



Cornyn's Misguided Vision

By Margaret Byfield

Senator John Cornyn has a bold new vision for Texas. He wants us to look more like our western neighbors and turn over our private lands to the federal government, or even better a "Land Trust."

Possibly, the Senator has never taken a good look at the western land's problems, which is why he is encouraging Texans to relinquish their hard fought private property rights to a Land Trust, through a conservation easement. As one who was raised in Nevada (87% federally managed), and a plaintiff in a 14-year court battle with the land management agencies, I say with all politeness, the Senator's perspective is misguided.

I realize that conservation easements are the rage for bypassing the hard decisions that landowners have to face, such as suburban growth, increased property taxes and avoidance of steep estate taxes. But the Senator, and others promoting conservation easements are ignoring fatal flaws inherent in the "sweet deal."

First, when a landowner signs the agreement he becomes the junior to the now senior estate holder, the Land Trust. It is akin to being a modern day sharecropper on land you once owned. Or, the equivalent to being a western rancher with a grazing allotment. The rancher owns the water, rights of ways, access to forage and other key elements on the allotment, as has been the ruling in my families case, *Hage v. United States*, however, few western ranchers would agree they are in control of their ranch.

With a conservation easement, the Land Trust does not buy a simple right to drive across your land, such as with a road right of way. They purchase the right to manage your property for their conservation purpose. They are your new Landlord. While you may still own some of the property rights, as does the western rancher, they now control if, when and how you will use those rights.

Second, most if not all of these easements have a clause, which allows the Land Trust to determine if any of your activities are in violation of the conservation program or "purpose" of the easement. They can stop even those activities, such as farming, ranching, etc, they agreed would continue when you signed, if they determine these are now in conflict with their priorities.

Third, the tax deduction is not automatic. The IRS has to approve the agreement and if they deny the deduction, the easement does not go away. You still have a binding agreement with the Land Trust, in perpetuity without the tax benefits.

This raises a fourth concern. Many landowners sign the easements because they believe it will forever keep their land from becoming a strip mall, or something else they do not want to see on their land. The "in perpetuity" clause applies to the landowner, his heirs or another buyer. However, if the Land

Trust holding the easement ever acquires the remaining property interests, for instance the landowner cannot comply with the “conservation purpose” and sells the remaining interest to the Land Trust, the estates merge and the easement goes away.

The Land Trust is now free to mine, drill, graze, log, subdivide, develop, or do anything else they might wish; with the land promised to become one of the “Last Great Places on Earth.”

It is also worthy to note that land which has a conservation easement can be condemned as mitigation land to replace species habitat being taken for things such as the Trans Texas Corridor, scheduled to begin construction in 2007. Even if you are not in the quarter-mile wide swath of the TTC, but you have a conservation easement on your land, you might find your land condemned anyway to replace habitat taken by the Super Highway.

Trust is what you will need a lot of when you sign a conservation easement, because you will not have the law weighted on your side.

My suggestion to Senator Cornyn is to reconsider his approach to “preserving the best of Texas” and spend more quality time on efforts such as reducing or repealing the estate tax.

My suggestion to Texas landowners is to guard your private property rights. Texas is still one of the last states in the nation where the federal government and environmental organizations are not the largest landowners.

Margaret Byfield is the executive director of Stewards of the Range, a non-profit organization that helps Americans protect their private property rights. She is also a plaintiff in the case Hage v. United States pending before the United States Court of Federal Claims.

*Stewards of the Range
PO Box 1207
Taylor, TX 76574
512-365-8038
stewards@stewards.us*