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Government Betrays Landowners with Conservation Easements

October 24, 2008

By Fred Kelly Grant

At this very hour, Colorado landowners are fighting to prevent the United States federal government from taking their land. Ignored by the mass media, hundreds of farmers and ranchers in southeastern Colorado are facing loss of their property at the hands of the IRS. They are victims of "conservation easements" promoted by federal and state governments, land trust companies, and conservation groups.

As landowners dedicated to preserving the open, agricultural use of their land, lured into the "easements" by both the U.S. and Colorado governments, they have been betrayed by those they trusted.

A "conservation easement" is an easement in name only. It is an agreement by a landowner to give up the right to develop his or her land for residential, commercial or industrial use. He/she agrees to keep the land in agricultural use FOREVER, and in return is rewarded either with cash payment for the development value, or income tax relief to the amount of the appraised value of the development rights.

The federal government and the state of Colorado offered inducements for execution of the "easements" by which the landowners donated their land to various land trusts to be held for agricultural use IN PERPETUITY. They accepted the following offers of income tax relief, conditioned upon execution of the easements: federal income tax deductions, and tax credits from Colorado income tax, or the right to sell such tax credits to third parties or the State itself.

In reliance on commitments from the two governments, the landowners donated their land to various land trusts, mainly for two reasons: they wanted to preserve their land as agricultural land forever, and they faced cash flow problems which could be helped by the tax relief. So, they gave away the value of development rights in exchange for tax relief. In most cases, the development rights were far more valuable, money wise, than the assessed land value. But, the landowners placed their desire for continued agricultural use above the interest in a future much higher profit.

The landowners followed the rules. They engaged consultants to help them put together the donation package. They hired appraisers certified by the state of Colorado as honest, ethical, and competent. They had certified public accountants review the appraisals and their financial situations. They hired lawyers to make sure the law was followed in the transactions.

They asked that all this professional help assure them that the Land Trust company, which would own the easement, was trustworthy.

But, after two to three years, one of the donee Land Trusts invited the IRS to review the easement appraisals. That invitation didn't worry the landowners because they had obtained professional assistance and had been assured they were following the rules.

But, suddenly the IRS announced disqualifications of "easements," claiming that the appraisals of development rights were highly overstated. The State of Colorado called into question the licenses of several appraisers (all appraisers who have sought full reinstatement have been successful), and the mass media began to talk of a "scandal," and "sham" appraisals, and cast the landowners as greedy people looking for windfalls. The media reached its libelous conclusions without reviewing the files and determining the facts. But, what's new? As Will Rogers said, "If you don't read the newspaper you are **uninformed**, if you do read the newspaper you are **misinformed**."

In one case, for example, the appraisal of the development rights was challenged by an IRS employee who claimed that the appraiser did not use any comparable realty values in the vicinity. The statement is either an outright lie, or the grossest negligence in history. Within a quarter-mile of the appraised land is a subdivision of high scale homes, and within a half mile is a subdivision of even a higher scale homes situated on a finely groomed golf course.

The appraised land is within two miles of the city limits and a regional hospital. The landowner has water rights that accompany the appraised land, and the land has available water access, which would serve residential parcels very efficiently. Whether the IRS conclusion is a lie may rest on the fact that the federal employee judging the appraised value is not an appraiser, and has been exposed to land appraisal training for a **solid two hours**.

The IRS has demanded payment of back taxes, plus penalties and interest. In some cases, the demand is higher than the value of the landowners' property, now that the "easements" have devalued the property. The third parties who bought state tax credits have demanded return of their money. The state of Colorado has turned its back on the landowners, which it lured into the conservation easements. The Governor's office turns back requests for assistance with the spurious claim that the matter is a "federal" issue. The Secretary of Agriculture, who lives among the troubled landowners, ignores the problem.

The landowners cannot borrow money to satisfy the "return" demands. The banks will not lend money because of the conservation easements, which devalue the land.

The landowners cannot sell their land, or any portion of their land. Buyers are not willing to take on the restrictions and devaluation of the land resulting from the conservation easements. One of the ranchers had a sale in place for a portion of his property. The sale price would have allowed him to replace at least 75 percent of his imminent loss, but the buyer backed out because of the conservation easement.

As the federal and state governments pursue destruction of these landowners, they continue to promote conservation easements. Land Trust companies and conservation groups continue to promote conservation easements, and the Congress created tax incentives in the new Farm Bill that will lure other landowners into reliance on a government, which has proved unreliable.

Colorado at this moment faces a huge federal take-over of private land, which will remove thousands of acres from the tax rolls of the counties. And, the problem in southeastern Colorado is only the tip of the iceberg. There are over 1,800 of these conservation easements throughout Colorado. In the blink of an eye, Colorado can be victimized by massive federal take-overs.

The problem facing Coloradans and Colorado is the beginning of what can be, and will be, a national crisis resulting from transfer of private ownership of land to the United States Government. Counties will suffer from loss of tax revenue; the landscape will suffer from negligent management by federal agencies; the species in the ecosystems will suffer from negligent management; and the law will suffer from a blatant disregard for the constitutional limits on federal government ownership and requirements that property is not taken without just compensation.

All the horrible results from imposition of conservation easements, which private property organizations including Stewards of the Range and the American Land Foundation have emphasized, have come to fruition in southeastern Colorado. They lay ahead for unsuspecting landowners across the Nation.

What you can do to help:

As the governments and Land Trusts turn their backs on the landowners, all individuals in the nation can help. You can call, fax and email your Representatives and Senators who are seeking re-election. You can ask them what they are doing, or will do, to protect private landowners as they protected big business in the massive "bail out" of Wall Street. You can tell them that your vote depends on their willingness to help. You can demand of incumbents that there will be field hearings to determine the truth as to the inadequacy of the IRS reviews. You can demand that they hold field hearings to inquire into, and "fix", the fraud that is evident on the part of the promoters of the conservation easements.

If you live in Colorado, you can call, fax and email the Secretary of Agriculture and the Governor, demanding that they "fix" the problem caused by fraud perpetrated on the landowners. And, you can write letters to the local and regional newspapers and television stations demanding that they determine the facts, rather than relying on press statements by leaders of the Land Trusts who are complicit in the threat to the landowners. The landowners are ready and willing to show the press the facts as they did to me.

Fred Kelly Grant serves as president of Stewards of the Range and has practiced law for over 50 years. He, along with Stewards of the Range and American Land Foundation are assisting landowners nationwide on property rights issues.

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7 Responses to “Government Betrays Landowners with Conservation Easements”

[Jack Venrick](#) Says:

October 24, 2008 at 10:51 pm

I live in Washington State and am a member of Libery Matters and received the letter they emailed out titled The Colorado Special Alert on Conservation Easements.

There was no contact info for the Colorado Governor and Dept. of Ag. Here it is or at least the closest I could get on the web.

1. Colorado Governor Contact site

<http://www.colorado.gov/cs/Satellite/GovRitter/GOVR/1177024890452>

2. Colorado Department of Agriculture Contact site <http://www.colorado.gov/cs/Satellite/Agriculture-Main/CDAG/1167928159816>

3. Note state org chart in the site also which is very informative

[Vicky Davis](#) Says:

October 26, 2008 at 2:08 am

Have you considered suing the Land Trust (you didn't say which one) corporation and the federal government for engaging in a system of racketeering? There is a pattern and practice to these confiscations of private property using conservation easements by these Land Trust outfits aided and abetted by the U.S. government that empowered them.

Here is the deal – the United States is a signatory to the United Nations agreement. By signing that agreement, they agreed to abide by United Nations resolutions passed by the body of the UN.

As that pertains to UN Agenda 21, it means that the United Nations agreed to – de facto – to abide by Agenda 21.

When President Clinton was in office, he took major steps towards the implementation of Agenda 21 without ever informing the American people that Agenda 21 was the law of the land. Agenda 21 goes well beyond simple protection of the environment, it includes the management of people and their use of natural resources – including where they are to live, how they are to live, central planning of land resources, etc.

The use of non-profit organizations working in concert with the United States government to capture private property to meet the requirements of their international agreements – without full disclosure to the property owners of the real purpose of the easements constitutes a fraud perpetrated against the landowners.

Next, what is the basis of the IRS claim for the different appraised value? Is it because of the subprime meltdown with all property values are declining? If so, then you should be able to make a case that the value was true and correct as of the time that the appraisal was done. Changing market values of property cannot be used to retroactively recalculate a tax liability because you could not have known at the time the return was filed that the future market value would be lower so there is no legal basis for the IRS to retroactively revalue your property.

What are the credentials of the appraiser? What is his track record of appraisals in the town? Is he even local? Did the Land Trust company recommend the appraiser? What were his comparables for the appraisal? What percentage of his work is for the Land Trust corporation as opposed to other appraisal work?

In what you are describing, the Land Trust organization called the IRS for what reason? This sounds to me like a set up. What were their damages or harms for wrong appraisals?

If they were worried about the appraisals, they should have called in another appraiser to check the value. It seems to me like they are pretending that they are the party with lesser expertise – trying to make it seem as if the land owners took advantage of them. That's absurd and you should find out how many times this Land Trust has pulled this stunt with other property owners. Find out if they are a subsidiary of a larger Land Trust organization and check their track record.

Another thing to check on is to find out if their property was designated as a Foreign Trade Zone. When I was doing some reading on Foreign Trade Zones, I saw that the homes in question in the Kelo case were in an area that the federal government had given to Pfizer as an FTZ. I think if the property owners had known that – I do think the Kelo case might have turned out differently.

Also, if the area is near an international corridor, a designated economic development zone or a closed military facility – hubzone, it would be more evidence of racketeering – private entities using government power to confiscate private property using an enticement that was a trap.

A couple of years ago, I found a congressional investigative report on the abuses of the Nature Conservancy on Thomas – the document website of Congress. I told the FreedomAdvocates (then Freedom 21) people about it in case they wanted to get it to read. I don't know if they did or not but you might want to check. If they don't have it, you should be able to call your member of Congress and have them get a copy of it for you – along with any other congressional reports on the abuses of these Land Trust outfits.

That's all I can think of for the moment but I'll be thinking about it.

Oh... one other thing. Somebody – at some point should investigate the old mining claim jumper laws and lawsuits. There might be something there that would be helpful.

Peter Sartucci Says:

October 27, 2008 at 4:57 am

This article was poorly-researched and has basic facts wrong. The biggest error is in dodging the basic issue; the appraisals. The values reported for those easement donations that have been made public are ludicrously high, valuing agricultural land as if it were urban residential land. This is unreal nonsense; the appraisers were clearly telling their clients what the clients wanted to hear, rather than what the market was saying. As a result, the state licensing board stripped the licenses

from three of these same appraisers – to the great relief of their colleagues, including me. If you believe in the primacy of a market economy over a government-dictated economy, then do not swallow this claptrap about the Southeastern Colorado scandal. Deceit is deceit, and these landowners naively followed deceitful people into breaking the rules; now some of those same deceitful people are trying to milk them some more by calling for what is really a blatant government subsidy. It's a tragedy.

Betty Palmer Says:

October 28, 2008 at 8:18 pm

Vicky, yes, it does sound like a set up, you know the 'ole look like and walk like a duck" thing. Conservation easements have been a big talking item on our "scenic" river. I always knew there had to be a catch in this "great" opportunity. I just hope land owners around here will be advised of what's happening in CO. Also, Peter, knowing Fred Grant, I seriously doubt the facts are wrong and I'm sure this article has been thoroughly researched. Nice try though.

Diana Lee Says:

October 29, 2008 at 2:31 pm

As much as I believe in private property rights, and as much sympathy as I have for these landowners, this is a perfect case of goose-stepping to whatever Big Government says or suggests. The same can be said for those that lease their land for giant wind turbines, which are not about producing electricity, but instead producing big bucks for investment firms; ceding the jurisdiction of land through the voluntary acceptance of a premises identification number as a first step in NAIS; and any other "scheme" Big Government has yet to reveal. Folks need to do their homework and ask questions. This is why we are heading toward a world police state, because most people do not question authority. I hope the outcome is positive for these landowners.

Do not blindly trust the UN, our federal government of Amerika, your state, your county, your local or school board officials.

Phil Sandoe Says:

October 29, 2008 at 3:56 pm

I am not a lawyer. I am not a landowner. Just an average homeowner in suburban Virginia. But it seems to me that if lawyers and accountants looked over these easement agreements, then they should stand the test of their day in court. Don't the landowners have access to due process?

Again, I'm not a lawyer, but it seems logical to me that if the easements included language entitling the landowners to Federal, State, and/or local tax exemptions, then shouldn't someone from those entities have been a signatory on the agreement?

If the IRS has a discrepancy after the fact, shouldn't they be made to go through the legal process and have to sue the landowners and/or the Land Trust before they can take the land? If not, then that is something that should be changed.

What about the settlement attorneys/and or accountants in these cases? How could they have done their jobs correctly in this? Shouldn't there be some malpractice suits filed against them? Did any of these attorneys think to pick up the phone and call the IRS and inquire of them what their

