

Thinking Hard About Conservation

Do conservation easements make private lands susceptible to government interference in light of 30x30 initiative?

by Troy Smith, field editor

As they relate to natural resource management, definitions of preservation and conservation have often been contorted, confused or combined. It has happened so much, some people think the terms mean the same thing.

However, preservation of a resource means guarding it against harmful effects of human activity — usually by restricting or halting resource uses. That's not the same as conservation achieved through planned, sustainable use of resources.

Margaret Byfield, executive director for American Stewards of Liberty, thinks the Biden administration's agenda will further the more extreme environmentalist goals for preservation at the expense of individual property rights.

Some cow-country folk disagree with Byfield's claim that conservation easements make private lands susceptible to government interference.

Taking issue with 30x30

Recently, Byfield has raised concern about a Biden executive order, issued Jan. 27, addressing

climate change. The order includes language directing the Secretary of the Interior, in consultation with the Secretary of Agriculture and heads of other agencies, to submit recommendations for conserving at least 30% of U.S. lands and waters by

year 2030.

The order's language uses the word "conserving" when stating the "30x30" goal and calls for the involvement of state, local and tribal

governments, as well as landowners. However, Byfield is warning local stakeholders to guard against restrictive future federal action.

Though still unfamiliar to many, the 30x30 plan is not new. A Department of the Interior fact sheet, released Jan. 27, offers an explanation using language from an August 2019 report published by the Center for American Progress (CAP).

The report served as a framework for a 2020 Senate resolution promoting 30x30, co-sponsored by then-senator and now Vice President Kamala Harris.

A companion measure was introduced in the House of Representatives by Deb Haaland, who was recently confirmed as the

new U.S. Secretary of the Interior.

"All of it comes from a playbook written by CAP," Byfield says. "They believe individuals shouldn't be trusted with land management and the administrative state can do it better."

The report's claims of support by 86% of all American voters were extrapolated from a survey of about 1,200 people. That's a weak sample in Byfield's estimation. She says there is insufficient science behind claims 30x30 will contribute to a climate change turnaround.

Warning signs

Byfield points to another recent Biden administration move whereby the Department of Interior revoked state and county veto power over federal land acquisitions through the Land and Water Conservation Fund. She warns increased federal land acquisition, expansion of acreage under wilderness and national monument designations, and increased restriction of multiple-use activities (livestock grazing, timber harvesting and energy production) on public lands are likely methods for putting more land under protection.

Achieving the 30x30 goal will also require placing more privately owned land under permanent protection.

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learn that what they really want is 50% by 2050,” Byfield says. “That will require permanent protection of even more private lands.”

Options

Expecting proponents to aggressively push a 30x30 agenda, Byfield urges landowners to remain vigilant.

“Educate yourselves and your local and state representatives, and adopt policy to guard against expanded federal control of property rights,” she advises.

Byfield says the best defense against federal overreach is a process of policy coordination. To be most effective, it requires action by multiple local policy-making bodies, including municipal and county boards, water districts, zoning boards, and even school districts and fire departments.

“Coordination is a process mandated by federal law that requires federal agencies to coordinate their plans, programs and management activities with local governments,” Byfield explains. “It’s a powerful tool that can be used to protect private property rights, productive uses of land and local economies from burdensome

government regulations.”

American Stewards of Liberty can supply instructional information titled “Policy Coordination for Local Governments.” The guide is written for local elected officials, staff and community members having an interest in supporting local objectives.

Conservation easements

Byfield says landowners should expect 30x30 proponents to advocate for increased use of conservation easements as a means of incentivizing landowners to place privately owned land under protection. Environmental groups supportive of 30x30 have said as much. Yet Byfield openly opposes conservation easements established in perpetuity.

“What if you sell an easement to a land trust and that land trust sells it to someone else? What if the easement is sold to the federal government?” Byfield asks, asserting the landowner might no longer have the right to build a fence when and where they want without asking a federal land manager.

“Under a conservation easement, you forfeit your control for perpetuity,” she emphasizes.

The other side

Some landowners argue conservation easements are a great tool for accomplishing a landowner’s personal conservation goals, particularly on rangelands.

David Sands, executive director of the Nebraska Land Trust, says it’s a mistake to talk about conservation easements in generalized terms. He says every conservation easement is a unique contract designed for a specific purpose — or it ought to be.

“I would never say that all conservation easements are good, and I couldn’t say all have turned out well for landowners,” Sands says, adding it’s also wrong to say all conservation easements are bad.

“The terms can range from very restrictive to very flexible. An easement designed to protect certain endangered species might be bad for a rancher. On the other hand, an easement designed to protect working lands may be very good for a rancher,” Sands adds. “Establishing an easement is not something you do without a lot of thought, and you have to know and trust the particular

land trust you're dealing with."

The desire to maintain property as working lands motivated the Price family to establish a conservation easement on their Gracie Creek Ranch located northwest of Burwell, Neb. They saw it as a way of maintaining control of how their land would be used in the future.

Bob Price explains they wanted to protect the ranch from potential intrusion. Under the easement, development rights were sold to the Sandhills Task Force, a rancher-driven nonprofit organization. The terms require the land remain in agricultural production as grassland.

"We were involved in writing terms, which allowed us to manage our ranching operation like we wanted to, without restricting any practical management practices," Price states. "We did it to protect our business and way of life. It gave us peace of mind and, at the same time, preserved open space and protected wildlife habitat."

Erik Glenn, executive director for the Colorado Cattlemen's Agricultural Land Trust (CCALT) and president of the Partnership of Rangeland Trusts (PORT) a consortium of land trusts formed by state cattlemen's associations and other agricultural industry groups. Glenn says all member land trusts expect landowners to be involved in writing every easement contract.

"The entire document is negotiable," Glenn explains, emphasizing the landowner and land trust must agree on rights of usage and development.



Those rights are then extinguished and can't be resurrected. The document also details the rights the landowner retains, which may include allowances for future development associated with operation of a viable agricultural business. The landowner still controls access to the property.

"Every easement document does have a clause related to transfer. It can't be sold, but it can be transferred," Glenn adds, explaining transfer might be necessary if the land trust that originally held the easement someday ceased to exist. "CCALT easements require landowner consent for transfer, if that should ever happen. Landowners can specify who the succeeding easement holder would be, naming

another nongovernmental, agricultural land trust."

Glenn believes more strong agricultural land trusts are needed to help conserve working lands. Yet participation must remain voluntary. He advises landowners to be watchful of developments pursuant to 30x30, recommending they work through their respective cattlemen's associations to advocate for private property rights.

Glenn also recommends landowners engage directly with state legislators and congressional delegations, insisting that conservation measures applied to privately owned lands be implemented voluntarily and without government coercion. **AJ**