

Conservation easements take away important property rights

By Kerin Clark

"I have a fundamental problem with the federal government taking control over more and more private property," Attorney Harriet Hageman told Wyoming Farm Bureau members at the organization's annual meeting Nov. 11. "And in the long run conservation easements do just that -- federalize our private property rights."

Hageman explained to the audience how conservation easements are often purchased privately and then "flipped" under a pre-arranged agreement with a government agency. "The federal government already owns 29 percent of the land in the United States," Hageman explained. "In the Western states, the federal government owns 54.1 percent of the land." "Since there is such animosity toward the federal government buying more and more land, they have found other ways to take property rights," Hageman said. "Conservation easements are one of the ways in which the federal government is acquiring an interest in private property without having to actually buy the land outright."

"Private property rights are one of the most important rights we have in terms of protecting ourselves from the tyranny of government. They are important in being a free people and protecting our liberty," She continued.

Hageman explained how people often view conservation easements as an unobtrusive way to maintain open spaces and protect agriculture. "As I've delved into the details of these transactions my concerns have been heightened, not alleviated," Hageman said. "I do not believe that perpetual conservation easements are in our best interest," Hageman continued.

"So many of us are in Wyoming because of what our ancestors did before us -- they carved out a farm or ranch; built a place to live and grow food," Hageman continued. "What perpetual

conservation easements do is prevent current landowners and the next generation of agriculture producers from making the decisions that you and they need to make. They take away the flexibility needed to make good decisions."

Hageman encouraged folks to recognize that future generations need to make their own decisions, based upon the conditions before them at the time. "The current generation should not be making decisions today that prevent our children and grandchildren from addressing whatever situation they are confronted with," She said. "A one-time payment in current dollars is not, in the long run, going to benefit that property or your descendants."

"Conservation easements, by their very nature, place landowners in the situation of voluntarily devaluing the most important asset they own -- their real property," Hageman explained. "That is the point of the tax write-off, which allows you to deduct the difference in the value of your property before the conservation easement is granted, and the value after. This difference in value can be drastic."

This devaluing ultimately affects landowners' borrowing power, and the resale value of the property. "The tax benefit is a one-time thing, but a perpetual conservation easement stays on your land forever, and that is a problem," she continued.

"If conservation easements for the protection of open spaces and the preservation of wildlife are a high priority for certain folks, they should pay for it," Hageman said. "They should not just make a one-time payment in today's dollars, and tie up your land into perpetuity, they should pay whatever the going rate is throughout time. That is one of the problems with perpetual conservation easements. The fact is that the value of money and priorities change." She suggested that we restrict conservation easements to a

specific amount of time, say 25 years. They could be renewed, but each generation of landowners would then have the ability to negotiate the contract that is in their best interests and ensure that they are paid the real value of the easement.

Hageman also pointed out that, unbeknownst to many landowners, conservation easements essentially force you into a partnership with a dictatorial bureaucracy that can dictate what types of activities are allowed on your land, even if the purpose of the easement is to protect ranching or farming. She shared an example involving a sheep producer who was forced out of business as a result of a conservation easement

on lands that he leased. Despite the fact that the easement was supposed to allow traditional ranching activities, it also included a provision (as they often do) that only those activities that are "consistent" with the purpose for which the easement was granted would be allowed (with the easement holder being solely entitled to determine "consistency").

According to Hageman, the easement holder demanded removal of the sheep based on their claim that bighorn sheep had been observed within a couple miles of the property. The landowner buckled under, forced the sheep rancher to move his sheep, and he had nowhere to go with them.

Hageman believes that conservation easements are being used by certain groups to control large swaths of land in the West. She also believes that within the next 25-30 years (if not sooner) we will realize that we have severely undermined the ability of our children and grandchildren to stay in the agriculture industry in this State.

Hageman concluded with emphasizing that we cannot continue to federalize our private property. "Our future, our children, our economy depends on it," Hageman said.

Editor's Note: In next month's issue we will look at some of the numbers associated with conservation easements.

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Mail entries to Wyoming Farm Bureau Federation, ATTN: Photo Contest, PO Box 1348, Laramie, WY 82073. Entries must be postmarked by January 31, 2012. Photos will be judged by an independent panel.

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