaning Americans are led by the well-heeled conservation organizations to believe that open, unspoiled land in the United States is being overrun at an hysterical pace by new development. However exaggerated that may be, even the trusts can't deny that their accumulation of land by purchase or easement in the last 20 years has been at a frantic, unprecedented pace of its own. And while they may not admit it, the result is at least as much to enrich the non profits as it has been to really "save" the land.

The Trust for Public Land (TPL), for example, reported in its 2000 tax form that the group spent \$70 million to acquire land for public use. But TPL only conveyed \$34 million worth of land in that year—at a net gain of more than \$97,000, while cashing in \$29 million in securities. Total assets of the non profit that year were listed as \$231 million, only \$3.2 million of that in land, buildings and equipment. It should be said that in comparison to The Nature Conservancy, TPL is a small-time player.

In the really big game that TNC and other trusts are playing with vast western lands, "collaboration" seems likely to work out best for those who already hold most of the marbles.

A handful of state governments, including those in Montana, Oregon, and South Dakota, have raised questions about the use of conservation easements, but they must buck the priorities of landowners themselves who say it should be up to them to decide the integrity of deals that can only really be demonstrated when "perpetuity" is put to a test. Without perpetuity, they point out, even an estate plan is useless in reducing tax liability. Term - limited

easements are not recognized for that purpose by federal tax authorities. It is just another corner in a maze of complications on the concept of property itself.

Thomas Jefferson seems to have puzzled over that question in writing the Declaration of Independence. Jefferson and other scholars of the time were intensely aware of the writings of English philosopher John Locke on human rights. Nearly a century earlier Locke had written that those included, "life, liberty, and the pursuit of property." In his founding document of independence, Jefferson remade it, "the pursuit of happiness," and set off a couple centuries of parlor debate.

Locke, some scholars say, was not a true advocate of democracy. His intention, they say, was to control the king. Jefferson's intention was to eliminate him. Thus, though property may indeed be part of what is meant by the term, it is not all there is to "happiness," and Jefferson understood that.

If it makes one happy to place an encumbrance on their property, then who, as of now, can say they are sacrificing their rights? Or, if the question be raised, the rights of the rest of us? ■

Perpetuity

BY TIM FINDLEY

From the fact sheet on easements by the American Farmland Trust:

"An agricultural conservation easement can be modified or terminated by a court of law if the land or the neighborhood changes and the conservation objectives of the easement become impossible to achieve. Easements may also be terminated by eminent domain proceedings."

From a fact sheet on easements by The Nature Conservancy:

"By holding a conservation easement, the Conservancy accepts responsibility for monitoring the property in perpetuity to make sure the terms of the easement are being observed. A monitoring system involving natural resource inventories, aerial photography, and regular visits by volunteer monitors helps assure that all is well."

Unfairly, one might be reminded of the deal explained by the devil to Daniel Webster. Perpetuity might not be forever. The even more important word in an easement agreement may be "trust." Taking the risk requires putting some faith in whom you want to share forever with. Producer-based trusts such as those formed by cattlemen's organizations are meant in part to assure ranchers that it will be with their peers—ranchers and others who believe in working the land.

But such folks should know better than most that times can change. A bad year can follow a good one. The next generation won't always have the heart of the last one. Perpetuity depends. Laws are always meant to last forever. Prohibition was for perpetuity. So, in some states, was segregation, and so, in others, was denying women the right to vote. Perpetuity in matters of social behavior might not last longer than most marriages. In matters of property rights it still seems an untested question. The concept of a tax on income, which is part of what plagues the heirs to ranches these days, was once promised never to be a part of the federal system.

Like prohibition, segregation, equal rights, and unfair advantages to wealthy non profits, perpetuity may last only until the people are fed up with it. ■

Success Stories

AFTER 40 YEARS OF RANCHING on 17,000 acres of land south of Salinas that are still so pristine as to have had only two owners since California statehood, Jack Varian found himself presiding over some of the most classically enchanting ranges in the West. He also found himself \$1.5 million in debt. Varian had made some bad choices on the market and on some other lands, but he was determined to save the prized V6 ranch for his four children and somehow avoid massive inheritance taxes that would eliminate their options.

He made a deal with the Trust for Public Land in San Francisco to sell a conservation easement on his ranch for \$2.9 million, but stipulated that he wanted that easement donated to the California Rangeland Trust. Varian came out of it with his ranch intact, his bills paid and a nest egg of about \$1 million. He is now 67 and certain the land will

remain in his family for at least the next generation.

ALONG THE COLD AND MUSCULAR banks of the Gunnison River in Colorado, Lee and Gail Dusa confronted the same problem of many others in the West with a tourist economy nearby steadily growing in new development toward their Eagle Ridge Ranch. Their novel solution was to sell limited shares of the 4,900 deeded acres to 15 investors under a conservation easement that all owed building sites in selected areas, but committed the owners to the continued operation of the ranch, even if a parcel is later sold. They were surprised at the willingness of so many buyers to limit their exclusive use to four or five acres while preserving the stability of the ranch operation producing about 700 cows and 1,500 tons of hay on the rest of the land.

JACK SPARROWK&S 13,100-ACRE Bar One just a half hour&s drive from Reno is the largest surviving ranch in two counties of California&s northern Sierra. Its stunning views and nearby urban facilities make it a choice site for development. But Sparrowk and his partners believe that ranching itself is the best way of preserving the alpine region. Their deal, brokered in part by The Nature Conservancy, turned management of the easement on the property over to the California Rangeland Trust. Recently, the Audubon Society declared the valley a national priority in the conservation of North American bird life. The ranch that helped make that possible continues in production.

ON THE ROCKING Z near Wolf Creek, Mont., Zack and Patty Wirth faced hard times after buying the out - of - production 1,000-acre ranch from his mother. Putting it back to work would cost a seemingly impossible \$150,000. "Bankers would pull their shades when they saw me coming," Wirth recalls. Sub dividing developers seemed a lot more friendly.

The solution found by the Wirths sought the best of both worlds. Working with the Montana Land Reliance, they donated a conservation easement on the ranch under terms written to include a 20-acre "homestead " site for a select buyer. That turned out to be a businessman from Oklahoma who wanted a second home near his favorite fishing sites and had no objection to granting 18 of the 20 acres to agricultural use. In return, he was granted limited recreational use of the ranch property. With a part-time "homesteader" as a trusted neighbor, the Wirths were able to restock the Rocking Z, certain that no other development will be legally possible. ■

Land Trusts

BY ERIC MONTAGUE

Most people want clean air, clean water and healthy forests. The question for landowners and policymakers is how best to accomplish those objectives and at what cost to taxpayers, the economy and local communities.

Over the past 30 years overuse of the traditional top-down, government-control approach to environmental protection has fostered a highly adversarial regulatory climate that often stifles economic growth and development, particularly in rural, resource - dependent communities. Lawsuits and heated disagreements between environmentalists and landowners are a common theme of the existing regulatory system. After years of conflict, most people want a fresh alternative÷one that can bring environmentalists, property owners and businesses together to cooperate in protecting our natural surroundings.

To avoid repeating the conflicts of the past some environmentalists are turning to land trusts as a new way to encourage landowners to protect sensitive environmental areas. In a pure model, a land trust raises private money to buy the land it wants to protect. This approach contrasts with the traditional practice of filing lawsuits or lobbying local, state and federal policy makers for greater restrictions on private property and public land use.

Recent articles in *RANGE* and *The Washington Post* show that land trusts do not always follow the pure model of raising private funds to purchase land. In research by Washington Policy Center, we evaluate the land trust movement, laying out some of the major political and structural problems of land trusts. As part of our research, we also establish core criteria that property owners can use when deciding to do business with their local trust.

At the heart of problems with many land trusts is an increasing reliance on government subsidies to fund the purchase of land and easements. Part of the reason land trusts have become so popular is the tax benefits granted by Congress to encourage landowners to donate their land or establish a trust-managed conservation easement. By controlling the types of conservation that receive tax benefits, the federal government can pick winners and losers. Private landowners who choose, of their own free will, to limit development on their land without working with a land trust do not receive a tax benefit, but those who cede control to a land trust do. Both property owners accomplish the same conservation object, but in one case, the federal government offers a financial reward.

Also troubling is the added IRS requirement that an easement be granted in perpetuity if the landowner is to receive a tax benefit. As most landowners understand, land values and uses change over time. An area that was once best used for timber production or grazing, may later be best used for agriculture or development. By extending the term of an easement indefinitely, future generations will have little ability to adjust the use of the land to that which best fits the needs of society.

Another discouraging tactic being employed by some land trusts is coordinated government coercion.



With increased frequency, non profit land trusts are plotting with local and state governments to zone or otherwise restrict the use of private property. By doing so, they reduce the value of that property, making it less expensive for the land trust to purchase. The landowner, on the other hand, has little recourse once his land value is reduced through regulation. In many cases, the only alternative is to negotiate a deeply discounted purchase agreement with the land trust.

While it is important to be aware of the problems with land trusts, landowners should also look for good examples. In many areas of the country, land trusts are working closely with local landowners to cooperatively achieve the conservation goals of the community. In some cases, ranchers and farmers voluntarily establish land trusts to protect their community from approaching development. In other circumstances, timberland owners have worked with land trusts to reduce their tax burden and maintain timber harvest as a viable land use.

A few key principles are common to land trusts that have established a positive community relationship.

These include:

Not accepting government grants.

Relying exclusively on voluntary transactions, not regulatory coercion.

Enacting a permanent restriction on the sale of land to the government.

Forging a cooperative community relationship.

Failure to abide by these core principles undermines the mutual trust necessary for a successful voluntary conservation program and distorts the environmental - protection interests of the broader community. ■

Eric Montague is a policy analyst for Washington Policy Center, a nonprofit, 501(c)(3) research and education organization in Seattle, Washington. Visit them on the web at www.washingtonpolicy.org. Nothing appearing in this document is to be construed as an attempt to aid or hinder the passage of any bill before any legislative body.

Are Taxes, Like Death, Forever?

BY JEFF GOODSON

There are few things more unseemly than abuse of the federal death tax by rich environmentalists to cheat people out of their land. Until the 20th century, death taxes were only passed as a short-lived tool to finance major military engagements. According to Bruce Bartlett of the National Center for Policy Analysis, the first death tax was passed in 1797 to finance naval rearmament and ended four years later. The second, passed in 1862 to finance the Civil

War, was repealed in 1870. The third, levied in 1898 to pay for the Spanish-American War, ended in 1902.

In 1916, a fourth death tax was passed to finance World War I. That tax survives today, vivid testimony to the immutable 20th century law that taxes are forever. Taking up to 50 percent of your money, the death tax has helped destroy the legacy of five generations of hard-working Americans.

Death taxes finally turned into an albatross for fans of big government in 2001, when Congress repealed it despite a full-court press to defend the tax by the liberal media. Unfortunately, the victory was only partial—repeal doesn't take place until 2010, and then it only lasts for a single year. Attempts to permanently repeal the death tax passed the House of Representatives last June, but Democrats blocked it in the Senate. The Senate vote was 54-44 in favor of repeal, but 60 votes were needed for passage.

The fact that death tax repeal continues to come up on the radar screen gives environmentalists apoplexy. Especially unhappy are the more than 1,200 U.S. land trusts that sprang up after the discovery of just how virulent the death tax could be as a land-use control tool. When it became clear in the late 1970s that environmentalists wanted a lot more land than they could pay for in fee simple, two strategies evolved to reach out and take that property. Both have since proven highly effective. The first was use of environmental regulations—especially wetlands and endangered species regulations—to keep people from using their land. This had the happy ancillary effect of devaluing property that the environmentalists wanted to buy outright.

The second strategy was use of the tax code to extort the right of property use from reluctant farmers and ranchers. The death tax proved perfect for this purpose, and the rest is history. About 80 percent of all private property saved by land trusts as of 2000 was obtained from private landowners in the previous 10 years.

Check out the literature of almost any land trust in America, and you'll find that their primary sales pitch revolves around "saving the legacy" of landowners from a tax that would otherwise force their heirs to sell the family ranch. The pitch is simple: "We can protect your legacy. Just sell us an environmental easement, and reduce the property's value to below the estate tax threshold. Not only can your heirs keep the family ranch, but they can keep on ranching it forever."

What the trusts don't advertise is that your heirs can't do anything else with the land forever, except ranch it and pay taxes on it. So on your death bed you're faced with the choice of either selling the family ranch to pay the death taxes, or giving up your children's land use rights to the environmentalists.

The mouthpiece for the land trusts is an umbrella organization called the Land Trust Alliance (LTA). In testimony before the House Ways and Means Committee in 1999, LTA recognized the ability to reduce estate tax liability as "an important element in land trusts' solicitation of easement donations." It also testified that "the federal government has been a partner in [this] effort, through the tax code and in many other ways." In deed. And this collusion between government and the



British stretcher bearers in World War I near Boesinghe, Belgium, August 1917. The temporary "death tax" was used to finance wars. It hasn't been repealed since 1916.

land trusts has robbed thousands of Americans of a priceless heritage—the right of use of the family property.

Although horrified by the prospect of death tax repeal, environmentalists have been uncharacteristically quiet during the current debate. Maybe their focus groups tell them that to publicly oppose repeal of a tax so damaging to rural families would be unseemly for some of the richest tax-free organizations in America. The biggest three land trusts have collective assets of well over three billion dollars, and income at the largest—The Nature

Conservancy÷was \$731 million in 2001 alone.

In its 1999 congressional testimony, the LTA argued for maintaining a 10-year phase-out period if legislators were serious about death tax repeal. ãEven if the next decade is the last one for estate taxes, in 10 years it will be too late for much of the farm and ranchland, forest property and key habitat that is under pressure.ä Not to mention too late for the thousands of families who own the land thatâs so coveted by the environmentalists.

Land trust abuse of the federal death tax has already sucked the lifeblood out of too many rural families in America. Congress should drive a stake into the heart of this practice, instead of giving rich environmentalists another seven years to cheat people out of their land. ■

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A Rancher's View

BY WAYNE KLUMP

Anyone who would put a conservation easement on their property must hate their children, grandchildren all of their heirs forever, or think that they are stupid and all of their offspring will be stupid forever.

Giving a conservation easement to a third party is like cutting off all your childrenâs arms and legs and poking out their eyes at birth, and doing this to their descendants forever.

These third parties, the ones you give the easements to, have out smarted us again. All or most of the value goes into the easement which stays there in perpetuity, which means forever! What will you have left? Only the privilege to pay property taxes on this now - worthless property forever.

What do I suggest?

It is very difficult to take off an easement, and it is valuable. If you love your children and you believe in the principles that this great nation was founded on, you will give a right-of-way easement to your children or heirs. It could be a way to save your property.

This is how you do it: Type up an easement from yourself (grantor) to your children/heir (grantee) for consideration (\$10), attach Exhibit A (legal description), then list all of the rights and values that you want to put in the easement. Include water, minerals, timber, carbon credits or air, grass, etc., the right to construct buildings, pipelines, utilities, roads, and the right to access, etc. Specifically state in this perpetual easement that everyone else is excluded from the property except grantee.

Have all property owners sign the easement in front of a notary. Have a page for consent to the easement for any lien holder to sign and notarize. Attach the legal description and record with your county recorder.

What you have just done is put all of the value of the property in the easement and given it to your kids. If you want to you can quit paying taxes on the property, because no one could use the property.

The Western Governors Association, Trust for Public Land, and the National Cattlemenâs Beef Association published a booklet supporting Purchase of Development Rights. The Farm Bill 2002 gives the USDA money to pay for easements on your property.

If you like your children, do not do it! Remember the worldâs biggest lie: ãWe are here from the government; we are here to help you.ä ■

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