



The Truth About Conservation Easements: How They Take Away Your Rights

By Dan Byfield

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Smooth salesmen and lawyers representing land trusts, environmental organizations and government agencies are swooping down upon America's beleaguered and highly regulated rural landowners. With a smile, some cash and a contract, America's landowners are rapidly losing private control of natural resources.

Municipal, county, and state government agencies are contracting with private non-profit organizations with one goal in mind – to dole out conservation easements. For private landowners, red flags should go up immediately. Conservation easements completely change the way land is owned and managed.

A recently announced alliance between a local government water authority and a land trust included a statement about how they planned to conserve land and protect water. Their alleged goal is to "help landowners create

conservation easements on their property that will ensure the property is managed according to the owner's wishes far into the future." However, that isn't entirely true.

Similar alliances are occurring in hundreds, maybe thousands of locations nationwide. Municipal, county, and state government agencies are contracting with private non-profit organizations with one goal in mind – to dole out conservation easements.

For private landowners, red flags should go up immediately!

Conservation easements take away part of or the entire bundle of property rights originally transferred when a landowner purchased real property. Those rights include the right to possess, use, modify, develop, lease, or sell your land. In a conservation easement, Landowners give up some, if not all, of those rights, leaving them powerless to control the use of their land but still obligated to pay taxes. In other words, the landowner becomes a subservient owner of his own land, which is now managed and controlled - forever - by a new partner.

Property includes land, water and minerals and they are what give meaning to the bundle of rights. Conservation easements give land trusts or government entities the authority to manage and control these rights and pay the landowner a reduced amount for his property without "taking" it. As a landowner, you are still physically living or working the land, but you have to abide by somebody else's rules.

True, conservation easements are voluntary; but once these agencies set their sites on a specific piece of land, the landowner is left with few options, none of which can be classified as

"voluntary." It's called greenlining and it's happening everywhere.

Landowners are notified that they are located inside a particular area desired to be "protected" and their land will be regulated or maybe taken by eminent domain. The only option given the landowner is to take their "offer" and the only thing being offered is a conservation easement. Every year, hundreds of landowners are "forced" to sell their rights to a land trust or a land use, resource-based government agency.

Conservation easements are legally binding contracts that last forever – they are "in perpetuity." The IRS must approve the offer before the landowner can get the tax incentives and abatements, but the outcome is always the same, a third party will take over control and management of the property.

The effect of placing a conservation easement on a piece of property is to substantially lower its value by reducing or restricting its use. Landowners who need quick cash and a tax reduction find these plans attractive for a short term fix. The property, however, will never be the same.

Taking such a step will bring a one time benefit, but the conservation easement attaches to your property forever. It cannot be changed, except by the government, as affirmed by the Ninth Circuit Court of Appeals in Big Meadows Grazing Association v. United States.

In that case, the Court said; "Specifically, Big Meadows relinquished all rights not expressly reserved in...the easement," which "expressly reserved in Big Meadows only record title...," but "it nowhere grants Big Meadows the power

to veto a conservation plan of which it disapproves."

Big Meadows gave up its bundle of rights and was left with virtually nothing but the bills. The government modified the amount of money Big Meadows would have to spend to implement the conservation plan and the Court said Big Meadows had to oblige.

A conservation easement can be enforced by the holder or a third party like the Environmental Defense, who don't think your land is being managed properly. It can be transferred at anytime to another land trust or government agency. And, it determines management practices and landowner's obligations.

A conservation easement is also, in effect, a quasi databank that others can use when searching for suitable habitat. That is, when habitat is destroyed for development of any kind, the law, called mitigation, requires other land to be set aside as a replacement. Land in a conservation easement, even if it is 500 miles away, can be condemned and used to replace the property lost. Landowners who have taken a conservation easement have made their property ripe for picking in such situations.

Landowners who are offered conservation easements by agencies who claim they are "here to help you," must read the fine print . . . because once the papers are signed, the landowner has lost his rights forever.

Dan Byfield is president of the American Land Foundation (<http://www.libertymatters.org/alf.htm>) a non-profit organization dedicated to protecting private property, liberty and free enterprise.