

Conservation Easements and Donations for Tax Deductions

Prior to discussing concepts involved in the acquisition and maintenance of conservation easements, we should review the basic concepts of land ownership.

Bundle of Rights Theory

This theory holds ownership in real property can be compared to an almost infinite bundle of sticks wherein each individual stick represents a distinct and separate right inherent in the ownership of property. These individual sticks or rights are provided for and guaranteed by law with the exception of the following general limitations:

- a. The power of taxation
- b. The power of eminent domain (condemnation)
- c. Police power (includes zoning ordinances, E.P.A. regulations, etc.)
- d. Escheat (reversion of private land to the state if the owner does not pay taxes or if the owner dies with no will and no traceable heirs)

Collectively these rights constitute fee title ownership and the owner of these rights has the right to sell them all at one time (fee title acquisition) or individually. When an owner of property conveys one or a combination of his or her bundle of rights to another unto perpetuity, it is usually referred to as an easement. The conveyance of a perpetual right or an easement usually is considered to "run with the land" or in other words will forever encumber the fee title to the property. In addition, the owner of the rights has the exclusive right to lease, to enter, to give away, or to refuse to exercise any of the rights.

A conservation easement on the Black's Fork of the Green River benefits the public and the landowner. The public gets to fish and the landowner gets a tax break.

Conservation Easements

Conservation easements, open space easements, scenic easements, and wildlife easements are essentially the same conveyance with different names. The names can be considered



interchangeable. A conservation easement allows a landowner to restrict forever the uses to which a property can be put. Those restrictions even apply to the landowner.

To define the Wyoming Game and Fish Department's attitude towards acceptance or acquisition of conservation easements, it is first necessary to define "conservation easement" as it applies to the Wyoming Game and Fish Commission.

To this end the following definition was adopted by the department through the commission relative to conservation easement:

A conservation easement is a perpetual natural resource based restriction(s) imposed or placed upon a property at the free will of the owner and which restriction through the conveyance of a properly executed and recorded document is designed to protect and enhance certain elements of natural diversity defined by a dated biological reconnaissance unto perpetuity.

By accepting or acquiring a conservation type of easement (the terms of which would be defined by a biological evaluation), the Wyoming Game and Fish Department is able to protect or enhance those wildlife or natural resource values which only the owner of those rights, by virtue of his fee title, could destroy.

The department would consider acquiring only those rights needed to protect or enhance defined wildlife or resource values. All other rights belonging to the landowner through the bundle of rights theory of fee ownership would be retained. This is consistent with the concept of specific rights for public fishing in the department's fishing easement program.

There are two methods of acquiring conservation easements. One method, which is referred to as the direct method, is to actually solicit and purchase conservation easements from willing sellers on a defined term or perpetual basis. The other method of acquisition is the unsolicited free-will donation of conservation easements. This will be referred to as the indirect method, a method the department is currently using.

The Direct Method

In the direct method, easements can be directly purchased by the agency in the same manner in which fee title lands or less-than-fee-title easements are acquired. That is, the depart-

ment would first establish a priority list of needed easements based on resource values and then contact the landowner, appraise, negotiate, and acquire the easement. An attempt would be made to buy the easement in perpetuity.

The Indirect Method

In the indirect method, unsolicited easements are donated to the agency usually in return for a tax advantage granted to the donor through the IRS laws of the federal government. The main difference in acquisition of the easements by this method is that the easements must be perpetual since they are being donated for tax exemption purposes. The rights acquired by donation are no more or less valid than those rights acquired by the direct method.

There are several ways a donor can transfer a property right to the Wyoming Game and Fish Department. The owner can give land to an agency or non-profit organization with no strings attached through a standard deed of conveyance—an outright donation. This is the simplest and most direct land gift and may provide the greatest tax benefit to the donor. The maximum income tax advantages of such a gift go to the donor who donates highly appreciated property and as a result is able to use the market value of



Springer conservation easement in Goshen County.

the donation as a tax donation.

A second method of transfer is the bargain sale. A bargain sale is part sale and part gift of land; it is a sale of land at less than its fair market value. The seller can deduct as a charitable contribution for income tax purposes the difference between the fair market value of the property and the actual sale price. The bargain sale concept is very popular—the seller receives some immediate income and can deduct the value of the gift portion from income taxes, although he usually has to pay taxes on the capital gains. The value of his deduction can keep him in a lower tax bracket. The receiver, of course, gets to protect a significant area at a reduced cost.

A third method is the full purchase. This is a purchase in total or a purchase of only the rights needed by the grantee. It is similar to an outright donation except there are no tax advantages.

The same basic rules governing donations of fee-simple interests in property apply to donations of conservation easements. You can even

make a bargain sale of interests in property through a conservation easement and get the same kind of tax treatment as if you had made a bargain sale of the entire fee. The Internal Revenue Code allows a charitable contribution deduction for the appraised value of rights donated for "conservation purposes" to public agencies or qualified charitable organizations. The tax code defines "conservation purposes" as:



The Little Popo Agie River south of Lander. The Wyoming Game and Fish Department is interested in obtaining conservation easements on lands adjacent to rivers and streams that offer good fishing.

- (I) the preservation of land areas for outdoor recreation by, or the education of, the general public,
- (II) the protection of a relatively natural habitat of fish, wildlife, plants or similar ecosystem,
- (III) the preservation of open space (including farmland and forest land) where such preservation is:
 - (1) for the scenic enjoyment of the general public or
 - (2) pursuant to a clearly delineated federal, state, or local governmental conservation policy and will yield a significant public benefit or
- (IV) the preservation of an historically important land area or a certified historic structure.

The IRS insists that both the donor and the receiving organization have conservation in mind. Thus a gift of a conservation easement to the Wyoming Game and Fish Department would be deductible.

At the time of its formation, each charitable organization must have its tax status and eligibility to accept deductible gifts approved by the IRS. To be deductible, gifts of easements must be perpetual, binding forever anyone who owns the

land. The recipient's organization must be able to enforce the restrictions agreed upon and must agree never to sell, give away, or trade the rights received through the easement except to another conservation entity which would agree to protect those rights in the same manner.

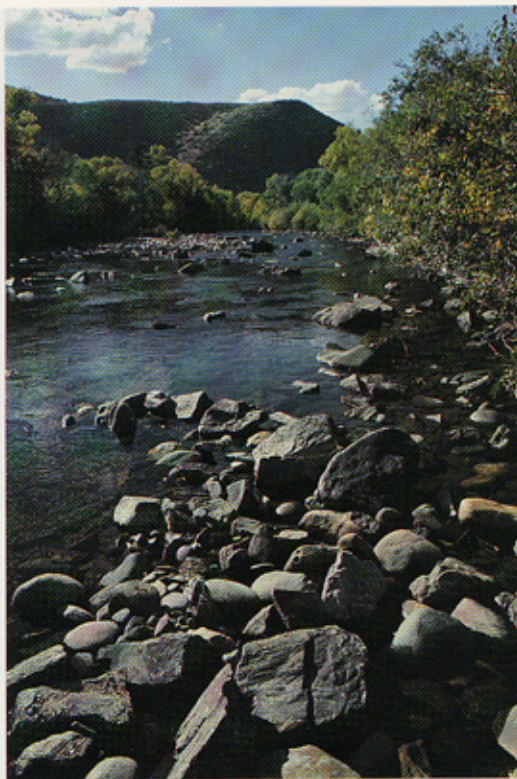
Conservation easements as stated before are designed by acquisition of certain rights to protect those elements of natural diversity which, outside of the four limitations discussed in the bundle of rights theory, only a landowner owning those rights has the ability to destroy.

For example, unless there are zoning or health ordinances (one of the four limitations) placed on the property by the local or state government, the only person who has the legal ability to subdivide the premises is the landowner. By acquiring the rights of subdivision, an agency is able to protect the property against subdivision because up to the time of the grant the only person who could have exercised the right to subdivide the property was the landowner himself.

There are almost infinite rights associated with fee ownership, and depending on the site-specific situation, any one or combination of



There are many conservation easements along the North Platte River. All of them grant the public access to the water and to excellent fishing. The Internal Revenue Code allows a charitable contribution deduction for the appraised value of rights donated for "conservation purposes" to public agencies or qualified charitable organizations.



Wildlife conservation easements like this one along the Encampment River in Carbon County help protect natural diversity and thus help protect and enhance wildlife populations and habitats.

and would be the baseline or reference date in the monitoring process. If the easement is violated and damage is done to the wildlife or natural resource it was designed to protect, then all means including legal action must be used to rectify the situation.

The Wyoming Game and Fish Department claims no expertise in tax law. We suggest that a competent tax attorney be secured to investigate all the tax advantages of donation or partial donation.

Wildlife conservation easements are an excellent way to protect certain elements of natural diversity and thereby maintain and enhance wildlife populations and habitats. All easements are site-specific and the scope of responsibility and legal authority granted by an easement is limited solely to and by the provision contained within the document.

It is necessary, then, to first identify the wildlife or resource values and then acquire only those rights which can degrade those values. After acquiring those rights, the receiving organization must continually monitor the easement and its effectiveness to make sure that it is not violated. Acquiring easement rights gives the receiving organization a vested legal interest and thus a legal responsibility in the property to protect or enhance wildlife and associated habitats.

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This publication is one in a series of habitat extension bulletins produced by the Wyoming Game and Fish Department. Call 1-800-842-1934 for additional information or assistance.