

TALTnews

A biannual publication created for landowners to provide the latest information to help keep Texas, Big, Wide, and Open.

TALT ANNOUNCES NEW BOARD MEMBERS!

Welcome Tina, Randy, and John!

TALT proudly announces the addition of three new directors: Tina Buford, Harlingen, TX; Randy Rehmann, Austin, TX; and John Dudley, Comanche, TX. TALT by-laws state that the Board of Directors must be drawn from the memberships of a statewide wildlife conservation organization that represents landowners and hunters; a statewide agriculture association; and a statewide livestock association. Tina and Randy both served as president of the Texas Wildlife Association, while John is a past-president of Texas and Southwestern Cattle Raisers Association. Visit our website www.txaglandtrust.org to read more about these new directors and the expertise they bring to our Board as landowners and conservationists.

SPECIALREPORT



With the prolific drilling taking place in numerous parts of Texas, the first question TALT staff often encounter is “can I do a conservation easement if I have oil and gas production?”

The good news is that conservation easements and mineral development are not necessarily mutually exclusive. Under certain circumstances, it is possible for landowners to enact a conservation

easement, qualify for a tax deduction, and have oil and gas production on their land.

“The issue is protecting the conservation value of a property by minimizing the potential consequences of mineral extraction,” said Steve Small, one of the nation’s foremost experts on conservation easements. He along with Joseph Fitzsimons, an oil and gas attorney with Uhl, Fitzsimons and Jewett in San Antonio, led a webinar hosted by TALT last fall,

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PRESIDENT'S LETTER

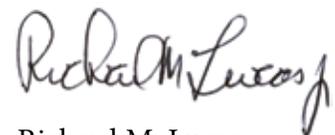
Five years ago in May, the TALT Board officially convened for the first time. A steering committee, comprised of leaders from Texas Farm Bureau, Texas & Southwestern Cattle Raisers, and Texas Wildlife Association, as well as other agricultural organizations, had worked for about two years to give shape and form to the new ag land trust. Led by Executive Director Blair Fitzsimons, who at the time was working for American Farmland Trust, the committee wrote a mission statement, crafted guiding principles, and filed for non-profit status.

The guiding principles that the committee developed speak to what sets TALT apart. As the only land trust in Texas whose sole mission is the protection of agricultural lands, we do not hold fee title to land nor do we involve ourselves in management issues. Our board is comprised of landowners—farmers, ranchers, and hunters—who understand what it means to own and operate an agricultural property.

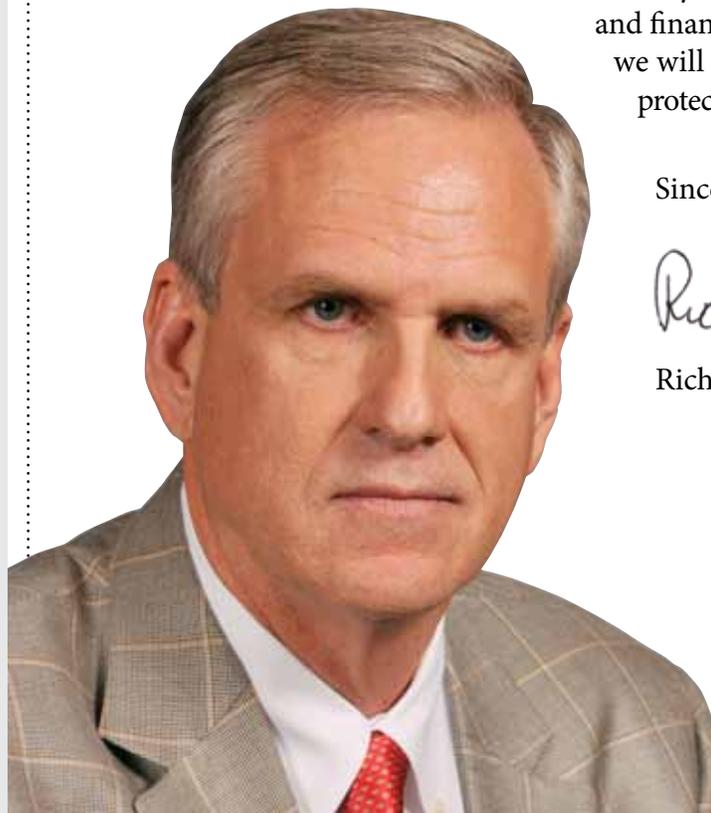
Today TALT holds easements on 128,000 acres, thus putting it on solid footing with land trusts that have been around much longer. Last year, we closed easements on significant and diverse ranches around Texas—Palo Duro Canyon, Devil's River, and the Trans Pecos. Perhaps more significantly, we're having conversations with landowners who previously have never considered a conservation easement. TALT recognizes that conservation easements aren't for everyone, and strives to be the premier resource for landowners who are contemplating this tool.

TALT's success to date would not have been possible without strong support from our friends. We are grateful for the confidence shown to TALT by our partner-landowners and financial donors. Together, we will continue to work to protect Texas' wide open spaces.

Sincerely,



Richard M. Lucas



ADVICE

FROM NOTED CONSERVATION EASEMENT AND TAX EXPERT,

STEVE SMALL

In 2010 and again in 2011, TALT hosted workshops featuring Steve Small, one of the country's leading authorities on conservation easements. The following is advice from Steve for families or individuals considering a conservation easement. See TALT's website, www.txaglandtrust.org, for Livestock Weekly coverage of TALT's Saving Family Lands seminar.

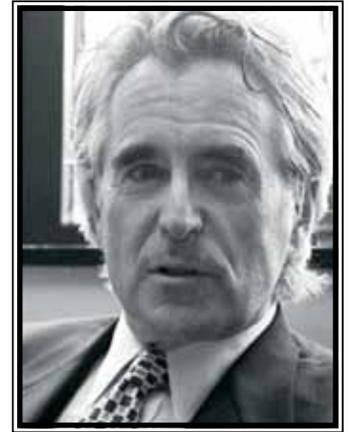
Attorney Steve Small is recognized as the nation's leading authority on private land protection options and strategies. As the principal author of the Internal Revenue Code governing conservation easements, Small possesses unmatched expertise on a variety of topics, including: federal tax code rules, the ins and outs of the conservation easement process, and using a conservation easement as a tool for effective estate planning. Now in private practice in Massachusetts, Small has served as chief legal counsel for many conservation easement transactions throughout the United States.

Noting that burdens associated with estate taxes often paralyze effective estate planning, Small says, "If you value open space and you are motivated by a love for your land you need to make some decisions about what you want for that land in the future, or Uncle Sam will."

Conservation easements are just one tool in the tool box available as landowners consider their estate plans. Small encouraged landowners to make a "wish list" of everything they hope to see for their land and for their families in the future and discuss those desires with their principal financial and legal advisors before approaching a land trust. After all, conservation easements are completely voluntary, Small says.

Once the goals for the land have crystallized, then landowners are prepared to begin meaningful conversations with land trusts to discover which one is the best match for the family and its goals, he says. It's important to establish a good working relationship and clear understanding of your goals with the land trust and their personnel because conservation easements "run with the land" in perpetuity, he notes.

Finally, Small advises that, "If you do it right and follow the IRS rules, you're going to be able to leave a legacy for your heirs that you can feel good about."



"If you value open space and are motivated by a love for your land, you need to make some decisions about what you want for that land in the future—or Uncle Sam will!"

PROFILE | RICHARD LUCAS | FAIR OAKS RANCH

Five generations of the Lucas family have cared for the Fair Oaks Ranch located in Goliad and Bee counties. TALT President Richard Lucas and his family enrolled their property in a conservation easement in 2005 to help ensure that succeeding generations would have the opportunity to become land stewards as well.

“Our father used to say, ‘Each generation of Lucases has the responsibility to leave the land in better shape than when they took it over,’” says Lucas, whose children represent the sixth generation of ranch leadership. “Enrolling Fair Oaks in a conservation easement helps fulfill that legacy of stewardship because it will protect our land from the many diverse forces of fragmentation that are breaking up family farms and ranches across the state.”

The division of historic ranches is not an abstraction for Lucas. It’s happened across his fence line. Recently, a 20,000-acre ranch that bordered his family’s land was sub-divided into five smaller properties because the owners did not have an adequate estate plan in place.

“If I could tell landowners one thing concerning estate planning, it would be, ‘Doing nothing is not an option,’” Lucas said. “When considering the future, if you don’t make decisions and take action, someone else – very likely the IRS – will decide the future of your land for your heirs. A conservation easement is a useful tool for passing land along to the next generations.”

The Lucas family negotiated a conservation easement that allowed them to continue to ranch, hunt and recreate just as their ancestors had.

This experience prepared Lucas to help battle one of the biggest misconceptions about conservation easements.

“People seem to think that a conservation easement is a contract that you either sign or you don’t,” he said. “In reality, it’s a negotiated document that is tailor-made for each individual situation. No two conservation easements are exactly alike because no two families and no two properties are exactly alike.”

As a fourth generation Director of Texas and Southwestern

Cattle Raisers Association (TSCRA), Lucas’ connection to ranching runs deep. Because of his involvement with TSCRA and the association’s connection to TALT, Lucas served on the TALT Board of Directors from its inception. As a result, Lucas witnessed the land trust’s progress first-hand.

“Under the leadership of Past President Steve Lewis and Executive Director Blair Fitzsimons, TALT went from an idea to one of the largest land trusts in Texas in just five years,” he said. “Today, TALT holds conservation easements for almost 130,000 acres in Texas.”



To achieve that, Lucas is also committed to enlisting a diversity of funding sources and increasing outreach activities. “While we’ve made a great deal of progress, many people in the farming and ranching community don’t fully understand the potential benefits of conservation easements,” Lucas said. “Our job is to educate people, letting them know that a conservation easement is not a government land grab, but a tool that can allow families to pass land from generation to generation, while providing significant tax benefits.”

On a broader scale, conservation easements are good for Texas as whole. First, by limiting development,

conservation easements help control demand for water, while maintaining open land essential to the water cycle, he said. Second, conservation easements help Texans hang on to their shared heritage.

“When we conserve open space land, we’re actually conserving the history and heritage of Texas,” he said. “The image most people have of Texas is wide open spaces. If we don’t take steps to protect our open space land that will just be a memory.”

ARTICLE

CONSERVATION EASEMENTS/ MINERAL RIGHTS

“Oil, Gas & Mineral Development CAN Work with Conservation Easements.” Small and Fitzsimons will be presenting on the topic at the national Land Trust Rally in Salt Lake City on October 2, 2012. View TALT’s webinar for free on our website at www.txaglandtrust.org under the Events tab.

In his presentation, Small provides an overview of the tax codes governing conservation easements, which must be in perpetuity to qualify for a tax deduction. The following are a few primary takeaways for those considering how mineral development can work with a conservation easement:

- **WHAT IS ALLOWED?** - All surface mining is prohibited, but sub-surface extraction is permitted as long as there is a “limited, localized impact...that [is] not irremediably destructive of conservation interests,” Small says. In other words, the extraction of the minerals should not drastically alter the property’s appearance and/or ecosystem.
- **CONTROL OVER SURFACE DAMAGES** - In order to protect the conservation value in perpetuity, landowners must have a degree of control over surface damages – and the more control the better. The least complicated situation involves a single landowner who owns 100 percent of the mineral rights. “It’s a matter of relative control,” says Fitzsimons. “The more control the surface owner has over how the mineral estate is developed the easier it is to implement a conservation easement.”
- **WHO OWNS THE MINERALS?** - It all comes down to who owns the minerals and what agreements are in place to protect the surface. Start with the lease. Surface protections would have been negotiated and included in either the original lease or in attendant surface use agreements. If not, then the mineral estate dominates the surface estate, meaning the rights of the lessee to develop the minerals trumps the rights of the surface owner to protect the landscape. With that said, there is another body of law that requires the lessee to make reasonable accommodations to the surface owner. It becomes a matter of on-going negotiation.
- **WHEN SURFACE PROTECTIONS DON’T EXIST** - Small points out that, even if specific protections do not exist, all is not lost. Landowners can work with a geologist to obtain a report stating that “the likelihood of surface mining is so remote as to be negligible.” This document offers evidence that the conservation values could remain intact through time because the chances of exploring and extracting minerals are so slim that they are almost inconsequential.
- **PRECEDENT IS IMPORTANT** - If a property has a documented history of wildlife habitat co-existing with oil and gas production, it’s clear that the two activities are not incompatible; therefore, it’s important to build a record. “For a record to carry weight, it has to be based on science and fact,” Small says. “This is where a landowner enlists the expertise of botanists and wildlife biologists to demonstrate that limited exploration will not damage the conservation value of the property.”

“It’s important to understand that there is no clear law governing conservation easements and mineral development,” Small says. “Every single case is property specific, conservation-value specific, document specific, proposed use specific, and state-law specific. The more rights landowners hold, the better their negotiating position.”



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UPCOMING TALT EVENTS

June 28-July 1, 2012:
Texas Wildlife Association Wildlife Convention 2012,
JW Marriot Hotel, San Antonio, Texas.
For more information and links to registration,
visit www.texas-wildlife.org

August 2-3, 2012:
Trans-Pecos Wildlife Conference,
Sul Ross State University, Alpine, Texas
For more information visit www.sulross.edu

October 18, 2012:
Texas Land and Mineral Owners Association
Bi-Annual Meeting, Pearl Stable, San Antonio, Texas.
For more information and links to
registration, visit www.tlma.org

TALT EASEMENT

DONORS:

IN THEIR OWN WORDS

At our May Advisory Board meeting, a panel of TALT easement donors talked about what motivated them to protect their property with a conservation easement. Here are excerpts from that discussion:

“I wanted my children to participate in the planning of the conservation easement. I wanted my children to inherit this legacy of permanently protecting this ranch—to have pride in it. I wasn’t so much interested in extra bucks as I was motivated by the pride of preserving a piece of property.”

“We thought about what do we want in the end. When we described that, it started to sound like we needed a conservation easement to protect the conservation values. A lot of people are surprised to find that you can negotiate it, that there isn’t one way to do it, so long as you’re focused on the protecting the conservation values. We worked very hard to put a deal together and I woke up the morning after we did it and I felt good.”

“I kept thinking about this cycle—as land gets passed down it just keeps getting more fragmented. For grandchildren—the true value was keeping the place intact so if one of them wanted to lease it, they could lease it. My idea was to put a conservation easement on it and if they wanted to operate it as a ranch, they can. If they wanted to enjoy it for hunting, they can. It really fit with exactly what I wanted going forward.”