



2015 CE Summit Summary

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KNRC 1st Annual Conservation Easement Summit

Oakley, KS - The Kansas Natural Resource Coalition, (KNRC) comprised of most of the western 1/3 of Kansas County Commissions, sponsored a Conservation Easement conference at the Buffalo Bill Cultural Center in Oakley. KNRC achieved its conference goals to discover facts, facilitate public discussion, and generate awareness of Conservation Easement programs, benefits, restrictions and ramifications.

Presentations opened with Harriet Hageman, Hageman Law, explaining Conservation Easements as legally binding agreements in which landowners retain only partial ownership over their land by relinquishing rights for management and development - often limiting all development of minerals, mining, wind, etc. She illustrated the agreements' language protects conservation resources but only "allows" agriculture to continue, if agriculture is deemed to interfere with protected resources, it may not be "allowed" to continue. Harriet noted that Conservation Easements are designed to devalue property - often by 50% or more - to qualify for tax incentives and are transferrable, which could result in partnerships landowners never agreed to. Ms. Hageman said she believes they are a "government land grab" and pointed to Kansas having the least federally owned acres in the US as one reason for the push to acquire Conservation Easements. She said they are a way federal agencies can dictate private land use, while making landowners pay for the conservation maintenance and referred to the recent National Park Service disclosure of an \$11.49 Billion backlog of unfunded maintenance.

Harriet asked landholders in the audience if they would be willing to manage lands with no changes from practices in 1642, while reminding them those future generations would be restricted to today's practices forever. In closing, Harriett reiterated that Conservation Easement grant holders have the right to determine & dictate the use of the land *forever* - making properties hard to manage profitably or sell in the future, only generate a one-time payment with no future value for current or future generations and result in original landowners remaining financially liable for any subsequent landowner violations.

Associate Professor at West Virginia University School of Law, Jesse Richardson's presentation "*It Depends*" addressed ramifications for landowners encumbered by Conservation Easements. He said professors instruct, "*Always tell your client not to do Conservation Easements because forever is a mighty long time.*" He discussed several problematic areas for farmland under perpetual easements, such as when an operation is no longer profitable with practices in place at the time of the easement, the landowner may be prohibited from changing to more profitable crops or practices. Jesse pointed out easements can prevent landowners from expanding their operations, developing agritourism or constructing wind turbines or solar panels. He gave two recent examples of enforcement against landowners; in the first, the landowner filled a sinkhole, lost in court and was ordered to pay The Nature Conservancy \$99,796 and in the second, the landowner landscaped his property, lost in court and was required to pay \$650,000 in fees.

Jesse noted Congress used such terms as "rare" and "unique" in describing conservation easements eligible for tax deductions when first proposing the legislation but now the prevailing practice is "*more is better.*" He suggested Conservation Easements should be "*reserved for crown jewels like the Grand Canyon.*" Jesse said land trusts assert that easements are "*private contracts,*" so there is no transparency and terms are kept secret except what is written in deeds even though public money may be used to acquire them. Richardson explained that neighbors to Conservation Easements also may have the potential to be sued by land trusts asserting they are "*affecting*" conservation values.

Rancher and property rights advocate, Kimmi Lewis, who was instrumental in blocking the Piñon Canyon Expansion and most recently the designation of SE Colorado as a National Heritage Area, rounded out the morning. She began by illustrating how government agencies are working with non-

government organizations, such as The Nature Conservancy on projects that restrict private property rights. She explained that while The Nature Conservancy says they are an environmental group, her presentation would show they are a real estate group and she pointed to a 'Memorandum of Understanding' between them and the US Army Corps of Engineers. From a 2009 Conservation Easement Workshop in Trinidad, Colorado put on by The Nature Conservancy Kimmi recounted disclosures by their representative that they're targeting SE Colorado to acquire at least 10% in easements.

Kimmi displayed several maps from a seemingly never ending stream of initiatives, all with the common thread of targeting private properties in SE Colorado. Last year they stopped a SE Colorado designation as a Heritage Area, only to have to block environmental groups from having sites on private property designated as National Historic sites. She pointed out that with National Heritage Areas, National Historic Trails, Scenic Byways or other National designations comes buffer zones called "*viewsheds*," which means Federal Agencies can regulate the 'view' for properties with that designation. Kimmi said she believes in protecting historic sites but not through National designations and questioned why they are funded through the Department of Defense Authorization Act. She said she believes in "KICK – Keep It Clean Kids," meaning keep your land titles clean and unencumbered by easements or National designations. She said she knows many landowners that wished they had not done Conservation Easements.

While on the topic of legal fees, Sheila Ellis explained Land Trust Alliance has developed TerraFirma, a risk pool insurance, which has more than 450 land trust members that includes Ranchland Trust of Kansas and Kansas Land Trust, and its sole purpose is to provide land trusts up to \$500,000 per incident to sue landowners to enforce Conservation Easements for perceived "violations." Win or lose, land trusts often recover all costs from the landowners, as a requirement in the easement.

Assistant Secretary of the Army, Stanley Rasmussen, responded to the inquiry on Department of Defense's budget funding Heritage and other designations, stating they receive money they don't request, which goes to non-defense projects because Congress knows the act will pass.

KNRC President Shawn Tasset gave a brief lunchtime 'State-of-the-Coalition' address sharing that KNRC is doing well and working diligently to give the citizens of western Kansas a voice in the policies that affect them.

Big 1st Congressman Tim Huelskamp gave the keynote address touching on many of the issues he faces in Washington. He pointed out that the Endangered Species Act is long overdue for an overhaul with only a 1.3% success rate and that he has been pushing back on the listing of the Lesser Prairie-Chicken by US Fish and Wildlife Service with a bill that would delay the listing and give time for the conservation plans to work.

The afternoon session reconvened with a panel discussion, which included Mike Beam – Executive Director KLA's Ranchland Trust of Kansas, Lynn Thurlow – Soil Conservationist for NRCS, Stanley Rasmussen – Council to Assistant Secretary of the Army, as well as Harriet and Kimmi. Much of the discussion centered around the need for a more transparent process, particularly when public money is used to purchase CEs.

The conference was rounded out with a presentation from Ric Frost, a policy analyst involved in education and analysis of western water law and endangered species issues. His presentation was on impact considerations for CEs. He cited an attempt by an environmental group to purchase a CE on a section of land at the bottom end of a watershed, which would have resulted in impacts to all of the upstream watershed conservation resources, since the water flowed to the bottom CE land. The landowners offered a section of land at the top without connection to the watershed – the group was no longer interested in 'conserving' land. He pointed out that land trusts are not licensed or regulated and recommended legislation setting standards for licensing and conduct, just as real estate professionals are supervised. Additionally, he suggested states need language, which does not allow for third-party enforcement of CEs against landowners.

All speakers encouraged passage of legislation, which would limit the duration of CEs because as Jesse pointed out, "*forever is a mighty longtime.*"