PASSING LAND DOWN TO FUTURE GENERATIONS: PRACTICAL QUESTIONS LANDOWNERS SHOULD ASK BEFORE NEGOTIATING A CONSERVATION EASEMENT
by Lorie Woodward Cantu

When negotiating a conservation easement, there are many decisions that must be made. Once past the basic issue of whether one can live with a perpetual conservation easement, a landowner needs to answer some basic questions.

“Many times, landowners grapple with the philosophical questions associated with conserving their land in perpetuity, but overlook some of the practical considerations that are equally important when hammering out the final agreement,” said TALT CEO Blair Fitzsimons. “As an ag land trust, TALT’s easements foster

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CONSERVING OUR LAND/CONSERVING OUR LEGACY: A HISTORY OF THE CANADIAN RIVER
by Lorie Woodward Cantu

Editor’s Note: The mission of the Texas Agricultural Land Trust is to conserve agricultural lands, native wildlife habitats, and natural resources. But equally as important, we conserve culture and history. The lands that we protect with conservation easements are rooted in Texas history; the people who work those lands embody the Texas ideals of independence, hard work, and perseverance.

Today, TALT holds conservation easements on over 225,000 acres throughout Texas, including 100,000 acres in the Texas Panhandle. Two of those easements protect approximately 30 miles of the Canadian River. This beautifully rugged river has shaped the history and culture of the Panhandle, and today is still home to many of Texas’ iconic ranches.

Human history, especially in arid climates, is shaped by the presence of water. The Canadian River is a prime example. It’s the only consistent source of water in a region also known as the Staked Plains, once a vast short-grass prairie.

U.S. Army captain Randolph B. Marcy, who led an expedition to explore the headwaters of the Canadian River in 1852, wrote: “It is much elevated . . . very smooth and level . . . without a tree, shrub, or any other herbage to intercept the vision . . . the almost total absence of water causes all animals to shun it: even the Indians do not venture to cross it

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It’s no secret that TALT conserves productive working lands. In fact, since our inception in 2006, we have worked with landowners across the state to conserve the agricultural and natural resource values of over 225,000 acres. Through the careful stewardship of its owners, this land will continue to contribute food, fiber and shelter along with clean air, pure water, wildlife habitat and other life-giving benefits to society in perpetuity.

While it’s easy to see cattle grazing on open range or water rushing through a pristine creek, the history written on the landscape is easy to overlook. And, yet, because this is Texas, it is there as surely as the grass and trees. The history of our state, perhaps more than any other place on earth, is tied to the land. People came to this diverse expanse of possibility to seek their futures in its dense forests, on its fertile plains or atop its rugged hills.

Where there are people, a culture follows. The extremes of Texas forged a breed of strong, resilient, independent, forward-thinking men and women who seized the life and opportunities that the land offered. Where there are people, there are stories. Where there are stories, there is history.

When TALT conserves the land, it conserves our stories. Land provides the basis of our past—and our future.

All the best,

Blair Fitzsimons, Chief Executive Officer
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PRACTICAL QUESTIONS LANDOWNERS SHOULD ASK BEFORE NEGOTIATING A CONSERVATION EASEMENT

by Lorie Woodward Cantu

the business of agriculture, and therefore don’t dictate day-to-day management practices. Instead, we focus on limiting fragmentation and excessive development or over-building.”

Fitzsimons suggests to landowners who approach TALT about a conservation easement that they answer the following questions as a starting point:

❓ How many times do I want to be able to divide the property?
TALT’s goal is to stem fragmentation. When farms and ranches are divided into smaller and smaller pieces, after a while they are no longer economically self-sustaining, and the natural resources—such as water and native wildlife habitat—are lost. Together, the landowner and land trust must answer the question of how many times the property can be divided before the conservation values are severely impacted.

❓ How many additional houses will my family need?
While hoping to limit the impact of the built environment on ag, wildlife and water resources, TALT recognizes that landowners need flexibility to accommodate growing families. Depending on the size of the property and what’s already in place, TALT will work with landowners to select a number of future home sites. A landowner needs to decide how many and where those sites will be.

❓ Have I thought about all future uses of the property?
While not limiting infrastructure needed to maintain a farm or ranch, such as fences, windmills and troughs, TALT easements do limit the unfettered expansion of gravel pits and dump sites. A landowner needs to think ahead to the placement of these things, so that existing and future sites can be identified in the easement.

❓ Can I sell my wind rights?
The IRS has been silent on wind energy development; therefore, TALT recommends that landowners restrict the sale of wind rights for donated conservation easements.

❓ Can I sell my ground water rights?
On any farm or ranch, water is usually an important conservation value. Therefore, TALT’s conservation easements generally restrict off-premises transfer of water. If a landowner does not want to give up that right, he or she will need to commission hydrologic studies to determine how much water can be transferred from the property without harming the conservation values. It can be a very difficult and expensive process.

❓ Can I develop the minerals?
For both donated and purchased easements, surface mining is prohibited while sub-surface mineral development is allowed as long as there is minimal damage to the surface. A landowner needs to know the mineral ownership of his property, and whether the lease or a surface use agreement controls surface damages.

A Final Note on Management Practices

While TALT does not dictate day-to-day management practices, it encourages land managers to base their decisions on things such as brush management or rotational grazing on the accepted best management practices for the area.

“In many cases, landowners who are donating a conservation easement also want to prescribe how the land will be managed in the future,” Fitzsimons said. “Those agreements are separate and apart from the conservation easement and are the responsibility of the family to define those terms between themselves.”
Landowners in the five-state range of the lesser prairie chicken (LPC)—Texas, New Mexico, Colorado, Kansas, and Oklahoma—have been understandably concerned about potential restrictions on their operations in light of the listing of LPCs by US Fish and Wildlife Service (USFWS) in March of 2014 as threatened under the Endangered Species Act. Welcome relief came on September 1, 2015, from a ruling handed down by U.S. District Court Western District of Texas, vacating federal protections for the species.

The Court ruled that USFWS did not adequately follow its own procedures when evaluating active conservation efforts such as the Range-wide Conservation Plan developed and administered by the Western Association of Fish and Wildlife Agencies (WAFWA).

The Range-wide Conservation Plan (the Plan) remains in service even though the ruling vacated the threatened listing, continuing as a highly effective strategy for conserving LPC habitat and potentially increasing the population so that a listing would not be considered warranted in the future.

The Plan is a voluntary effort on the part of conservation agencies in the five-state range of LPCs, landowners, and industry, aimed at long-term conservation of LPC habitat. One of the tools available in the Plan is permanent conservation easements. Funding is available through the Plan by way of industry enrollment whereby payments are made to fund conservation activities on private property that offset unavoidable impact on LPC habitat and/or the birds directly.

Other LPC conservation programs which provide funding and/or assistance for LPC habitat management include: the USDA Natural Resources Conservation Service (NRCS) Working Lands for Wildlife, Lesser Prairie Chicken Initiative (visit your local NRCS office for details or go to www.nrcs.usda.gov); USDA Farm Service Agency’s Conservation Reserve Program (visit your local FSA office or go to www.fsa.usda.gov; and mitigation banking through USFWS-approved Common Ground Capital Programmatic Range-wide Conservation Bank, that provides income to select properties possessing high quality LPC habitat and protected by a conservation easement, from credits sold to industry to offset their impact on LPCs and habitat.

Thanks to abundant spring rainfall and the efforts of many landowners to manage their country with the needs of lesser prairie chickens in mind, the population increased by an estimated 25% from 2014 to 2015. Better days are on the horizon for the birds and for landowners interested in taking up the challenge to maintain or create high quality LPC habitat. Monetary assistance in these various forms can make it economically feasible to modify operations as needed for optimal habitat, paralleling good range management and sound stewardship of the land.

Stewardship Director Ken Cearley is based in Amarillo. For more information, contact Ken at kcearley@txaglandtrust.org, 806-670-6070.
MEET TALT BOARD MEMBER MARK BIVINS

by Lorie Woodward Cantu

Mark Bivins of Amarillo is the fourth generation of his family to make a living by ranching in the rangelands of the Texas Panhandle.

“My ancestors made a living from the land. I’ve made my living from the land—and I look forward to passing it on to the next generation of land stewards,” said Bivins, who is a rancher and businessman.

He is committed to conserving Texas. Bivins is a former Commissioner of the Texas Parks and Wildlife Department as well as a trustee of the Texas Parks and Wildlife Foundation. He also served on the board of Taking Care of Texas, now Texan by Nature. Bivins is a member of TSCRA and TCFA.

“I accepted a position on the TALT board because conserving land is important to me—and it’s important to TALT,” Bivins said.

While he understands the importance of the state’s ecological health, Bivins is equally aware of Texas’ economy. He has served on the Governor’s Task Force for Economic Growth, the Don and Sybil Harrington Foundation, and the Amarillo Area Foundation.

“I hope that my experience in production agriculture, conservation organizations and business will help TALT achieve its goals,” Bivins said. “Unlike many land trusts that focus solely on preservation, TALT is dedicated to keeping agricultural lands working.”

TALT brings knowledge and options to the table for Texas landowners.

“Texas is one of the largest private lands states,” Bivins said. “While it’s up to each landowner to conserve his or her property, the best conservation is accomplished with knowledge. The more landowners know about their various options, the more likely they will be able to act in the best interest of their family—and in the best interest of Texas.”

TWO NEW PROPERTIES CONSERVED!

TALT was honored to partner with conservation-minded landowners to close two easements in April. Thank you to Mary Ruth Rhodenbaugh of Holly Farms, and the Friends of Cibolo Wilderness Inc. of Herff Farms for placing conservation easements with TALT.

Holly Farms has been in Ms. Rhodenbaugh’s family since 1908. A 188 acres of luscious rangeland, this is one of the oldest continuously operating agricultural properties in Brazoria County. The 60-acre Herff Farm property is a part of the Cibolo Creek Nature Center in Boerne. This stunning piece of property will serve as an outdoor classroom for the general public to learn about nature and agricultural stewardship.

Both properties provide significant public benefit in terms of their water conservation values, wildlife habitat and the sheer beauty they provide to the developing communities around them.
MISSION
To conserve the Texas heritage of agricultural lands, natural resources and wildlife habitats.

GOVERNING PRINCIPLES

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.

except at two or three places.”

The river rises in the Sangre de Cristo Mountains in Colorado and flows to the mouth of the Arkansas River in Oklahoma. Of its 760 miles, 190 are in Texas. The Canadian crosses the Texas Panhandle, flowing north and east through Oldham, Potter, Moore, Hutchinson, Roberts, and Hemphill counties, and passing through a gorge 500 to 800 feet below the plateau.

EARLY PEOPLE

Besides water, the gorge provided shelter from the incessant wind. Remnants of villages once populated by the first settlers, the Antelope Creek People, dot the valley. The 1400’s saw the incursion of Apaches who ruled the region until the 1700s when the Comanches seized primacy. By mid-1875, a series of military engagements fought between the United States Army and the Comanche, as well as other tribes, ended hostilities in the area.

“With the threat of Indian attack removed, the region was ripe for settlement,” said Michael R. Grauer, Curator of Art and Western Heritage at the Panhandle Plains Museum in Canyon. “Ranching was a natural fit.”

EARLY RANCHING CULTURE

A small window of opportunity arose for the free grazers. In 1876, Charles Goodnight, who moved south from Pueblo, Colorado, and Thomas Sherman Bugbee were two of the first cattlemen to stake a claim in the region.

“Water was as crucial to a ranching enterprise as it was to life of the tribes,” Grauer said. “The first consideration of early cattleman was controlling access to water.”

Between 1877 and 1879, the ranching culture was firmly ensconced with the establishment of sprawling operations including the JA, T Anchor, LIT and the LX ranches. These historic ranches were founded by private individuals and, in some cases, foreign investors.

For generations, the Canadian River watershed had been home to shepherders who were based in northern New Mexico. They would drive their herds annually from the New Mexico mountains to the Texas Plains and back to take advantage of the nutritious short grasses. The practice was so ingrained, the valley was known as the cañada or “sheepway.”

“According to local lore, Charles Goodnight had a handshake deal with the shepherders, which was designed to keep the peace,” Grauer said. “Goodnight agreed to keep his cattle south and east of the Canadian if the shepherders kept their sheep to the north and west.”

These New Mexico families were likely the same families who were first ciboleros hunting buffalo, then comancheros trading with the

“It’s simple. If we lose our ranching and its attendant way of life, we’ve lost our soul”
Southern Plains Indians, then mesteneros hunting wild horses for profit, next pastores herding sheep, and finally vaqueros handling livestock on the big ranches, Grauer said. “Through the 1880s, the early cattleman resisted settlement by farmers,” Grauer said. “By the 1890s, the landscape had changed.”

**BARBED WIRE AND ROW CROPS**

Barbed wire first appeared in the region in 1881. Initially, the free grazers tried using drift fences to prevent their livestock from wandering off. It wasn’t uncommon for cattle to drift 100 miles seeking shelter in the canyons during the winter.

“In theory, it was sound, but in practice it was devastating,” Grauer said. “In a blizzard, the cattle would wander until they hit a fence. Unable to get through it or go around it, they would stack up eventually smothering or freezing to death.”

A series of cold snaps blizzards in the winters of 1886 and 1887 became known as the “Big Die Up.” Some ranches reported the loss of 75 percent of their herds. The drift fences were removed and, with the advent of widespread row-crop farming, were eventually replaced by perimeter fences.

Around 1890, farmers, many of whom had emigrated from Germany, began moving into the area. They introduced Russian winter wheat which was well-adapted to dryland farming. About the same time, people began drilling into the Ogallala Aquifer in order to “drought-proof” farming and ranching operations. By the 1920s, the big ranches were diversified to include both livestock and row crops.

“When you look at old U.S. Census data, ranch owners, beginning in the 1920s, began identifying themselves as ‘stock farmers’ instead of ‘ ranchers,’” Grauer said. “It was a reflection of the continued diversification.”

**RANCHING TODAY**

Diversity is a hallmark of the ranches that continue to thrive today. In addition to raising livestock and farming row crops, many families also incorporate wildlife enterprises.

“Wildlife needs wide open spaces,” Grauer said. White-tailed and mule deer, which were transplanted the in 1960s to offset a declining population in the Trans Pecos, are plentiful, especially in the eastern Panhandle’s Canadian River Breaks. Pronghorn numbers are increasing near Dumas and Dalhart. Wild quail still call, pheasants flush from grain fields, and dove migrate each year following the path of fields and water.

Diversification and commitment has allowed many historic ranches – including the JA, LX, XL, and 6666 - to remain in the hands of their founders’ descendants.

“There’s something kind of wonderful about the continuation of a family’s ranching legacy,” Grauer said. “The fact that people still yearn to be horseback means Texas’ can-do spirit is still alive and well.”

**REAL Threats**

While ranching continues to define the region’s spirit, there are real threats to its survival. First, water, always scarce in this environment, could become less available. Currently, the rate of withdrawal from the Ogallala Aquifer surpasses its rate of recharge.

“Water is literally the region’s lifeblood,” Grauer said. “We all must work together to solve the challenges if we are to have a collective future.”

The second threat is less obvious than the first, but is equally urgent.

“The biggest threat to our culture and history—and ultimately our communities—is a lack of interest in our heritage,” Grauer said.

As Texas has become an urban state, the ideals of the cowboy haven fallen out of vogue because no one wants to be perceived as provincial, he said. It’s ironic that Texans are moving to distance themselves from this image, he said, noting a recent worldwide poll that asked, “If you could be anything in the world what you be?” The overwhelming response: an American cowboy.

“It’s simple. If we lose our ranching and its attendant way of life, we’ve lost our soul,” Grauer said.

**GENTLER TAX BENEFITS: NOW MADE PERMANENT**

In December 2015, Congress made permanent the generous tax benefits for donated conservation easements. If your desire is to keep hunting, farming or ranching, instead of developing the land for a strip mall or housing development, then a donated conservation easement can be a smart way to maximize value while conserving the land you love. Donated conservation easements with TALT allow you to continue your farming or ranching operations and maintain your private property rights while realizing significant income and estate tax benefits:

- You can deduct the value of the conservation easement against 50 percent of adjusted gross income.
- If you earn most of your income from agriculture, you can deduct the value of the conservation easement against 100 percent of your income.
- If you can’t deduct the full value of the conservation easement in the first year, you can carry it forward for 15 years, or until the deduction is used up.

This powerful tool allows modest-income donors to receive greater credit for donating a conservation easement. A conservation easement isn’t for everyone. However, if this piques your interest we will be happy to help you explore if this tool works for you and your family to reduce taxes and conserve your cherished farm or ranch for future generations.
LEAVING YOUR LEGACY

Would you like to leave a legacy for your children or grandchildren? One common tool is a charitable bequest, where an individual names in his or her will the Texas Agricultural Land Trust, or any other charity, as the heir to a portion of one's estate.

Naming the Ag Land Trust in your will allows you to make a significant contribution toward the conservation of Texas' working farms and ranches for future generations, while reducing the impact of estate taxes on your heirs.

If you plan to make a gift through your will, we have language that may be useful to you during your estate planning. For more information, or if you would like to talk with someone about making a planned gift, contact your financial advisor or Dina McIlhenny, Director of Finance, dmcilhenny@txaglandtrust.org, (210) 826-0074.

2016 EVENTS

Texas Wildlife Association Private Lands Summit
Thursday, July 14th J.W. Marriott, San Antonio

Texas Wildlife Association Convention
Friday, July 15th – Saturday, July 17th
J.W. Marriott, San Antonio Booth #412

South Texas Private Property Rights Association Annual Meeting
Thursday, Oct. 13th Caesar Kleberg Wildlife Research Institute, Kingsville Keynote speaker: Senator John Cornyn

Texas Wildlife Association’s Texas Outdoorsman of the Year
Thursday, Oct 13th J.W. Marriott, San Antonio

Visit txaglandtrust.org/news for more information.