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Harriet Hageman: Government acquisition of private property rights through conservation easements

Federalizing private property rights
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Informing private landowners of, “The Good, the Bad, and the Ugly,” regarding conservation easements was the topic of attorney Harriet Hageman’s discussion during the Wyoming Farm Bureau Federation Annual Meeting on Nov. 11.

“My concern is really quite simple; I am afraid we are federalizing our private property rights,” stated Hageman of the major problem that results when conservation easements are placed on private lands.

“Think about that. What you have is a government that is using conservation easements to control private property rights without having to acquire those rights themselves. They recognize that there is a lot of political animosity toward the idea of government owning more and more land. So, this process is being manipulated for taking over private property rights without necessarily owning the underlying land,” Hageman continued.

“For many of these land trusts, what used to be a close working relationship with private landowners has now been replaced by a closer relationship with government agencies. In these troubling arrangements, land trusts have operated more like government agencies; acquiring easements from private landowners, only to turn around and quietly sell them, sometimes at an enormous profit, to state and federal governments. I’m not trying to say all land trusts act this way, but enough do that we should all be concerned,” she added.

On top of the 654,885,389 acres, or 29 percent of the total land in the U.S. currently owned by the federal government, land trusts now control 37 million additional acres through conservation easements. The majority of this land is controlled by large, national environmental agencies such as The Nature Conservancy (TNC), who controls 15 million acres of that 37 million acre total.

Hageman listed the Trust for Public Lands, Ducks Unlimited, The American Farmland Trust and The Conservation Fund as other large land trusts, that combined, control 10 million of those 37 million acres.

“One of the things we’ve been finding is they have a prearranged flip. In other words, they know that if the federal government came to you, or the Fish and Wildlife Service (FWS), EPA or FSA, came to you said ‘I want to buy your land,’ any of you would say no. So, most easements are purchased by a land trust at below market value, and the land trust can sell the property for the easement to the government at market value, pocketing the difference.

“The land trusts benefit because they can earn a profit off the taxpayer-funded arrangement. Government agencies like the arrangement because, unlike seizing private lands through land use agreements, zoning laws or even eminent domain, they can attain private property without public scrutiny,” Hageman said.

She continued, saying that Pre-acquisition also enables the government to obtain private lands where public funds are not yet available, and that the Department of Agriculture (DOA) has noted voluntary acquisitions provide opportunities for public agencies to influence resource use without incurring the political cost of either regulations, or the full financial cost of right land acquisition.

“There is big money in this, but the landowners are not the ones benefitting in the ways these other organizations are. The American Farmland Trust and The Conservation Fund take in \$1 million and \$3 million annually in federal grants, respectively. The TNC receives an alarming sum, exceeding \$100 million, of your federal funding.

“My question is why do we have a third party in this? If these conservation easements are worth that kind of money, and if our government is willing to spend that kind of money to get a non-government agency to go and

surreptitiously take certain easements off your property, why aren't they working directly with you? Because it's corrupt, and it is a way that people have found to make more money off the federal government.

"Without some prevailing, serious and important reforms, this could evolve into the prevailing method by which the federal government takes our private property," Hageman stated.

She listed the concept of in perpetuity as another scary aspect of conservation easements.

"What conservation easements do is they inhibit and prevent the next generation from making the decisions that you have made, your forefathers made, and that will be in those children's best interest. The entire purpose of a conservation easement is to bring somebody else in as your partner. Not your son, daughter, nephew or cousin, but the TNC, the federal government, the FWS. You are bringing in an un-named, unaccountable person who is going to be coming onto your property and dictating what you can and cannot do," she cautioned.

"The other thing to keep in mind is that the tax benefit is a one-time thing. But, it's going to be on that property in perpetuity. When you put a conservation easement on your property, you are, by definition, decreasing the value of the most important asset you own. The very fundamental reason you get a tax write off when you do a conservation easement is because your tax write off is the difference between the value of the property before the conservation easement, and the value of your property with that conservation easement on it," Hageman explained.

"Why would we be willing to allow the TNC, federal government, or any other land trust to determine a value for that easement today, and say that's still the value in 2050? If conservation and open space and protection of wildlife resources are a priority in our country, then they ought to pay for it. That's your asset, and if they want to pay for it in 2010, they can get a conservation easement. But, they ought to pay for it again in 2030, with 2030 values," she added.

"When you're gone, it's your children and your grandchildren who have to make the decisions, and they have to have the flexibility, and the ability, to do it. Perpetual conservation easements take that away. We have to move away from the idea that we continue to federalize our private lands. Our kids, our future, our industry, our economy - everything depends on it," Hageman concluded.