

TALTnews

Protecting Texas Land For Future Generations

PRIVATE LANDS/PUBLIC BENEFITS: FARMLAND = DRINKING WATER.

by Lorie Woodward Cantu



By recognizing that healthy working lands provide clean water, an unlikely alliance of New York City officials and upstate farmers came together in the early 1990's to create a unique watershed protection program. The ground-breaking program protected the purity of the region's water without inflicting onerous regulations that would have decimated the region's agricultural industry.

"If we can protect farm and forest lands throughout our

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PASSING LAND DOWN TO FUTURE GENERATIONS: FAMILY LIMITED PARTNERSHIPS AND CONSERVATION EASEMENTS

by Lorie Woodward Cantu

Standing alone or working together, family limited partnerships and conservation easements are practical tools for passing land to the next generation.

"A family limited partnership is an orderly way to transfer wealth or property to the next generation," said Stephen J. Small, an attorney based in Boston who specializes in estate tax planning. In 2010 and again in 2011, Small led conservation easement workshops for TALT.

"A conservation easement protects land from development in perpetuity and can reduce land values, thereby lowering the potential estate tax burden. Depending on a family's needs and desires, these tools can be used singly or collectively."

A family limited partnership is a traditional limited partnership where all the partners are family members. In a family situation, the parents put their assets into the partnership. Initially, the parents are both the general partners and the limited partners. Then, under the most common and simplest form, they gift their limited

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EXECUTIVE DIRECTOR'S LETTER



In this era of disposable cell phones and e-books, the idea of permanence often seems like a fast-fading concept. Yet building something to last is what the Texas Agricultural Land Trust (TALT) does. TALT helps to create permanence in a world where there is little. Through the voluntary, perpetual land protection agreements that we negotiate with willing landowners, TALT helps them to protect, conserve and pass down lands that provide food and fiber, native wildlife habitat, or critical water resources...for future generations to enjoy. And it's not just about the land. Entrusted with upholding those easements into perpetuity, we have to ensure that TALT will be around forever, too.

Starting TALT was an interesting exercise in coming to grips with this idea of permanence. In 2006, a group of us who knew each other from ranching, farming and hunting circles decided that we needed an ag land trust to stem the rapid loss of rural land in Texas. Some of us had started other non-profits, but none of us knew much about creating one that would last into eternity.

We went on to form a steering committee made up of landowners that looked at all aspects of running a land trust. We brought in board members and staff from rangeland trusts in Colorado and Wyoming to share their experiences. We developed a mission statement and adopted governing principles. But of all the issues we examined, the question of perpetuity stumped the group the most. TWA's David Langford jokingly told the group, "perpetuity means until the next election," while someone else quipped, "forever is a long time."

Frankly, perpetuity is an issue that many landowners struggle to get their heads around. Some argue that this generation doesn't have the right to tie the hands of future generations. Others will say that that is what we do when we write wills, or sell the land. And when you think about it, tending to the land, stewarding it for one's heirs, leaving it in better shape than you find it is what farmers and ranchers have done for generations. A conservation easement, done correctly, only memorializes that.

As a rancher, wife and mother myself, being involved with TALT is my way of providing other families an opportunity to protect and pass their cherished lands down to future generations. I shepherded the steering committee discussions that gave rise to TALT, and then became the first executive director. Five years later, I work with a dedicated Board and talented staff to create an organization that is "built to last."

Governed by business men and women who own land themselves, the TALT Board has adopted clear strategic goals and policies to guide our growth. Our recent experience with the Land Trust Alliance's rigorous accreditation process strengthened TALT, as does the ongoing generous support of our donors. But ensuring permanence also means being mindful that our land conservation agreements don't unnecessarily burden future generations. We recognize that conservation is best achieved through management decisions made by the person on the ground, and as a result, we don't involve ourselves in the day-to-day management of the property.

Ultimately, it all begins and ends with the land, and the enduring, permanent nature of that land. TALT will have other executive directors and Board members. But with a solid foundation, we'll continue to evolve and adapt to new challenges without losing sight of the fact that we've been entrusted with protecting—forever—someone else's cherished property for the benefit of future generations.

Sincerely,

A handwritten signature in black ink that reads "Blair". The signature is fluid and cursive.

Blair Fitzsimons, Executive Director
bfitzsimons@txaglandtrust.org

PASSING LAND DOWN TO FUTURE GENERATIONS: FAMILY LIMITED PARTNERSHIPS AND CONSERVATION EASEMENTS

partnership interests to their children over a period of years.

“There are potentially important gift tax issues here,” Small said. “So each family needs to check with an experienced advisor.”

While the parents have given away the limited partnership interests, because they remain the general partners they retain full control over all the assets in the partnership, and maintain full liability for its debts. The children, or limited partners, may lose any value they have in the partnership, but their “liability” can’t go any further than that.

“Again, these are generalizations,” Small said. “Families need to be careful to follow all of the tax rules.”

The limited partners can become the general partners upon the death of both parents and also own and have title to the limited partnership interests.

“Traditionally, the family limited partnership has been one of the vehicles of choice for transferring wealth and value,” Small said. “One of the primary benefits of a family limited partnership is that families can create rules for how the partnership will run. By its nature, families are forced to consider the future.”

This stands in stark contrast to the potential chaos created when parents abdicate estate planning by vowing to “pass the land equally to all siblings.” While this is a simple legal process, it is fraught with peril, he said. It creates a situation where the siblings are considered tenants in common, and every major decision made for the land must be unanimous. Oftentimes, the siblings find themselves in court fighting over the fate of the land.

To create a family limited partnership, families have to discuss things such as: Who will manage the land? Will it be the same person or will the responsibility rotate to all of the siblings? How will major capital expenditures be approved and paid for? What happens if someone wants to sell their interests?

“These are family questions, not lawyer questions,” Small said. “In a perfect world, the family gets together and works through the questions and collectively determines the fate of their property.”

In the real world, though, Small has witnessed two pitfalls. A family limited partnership created to pass along agricultural land has some unfamiliar challenges for advisors who are used to dealing with businesses in partnership.

“If a family is passing along a thriving business, chances are the business is generating profit that periodically be distributed to the partners,” Small said. “If a family is transferring land, there is a strong chance that it may require infusions of capital for its maintenance and upkeep. Some of the most beautiful land in the world runs at a loss.”

In many instances, the older generation has been willing and able to absorb the costs. When that responsibility is passed to the next generation, some family members may not be able or willing to contribute to the land’s upkeep.

“Four siblings may agree on the future course for the land, but they could be at very different places financially,” Small said. “It is important for parents to find out what their children want and are able to do before they embark on estate planning.” For instance, if two of four siblings want nothing to do with the land, there may be other estate planning tools and options that make more sense for the family, he said.

A family limited partnership offers tax advantages, but by itself it does not reduce the overall value of an estate. This point becomes crucial for many farming and ranching families because the land often makes up the bulk of an estate’s value. It is a complicated area, but certain “discounts” are available for ownership of partnership interests in many cases. Conservation easements can come into play as a

complementary tool, he said.

“For many farming and ranching families, the value of their land has skyrocketed, leaving them facing a huge estate tax bill without the means of paying it,” Small said. “Without planning, oftentimes, people are forced to sell a portion of their most valuable asset simply to pay taxes.

“Because a conservation easement removes the potential for development, it also reduces the land’s value,” Small said. “As a result, it can make the

estate tax bill more manageable, or, in some cases make it disappear.”

It is advisable to execute a conservation easement before creating the family limited partnership, he said. The reason is simplicity.

“If Mom and Dad want to protect the property in perpetuity, they can complete the conservation easement with just two signatures – theirs,” Small said. “The process becomes much more complicated – and sometimes impossible – if the family has to take into account divergent views of many partners.”

He continued, “Families need to define the long-term objectives for their land. Then, working with a qualified advisor, develop a deliberate plan that allows them to achieve their goals. With planning and foresight, it is possible to pass the land to the next generation while maintaining family relationships and treasured open spaces.”

Disclaimer: This article is presented for information purposes only. TALT does not claim to give legal or tax advice, and encourages the reader to consult with your tax attorney, CPA or financial adviser to determine whether a conservation easement or family limited partnership is right for you. For additional resources, check TALT’s website at www.txaglandtrust.org

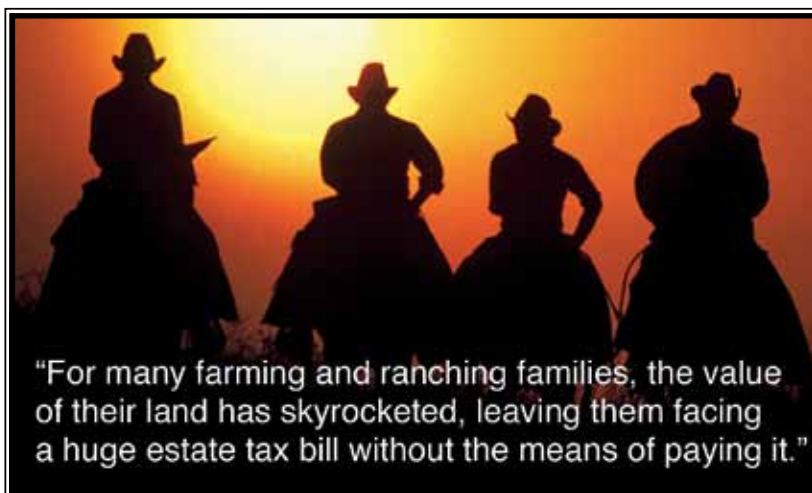


Photo: © D.K. Langford

PROFILE

PRAIRIE DOG RIVER RANCH



Palo Duro Canyon, Chase Fountain, Texas Parks & Wildlife Department

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“Some land is so unique that it deserves to be actively protected against development,” says Mike Hughes, who along with his family, recently enacted a conservation easement, which will be held by the Texas Agricultural Land Trust (TALT), on the Prairie Dog River Ranch. The ranch is located almost entirely in the Palo Duro Canyon complex.

Palo Duro Canyon, the second largest canyon in the United States, is characterized by diverse topography, changing elevations, intense color and striking views, making the Prairie Dog River Ranch which is situated on the canyon’s north side, a rarity. The ranch is home to a myriad of wildlife including mountain lions, Rocky Mountain mule deer, bald eagles and threatened species such as the Texas Horned Lizard and the Palo Duro Mouse. As the name implies, Prairie Dog River Ranch also contains live water, which has attracted people for millennia.

“People have inhabited Palo Duro Canyon for 12,000 years, leaving traces of their presence,” he says. “Our ranch has been home to the Antelope Creek culture, the Comanches and to Charles Goodnight.” Since its settlement as part of the historic JA Ranch, the property now known as Prairie Dog River Ranch, has been cared for by only two additional owners, including the Hughes family.

“The woman who was the ranch’s second owner had witnessed the impact of oil and gas development on the land of her childhood and she never forgot the changes that development brought,” Hughes says. “It was her wish that this ranch would stay the way it was – and we wanted the

same thing. We enacted the conservation easement to keep it as open space forever.”

Located just 30 minutes from Amarillo and in the heart of this ruggedly beautiful area, the ranch is subjected to more development pressure than many people might suspect.

Working with TALT, the Hughes family negotiated a tailor-made conservation easement to meet their specific objectives. Under the terms of the conservation easement, which “runs with the land,” allowable activities include commercial ranching, grazing, wildlife management, hunting, fishing, and outdoor nature-related activities and research, but limits future partitions and building activity. How to manage the ranch, for example whether to graze or not to graze, is completely left up to the landowner. TALT, as the conservation easement holder, is entrusted to ensure that the terms of the easement are upheld forever.

“The conservation easement allows us to continue to use the land and enjoy its benefits, while prohibiting future development,” says Hughes. “It is a perfect fit for our family and the ranch.”

PARTNERSHIPS | POLICIES

WATER FOR WEST TEXAS: TALT PARTICIPATES IN WEST TEXAS LEGISLATIVE SUMMIT

In August, TALT participated in the West Texas Legislative Summit hosted by the San Angelo Chamber of Commerce. The theme of this year's conference, in the midst of record drought, was finding balance on water issues. Executive Director Blair Fitzsimons served with State Representative Lyle Larson, Texas Farm Bureau's Billy Howe, and Texas & Southwestern Cattle Raiser's Jason Skaggs on a panel that addressed water conservation and regulations. As the panelists agreed, working lands play a large role in meeting the state's water needs, and the conservation of those lands needs to be included in any future water plans. Incentives for good private lands stewardship practices are vital to the continued protection of our state's water resources. To read more, please visit <http://www.gosanangelo.com/news/2012/aug/28/i-finding-balance-water-issues/>

PARTNERSHIP IS THE LIFEBLOOD OF A SUCCESSFUL NON-PROFIT ORGANIZATION.

Alone our limited resources can only go so far; working with other like-minded organizations, we can stretch those dollars and increase our impact.

The following is a partial list of organizations that TALT has teamed up with recently to further our mission of protecting Texas' working lands for the benefit of future generations:

- Borderlands Research Institute
 - Institute of Renewable Natural Resources/Texas A&M
 - Partnership of Rangeland Trusts
 - Partnership for Gulf Coast Land Conservation
 - Taking Care of Texas
 - Texas Ag Council
 - Texas Farm Bureau
 - Texas Land & Mineral Owners Association
 - Texas Land Trust Council
 - Texas & Southwestern Cattle Raisers Association
 - Texas Wildlife Association
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TALT WEIGHS IN ON TAKING CARE OF THE TRANS-PECOS DISCUSSION WITH FIRST LADY LAURA BUSH

In August, TALT Executive Director Blair Fitzsimons participated in a panel discussion with leaders from Texas Parks and Wildlife Department, Texas Wildlife Association, the Borderlands Research Institute, local landowners, and former First Lady Laura Bush to discuss the future of conservation efforts in the Trans-Pecos region. All agreed that conservation success will depend on groups working together to leverage each other's projects. As Mrs. Bush, who recently founded a new initiative known as Taking Care of Texas, reminded the group, "We have a broad, broad reach if we can all work together. As tough and as hard as it looks, our ecological system is fragile and it needs us to be able to make sure we take care of it." To read a complete recap of the event, visit TALT's website at http://www.txaglandtrust.org/index.php?option=com_content&view=category&layout=blog&id=37&Itemid=85

TALT EXECUTIVE DIRECTOR DELIVERS TESTIMONY IN FRONT OF SENATE AG. COMMITTEE

TALT was invited to address the Senate Agriculture Committee in July about the loss of rural lands in Texas and the implications for agriculture and natural resources. Blair Fitzsimons made several recommendations on how best to meet the needs of a growing population while protecting Texas' working lands that provide food, fiber and water. Her recommendations included the creation of working lands protection programs that are win-win for both agriculture and those in the cities. To learn more about Blair's testimony or to read her prepared comments, visit TALT's website at <http://www.txaglandtrust.org/pdfs/FitzsimonsSenateTestimonyAgCmte.pdf>

TALT'S MISSION

Created by landowners for landowners, TALT's mission is to protect private working lands, thus conserving Texas' heritage of wide open spaces.

GOVERNING PRINCIPLES

Created by TALT's Steering Committee in 2006 and re-affirmed annually by the current Board of Directors, the governing principles of the Texas Agricultural Land Trust help guide the Board's decisions:

STEWARDSHIP

requires stewards.

Keeping productive rural lands in private hands and under private management is the best way to conserve Texas' natural resources.

FOCUS

only on private lands.

TALT refuses to acquire conservation easements that will end up in public hands or that involve condemnation.

HELP

landowners protect their lands.

TALT does not own fee title to any properties.

TRUST

the landowner to manage.

TALT does not interfere with day-to-day management decisions.

RESPECT

landowners' rights.

The donation of an agricultural conservation easement does not require the landowner to provide public access, nor does TALT require it.

THE NEW YORK CITY WATERSHED: CONTINUED

watershed, then we protect water quality for the residents of New York City," said Craig Cashman, executive director of the Watershed Agricultural Council in Walton, NY. "When both local residents and New York City officials came to understand this basic premise, we created a win-win situation that is still working 20 years later."

Background

Ninety-percent of the drinking water that supplies New York City's nine million inhabitants comes from the Catskills-Delaware watershed located northwest of the City, with another ten percent supplied by the Croton watershed that lies to the northeast. Together, the watersheds and the reservoirs that they house meet the City's daily demand for over one billion gallons per day.

In the 1980's Congress passed a series of bills that required that all drinking water derived from surface water sources be treated or filtered, and gave oversight to the U.S. Environmental Protection Agency. **The primary concern for New York City was how to control non-source pollution at the source of most of its drinking water. Conventional wisdom said that filtration was the only option.** Experts estimated that building a filtration plant large enough to handle the Catskills-Delaware watershed output would cost \$10 billion to build and \$1-million a day to operate (in 2012 dollars).

Vexed by the enormous price tag of a water filtration plant, City officials turned to watershed protection, focusing primarily on the still-rural and agriculturally productive Catskills-Delaware watershed, as an alternative. The mantra became "a clean environment will produce clean water." And the question became how to translate that philosophy into action, not only on public lands, but on private property as well.

First Steps

To control non-point source pollution, City officials initially turned to regulations and land use limits within the watersheds. The local reaction was swift, harsh and predictably defiant, particularly from the upstate farming community which argued that the City's proposal would put 90 percent of the region's farmers out of business. "People initially participated out of fear," Cashman said. "The threat of heavy regulations made people afraid for their land and their livelihoods." It was this fear that rallied farmers to propose a solution for themselves, and prompted City and watershed representatives to the negotiating table.

At the suggestion of the New York State Department of Agriculture & Markets, the heated conversation cooled off with an educational exchange. First, representatives

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THE NEW YORK CITY WATERSHED: CONTINUED

of New York City explained the specifics of preserving drinking water, the City's regulatory obligations, the City's risks, and its strategies for dealing with them. Then, the local farming community representatives provided an unvarnished look at life on Catskills farms. The farmers discussed economic challenges, their views of their farms' pollution problems, and their own unhappy experiences non-point source pollution regulations delivered from the top down. Both sides quickly realized they had a common challenge: creating a farmer-friendly program of watershed protection.

A New Approach

"The Watershed Agricultural Council was born when local residents asked themselves, 'How can we be the difference?'" Cashman said. "The answer was to have local people address issues of local concern. If this program was going to work, outside forces couldn't come in telling local people how to manage their land and their livelihoods. The cornerstone of our long-term success has been building trust." The Council's success hinges on three key factors: local control, voluntary participation and 100 percent funding from New York City. Subsequently, the Council is comprised of 19 board members: 15 live in the watershed, one represents New York City, and four "at-large" members represent partner, community and stakeholder interests.

In addition to being locally controlled, the group also recognized that the Watershed Agricultural Program would have to be voluntary and it could not negatively impact farmers or their operations. "People respond better to incentives than threats," Cashman said. And so, the Council and its programs became a model for Payment for Environmental Services, or PES, whereby watershed protection programs monetarily reward the desired behavior of protecting water quality through land conservation measures.

But knowing that a majority of the farmers had to participate in order for the non-point source pollution control measures to be effective, the City offered to fund a \$3 million three-year pilot program. In return, the City asked the farmer-led group to enroll 85 percent of large watershed farms into the fledgling Watershed

Agricultural Program. Within 18 months, the Program met its target participation goal and incorporated in 1993 as the Watershed Agricultural Council. Even after two decades, program personnel continue to screen and enroll new farms each year.

While establishing relationships and building trust have been major factors in the program's success, another key has been the WAC's commitment to "do no harm" to farmers or their livelihoods.

"People aren't going to volunteer to participate in a program if it creates a burden for them," Cashman said. "Our goal was—and is—two-fold. We want to provide clean drinking water and we want to help farmers keep farming by creating program options that don't negatively impact their operations."

New York City funds the cost of the watershed protection programs, which in addition to farm enhancement incentives, include procuring conservation easements. Currently, WAC has placed 22,785 acres on 140 properties under conservation easements and anticipates enrolling 10,000 additional acres over the next five years. To date, WAC has spent \$30 million purchasing development rights.

"From our perspective and that of New York City, the preferred land use in the watershed is agriculture. If we can protect our farmland from development, then we can protect our water quality," said Cashman. "For a whole system approach to work, everyone involved has to win. In our case, we've enabled farmers to care for the environment without negatively impacting their livelihoods and we've allowed the nine million residents of New York to enjoy pure drinking water for a fraction of the cost of filtered water. By any definition, that's a win-win."

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P.O. Box 6152 San Antonio, TX 78209

OUR LAND



Source: Texas A&M Institute of Renewable Natural Resources

OUR WATER

IF DROUGHT RECURS AND WE DON'T FIND ADDITIONAL WATER RESOURCES, IN 2060 THE STATE COULD FACE:

- **\$116 billion in lost income**
- **\$9.8 billion in lost state and local business taxes**
- **1.1 million lost jobs**
- **1.4 million reduced population**
- **403,000 fewer students in Texas schools**

Source: Texas Water Development Board

www.txaglandtrust.org

OUR ANSWER



Conserve the land that produces the water!