

PRESERVING AND PROTECTING OUR NATURAL RESOURCES

HEARING BEFORE THE COMMITTEE ON FINANCE UNITED STATES SENATE ONE HUNDRED SEVENTH CONGRESS FIRST SESSION

JUNE 12, 2001



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PRESERVING AND PROTECTING OUR NATURAL RESOURCES

TUESDAY, JUNE 12, 2001

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, DC.

The meeting was convened, pursuant to notice, at 10:00 a.m., in room 215, Dirksen Senate Office Building, Hon. Max Baucus (chairman of the committee) presiding.

Present: Senators Breaux, Grassley, Snowe, and Kyl.

OPENING STATEMENT OF HON. MAX BAUCUS, A U.S. SENATOR FROM MONTANA, CHAIRMAN, COMMITTEE ON FINANCE

The CHAIRMAN. Please come to order.

Before we get into the details of the hearing, I would like to take a few moments to comment on the shift in majority. I do not know how much of a shift it is; we still have the same 100 Senators. But, nevertheless, we do have a shift in the majority, with different leadership, but facing the same issues.

I believe, just as in the past when Chairman Grassley and I worked very closely together, it makes very good sense to continue working on an equally bipartisan basis. That is basically because the Senate is so closely divided. It just makes more sense to work together if we are going to get things accomplished.

I might say at this point, I have the highest regard for Senator Grassley and the tone he set, that is, the tone of working together, and camaraderie, being straight and direct, and no politics, just trying to do what is right.

I might say, Mr. Chairman, that is an approach that I intend to follow as I follow your leadership, and we will continue working together just like we have in the past. I thank you very much for the very professional way that you chaired this committee.

Now, let us turn to today's hearing. In the wake of the big tax bill, some might be inclined to think that this subject here is small potatoes. After all, we are talking about items that are a lot smaller than the total tax bill. So the question really is, what is the big deal? What is so important about conservation tax provisions?

Well, here is how I see it. To my mind, tax incentives may be the next wave of success in the land conservation movement. They allow us to bring people together: land owners, conservationists, the Federal Government, local communities. All can work together to preserve our precious natural resources. They build public/private partnerships. They do not tear down, but build those partnerships.

They encourage voluntary actions by private individuals who want to have a legacy of natural heritage. This hearing allows us to look at some of those details and proceeds from the belief that the Tax Code has been an important incentive for land conservation.

I think that premise is justified by the facts, at least if you look at some statistics provided by the Land Trust Alliance. They say that, in 1988, 600,000 acres of land were held by land trusts. Ten years later, in 1998, approximately 2.4 million acres were held. That is more than a four-fold increase in protected land in a decade.

A lot of those donations of land were the result of incentives put into law in the 1970's and the 1980's. First, Congress established an estate tax exclusion for conservation of land.

Second, we allowed landowners to deduct the value of land conservation as a charitable contribution, limited to 30 percent of a taxpayer's adjusted gross income.

Today's hearing continues the work started by the Tax Subcommittee in a hearing last July. At that hearing, national organizations and large interests in land conservation gave their testimony.

Today we will focus on local efforts. We will hear testimony from five witnesses involved on the local level in the stewardship and conservation of land across the country.

What do we want to accomplish? We want to find out what kind of conservation projects are happening. We want to find out how tax incentives have helped. We want to hear how they can be improved.

I know that there are many types of land we may want to preserve. They may be crop or range land in Iowa, or Montana, or Oklahoma, perhaps thick forests in Maine, maybe a wildlife habitat in Louisiana, or simply a place of beauty in Arizona or New Mexico. Whatever the resource, it needs to make economic sense for landowners to save the land.

The bill I have introduced, the Rural Heritage Conservation Act, would address this concern. I will ask the witnesses, later on, some questions about it.

Another area is the purchase of conservation easements by governments. More and more State and local governments are making purchases. In Montana, for example, Gallatin County voters just approved a bond issue to purchase conservation easements.

There would be other ways to motivate more sales of land for conservation easements. Senator Jeffords and the administration support such a proposal. We hope to learn from our panel about this idea as well.*

I want to thank our witnesses for coming from great distances. The committee, frankly, is lucky to have all of you here today.

I, again, thank Senator Grassley for his help in organizing this hearing. It has been a great pleasure working with Senator Grassley, as I have noted. I presume, Senator, that you might have a statement you wish to make before we turn to the witnesses.

*For more information on this subject, *see also*, Joint Committee on Taxation staff report, "Present Law and Description of Proposals Relating to Federal Income and Estate Tax Provisions That Impact Land Use Conservation and Preservation," June 11, 2001, JCX-53-01.

**OPENING STATEMENT OF HON. CHARLES E. GRASSLEY, A U.S.
SENATOR FROM IOWA**

Senator GRASSLEY. Thank you very much for the statement you made at the opening about our cooperation under the short period of time that I was Chairman, and, more importantly, as you look to the future to continue that relationship, I think, also, within the tradition of the Senate Finance Committee, but also in a way that sets a good example for the bipartisanship that is necessary to get anything done in the entire Senate.

I have worked with Senator Baucus the years I have been in the Senate, and very closely on a lot of pieces of legislation, but nothing where he and I were in the leadership and responsible for producing legislation.

The thing that I really learned about you, Senator Baucus, is that you keep your commitments and you do try to work for bipartisanship. The product that the President signed last week is an example of that, and I thank you for that.

This hearing is called to focus on an issue in which both Republicans and Democrats all agree, the importance of the conservation of natural resources. Just last Thursday, I have already referred to the fact that President Bush signed the Economic Growth and Tax Relief Reconciliation Act of 2001 into law, the largest tax relief package for American taxpayers in the last 20 years.

But, before it became law, it started out here in this committee, the result of our continued bipartisan efforts of our new Chairman, Max Baucus.

In the new law, the repeal of the geographic limitations on conservation easement for estate tax purposes was carried out. The full repeal of those geographical limits were very important, both for me and my State of Iowa, and Senator Baucus and the State of Montana, along with other States as well.

Because of the previous restrictions, there were only 10 counties in my State of Iowa that met the strict 25-mile requirement of the Metropolitan Statistical Area. Today, every landowner in my State may choose to participate in a conservation easement program and be treated equally under the Tax Code.

Because of our commitment to good bipartisan ideas, we are proud to start this hearing reflecting on that success, the full repeal of any geographical restrictions on any conservation easements.

With that in mind, we will listen to our witnesses tell us how to do that. These are true American taxpayers and landowners who have sacrificed personal gain for the good of conservation and their fellow Americans.

Let us appreciate the outstanding programs they represent and the additional good that they can achieve with our freshly-won victory. Today you will hear success stories achieved under current law and an honest discussion of recommended changes to the Tax Code for this success to continue.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator.

I would like, now, to briefly introduce the witnesses, and then I think some of the members of the committee would also like to give a statement with respect to each witness.

First, we have Elton Kennedy at my far right. He will be testifying on behalf of the Delta Land and Farm Management. One of his primary focuses is the preservation of wetlands throughout the State of Louisiana and the southwest.

We will also hear from Mr. Mark Ackelson, who is director of the Iowa Natural Heritage Foundation, an organization that has used the unique combination of conservation easements and flood plain management to preserve farm cultures in the State of Iowa.

To his right is Bill McDonald. Mr. McDonald is the co-director of the Malpai Borderlands Group. It is a grassroots, landowner-driven, nonprofit organization, managing nearly 1 million acres of open-space land in southeastern Arizona and southwestern New Mexico.

Mr. Schley is president of the Pingree Associates. He represents seven generations of family stewardship of Maine timberlands.

Finally, to his far right is my cousin, Chase Hibbard. Mr. Hibbard is the president of Sieben Livestock Company. I will have a few more words about him at the appropriate time.

Senator Breaux, do you want to say a word about Mr. Kennedy?

**OPENING STATEMENT OF HON. JOHN BREAUX, A U.S.
SENATOR FROM LOUISIANA**

Senator BREAUX. Thank you, Mr. Chairman. Glad to see you in that position. Glad to see you and Senator Grassley still agreeing that you will be working together for the good of this committee and the good of the country. We are delighted to have that new arrangement take place.

I am delighted that Mr. Kennedy, who has been a friend of mine for a number of years, has come to talk about what he is doing in Louisiana and throughout the southwest.

Louisiana has about 40 percent of all the wetlands in North America. After getting about three feet of rain last week, we probably have about 80 percent of all the wetlands in North America. [Laughter.]

But we need to protect them because we are losing them. About 25 to 30 square miles of wetlands are lost every year. That is a huge amount. That is more than some States have within their entire borders.

Mr. Kennedy has been particularly unique in using conservation easements and provisions of the Tax Code that help them to donate property, sell property when you have willing sellers, basically to try and preserve this very important national resource, and also restore these wetlands.

The Internal Revenue Code is an extremely powerful tool, as we all know. There is a lot of good that we can make certain is performed through the Code. We want to hear from him on how it works. We are delighted to have Elton up with us today.

Thank you.

The CHAIRMAN. Thank you, Senator.

Next, is Mr. Ackelson. Would you like to say a few words?

Senator GRASSLEY. Mr. Ackelson, or Mark, as I call him, has headed the Iowa Natural Heritage Foundation for almost 20 years. Since 1994, he has served as the foundation's president, and in that time has helped the foundation protect over 65,000 acres and

create nearly 500 miles of trails. In addition, he is founder of the Land Trust Alliance and former chair of the Rails to Trails Conservancy.

He is going to be addressing the unique combination of conservation easements and flood plain management in the Heritage Foundation, and how that has been used to preserve the farm culture within the State of Iowa.

The CHAIRMAN. Thank you, Senator.

Next, we have Mr. McDonald. I believe Senator Kyl would like to introduce him as well.

**OPENING STATEMENT OF HON. JON KYL, A U.S. SENATOR
FROM ARIZONA**

Senator KYL. Thank you, Mr. Chairman. Let me add my thanks to both you and Senator Grassley, and also to Senator Breaux, I might add, for the bipartisanship that you exhibited during the last several weeks in getting the tax bill through.

I think people in the audience may wonder why we keep commenting on this. I think perhaps one reason is that, while we talk a lot about bipartisanship in the Senate, I think the Senate Finance Committee has been a really good example of how that can actually work to produce good results. It is due, significantly, to your efforts, Mr. Chairman, and of those of Senator Grassley and the others on the committee.

I am very pleased at the hearing that you have put together today and to introduce—or to help introduce—Bill McDonald. As you have said, Mr. McDonald is a fifth generation Arizonan, runs the family sycamore ranch in southeast Arizona.

He is a graduate of Arizona State University. He is past president of the Cochise and Graham County Cattle Growers Association, also a supervisor of the White Water Draw Natural Resource Conservation District.

He is a co-founder, past president and executive director of the Malpai Borderlands Group, as you noted. This is a grassroots organization attempting a whole ecosystem approach to the management of a million acres of land under multiple ownerships on the Mexican border, about 60 percent in New Mexico, about 40 percent in Arizona. Fewer than 100 families live there and they have been there for generations. Except for two small wildlife preserves, the land is primarily used for cattle ranching.

I am familiar with their work. I have been there, I have seen it. It is a wonderful contribution to conservation. They carry out a whole array of programs for land restoration, endangered species habitat protection, range improvements, and conservation.

It is a very good example of a private citizen-based group and how such a group can work for sustainable ranching and conservation at the same time. They need us to take a look at some of the laws to enable them to continue to do this work, and that is why I think this hearing is a very important hearing today.

Thank you, Mr. Chairman.

The CHAIRMAN. Well, thank you very much, Senator. I appreciate that. I am sure Mr. McDonald does, too.

Senator Snowe, would you like to say a word or two?

**OPENING STATEMENT OF HON. OLYMPIA J. SNOWE, A U.S.
SENATOR FROM MAINE**

Senator SNOWE. Thank you, Mr. Chairman. I, too, want to join in the commendations and plaudits to you, Mr. Chairman and Ranking Member Senator Grassley, for the extraordinary example you demonstrated in the bipartisanship in moving forward the Tax Relief Act, and those efforts of Senator Breaux as well.

Working together clearly does provide an exemplary example of the way in which the Senate and the Congress should perform. So, I am looking forward to continuing to work with you.

The CHAIRMAN. Thank you, Senator. I might add that you are one of the key reasons, as you, I think, know, indirectly, why we got such a good result. I thank you very much for your strong effort.

Senator SNOWE. I appreciate that. Thank you, Mr. Chairman.

I am delighted, Mr. Chairman and members of this committee, to introduce one of the true forest industry leaders in Maine, and throughout the country. That, of course, is Steve Schley from the State of Maine, someone whom I have known over the years.

I think you will find his testimony compelling, if not extraordinary, given what he has done and the enormity of the effort that was made by Steve as president of the Pingree Associates, which is owned by the Pingree family. This company has been in the family since 1840, I might add. They created a land conservation initiative in Maine that is truly a role model for the rest of the country.

I do not believe that Steve even recognized the full value of this initiative, but also to the extent to which it is going to have an impact in Maine, as well as throughout the country.

But certainly when he started down this road 5 years ago, he probably could not appreciate all of the obstacles and hurdles that he would encounter, but that in the final analysis, because of his perseverance, he prevailed.

Because of his tenacious efforts, more than 762,000 acres in the State of Maine have been set aside in land conservation and conservation easements. That is the largest ever, certainly in the State of Maine, but in the country, if not the world.

Where 20 percent of Maine's forest lands have been up for the sale over the last few years, it is even more significant to have these kind of efforts that have been undertaken by Steve and the NEFF.

He has been the vice president and now president of the Pingree family company since 1985. Through the years, they certainly have pursued and engineered the best sustainable management of forest land, certainly set an example as to how to go about it, and they have played a critical and vital role.

This conservation package, in fact, was not enjoined with the State or with any other governmental entity, but with a private non-profit entity called the New England Forest Foundation.

It is a very unique approach to land conservation and easements. It includes 110 lakes and ponds, and more than 2,000 miles of river frontage. That is why it is so unique, because it is one of the most remote pieces of land in the country. It affects more than six counties in the State of Maine. So, it really does, speak to the value of

land conservation while maintaining sustainable harvests from much of the forest land.

I hope that we can provide valuable incentives to help efforts like Mr. Schley's here today that would not otherwise be done, and all the others on the panel as well, Mr. Chairman.

So, I think we have an appropriate example of how we can best go about land conservation with Steve Schley being present. I certainly want to commend you for your praiseworthy efforts in doing what you did for the State of Maine, and for generations to come.

The CHAIRMAN. Thank you very much, Senator.

I would now like to turn to the panel. We will begin with you, Mr. Kennedy, and we will go down the line here. I would remind all witnesses that your full statements will be included in the record, and I would like you to get to the essence of it in about 5 minutes in any way you wish, either by reading your full statement, an oral summary, or whatnot. But your full statements will be included in the record.

Mr. Kennedy?

STATEMENT OF W. ELTON KENNEDY, DELTA LAND & FARM CO., LLC, MER ROUGE, LA

Mr. KENNEDY. Chairman Baucus, Ranking Member Grassley, my own Senator Breaux, to all the committee, distinguished members, my name is Elton Kennedy. I live in Mer Rouge, LA, which is in northern Louisiana. I am actively engaged in agriculture. I have investments located in several States. In Louisiana, I am principally in rice farming, grow crops, timber, wildlife.

I am in the Wetland Reserve Program. In Louisiana, I have CRP properties. Also, I have worked with the U.S. Wildlife & Fisheries extensively on different projects and lands, and other conservation organizations.

In my lifetime, I have seen most of our great Mississippi alluvial flood plain converted from bottomland hardwoods to crop production. This huge conversion of approximately 20 million acres to now only 4 million acres has happened in less than 35 years.

It was due not only to high soybean prices, but that everyone thought we needed more acres, I guess, at that time. But it was also at the encouragement of a society that did not realize the consequences of its actions. Over the last decade, we have seen many individuals go bankrupt in farming because of this.

In the past few years, I have begun to realize that the highest and best use for a lot of my properties was not always cropland. So I began to participate in some of the conservation programs offered by USDA, Fish & Wildlife Service, and other nonprofit conservation organizations.

Utilizing conservation easements and technical assistance from the respective agencies has allowed me to diversify my agri-business interests and to put more reliance on the natural productivity of the land on a more sustained basis.

Conservation easements, such as WRP, CRP, Partners for Wildlife programs, have enabled me to economically convert marginal farmland to wildlife habitat. This conversion has included former cropland that is now restored wetlands, and former over-grazed pastures that are now prime elk ranges.

I have personally donated lands in Colorado to the Rocky Mountain Elk Foundation. This land will be protected forever. It will not be developed, therefore losing its wildlife benefits and much of its natural beauty.

I own farmland around the Tensas National Wildlife Refuge in northeast Louisiana. This historic hardwood bottomland is crucial to preserving many species of birds, and wildlife such as the Louisiana black bear. It is also an important flyway and bird zone for migratory birds.

I have enrolled, and am in the process of enrolling and restoring, most of my adjoining acreage to that refuge, bottomland hardlands back to wetlands.

I must say, however, that without the financial considerations of these conservation programs and incentives, I would not have been able to make the transition that I have in many ways.

Even today, many of these USDA programs, such as WRP, are unfunded. The current tax deduction for qualified agricultural producers does not provide meaningful incentives for landowners to donate an easement.

The result of this current situation, is that tremendous conservation benefits are missed and we continue to support marginal agricultural operations on lands that are far better suited for conservation.

In my home State of Louisiana, 374 participants have enrolled 140,000 acres of marginal farmland into WRP for the benefit of soil conservation, water quality, air quality, a host of fish and wildlife species, and has benefitted the American taxpayer by reducing the financial burden of supporting agriculture that was marginal, at best.

The tragedy of this program is that, in Louisiana alone, another 500 applicants, representing an additional 102,000 acres, cannot be enrolled because the program is kept out and no funds or authority exists to continue this valuable program.

Government programs cannot provide all of the protection or restoration that is needed. We must utilize the combination of conservation easements and government programs to restore and protect our unspoiled areas and our open spaces.

We must increase tax advantages to the landowner to utilize such nonprofit programs offered by the Nature Conservancy, Ducks Unlimited, Rocky Mountain Elk Foundation, The National Wildlife Federation, and many others. Landowners just need the incentive to make the transition. After all, 74 percent of all wetlands are owned by private landowners.

I urge you to provide real incentives for landowners of all sizes to restore marginal crop and range land to a more productive use that not only provides wildlife habitat and a cleaner environment, but preserves our open spaces, restores our woodlands, and the natural beauty of this land.

Thank you.

The CHAIRMAN. Thank you very much, Mr. Kennedy. We appreciate that.

[The prepared statement of Mr. Kennedy appears in the appendix.]

The CHAIRMAN. Mr. Ackelson?

**STATEMENT OF MARK ACKELSON, PRESIDENT, IOWA
NATURAL HERITAGE FOUNDATION, DES MOINES, IA**

Mr. ACKELSON. Good morning, Mr. Chairman and members of the committee, and especially Senator Grassley. My name is Mark Ackelson. I am president of the Iowa Natural Heritage Foundation and one of the founders and former chair of the Land Trust Alliance, which you quoted earlier.

The foundation was created in 1979 by business and community leaders throughout our State who realized that the private sector needed to be much more involved in partnership with landowners. We are supported by 5,600 donors, and we are pleased to have Senator Grassley and his wife Barbara as one of our long-time supporters. I might add as a footnote, Mr. Kyl's father, Jon, was one of our founders.

We view protection of natural resources as important to our quality of life, and natural resources an investment in the future of the quality of life of our State and our economic well-being.

The foundation is one of 1,200 land trusts that have been created across the United States. In fact, every State now has a land trust; Iowa has 7, Montana has 13, for example. These are local citizens working to solve local issues using voluntary methods.

Many of the agricultural groups, including cattlemen's associations in Colorado, California, and Wyoming, for example, have also formed land trusts. We work together through our National association, the Land Trust Alliance.

Again, these organizations are responding to local need using tools available through voluntary protection. Some of those tools not only include acquisition and fee title, but conservation easements, voluntary methods in private funding and incentives provided by local, State, and Federal taxing authorities. The Federal tax incentives are a crucial element in the formula for preserving important lands throughout the country.

According to the "Landowner's Guide to Conservation Easements," a book which was released earlier this year and supported by the American Farm Bureau, they say that conservation easements are becoming more popular each year among owners of open space. It is a way of saving taxes, preserving special lands, and having them free of development threat.

According to the Land Trust Alliance, land trusts in the United States have protected more than 2.4 million acres of lands across the country in conservation easements. That was the figure in 1998, and we expect that that will grow much bigger.

Well, how important is natural resources conservation in Iowa? I think maybe I need to put this in perspective for you because our State is so much different than the others that you have on the panel this morning.

Iowa probably has the most altered landscape of any State in the country. We have lost 99.99 percent of our native vegetation, the prairie, which once covered 85 percent of our State.

We have lost 98 percent of our wetlands. We have eliminated 3,000 miles of streams. The EPA and RDNR now have listed 157 water bodies as impaired. Ninety-eight percent of our land is privately owned. Obviously, we are strong advocates of private property rights and responsibilities.

Protecting what we have and restoring a portion of what we lost is a major challenge, and landowners are certainly rising to that occasion. Since 1979, our organization has been involved in permanently protecting about 65,000 acres of land, and that has all been in partnership with landowners and other agencies and the general public, i.e., through the taxpayers and the use of the tax incentives.

The American Farmland Trust's recent figures tell us that one million acres of agricultural land are converted annually to other uses. According to a recent study by Iowa State University, even Iowa, with an extremely modest growth rate, is losing approximately 26,000 acres of agricultural land per year. So, conservation easements are an important tool.

In Iowa, our organization has completed easements on only 6,500 acres, but these easements are valued at about \$11 million. Certainly, none of those would have occurred without the strong conservation ethic of the landowner and the incentives provided by the Tax Code. These are landowners who have exercised their private property rights to ensure the future integrity of the land.

Landowners are land rich and income poor. Without the deductibility of the fair market value of donated easements, it certainly would not be possible.

But many landowners in Iowa still cannot afford to donate easements, even with the current deductibility and the 5-year carry-forward. To make it possible, we need to increase the tax benefits of making a conservation easement, providing funds to purchase easements from them, or both.

You heard Mr. Kennedy talk about the Wetland Reserve Program. This is a voluntary program requiring conservation easements. In Iowa, it is on frequently flooded farmlands in the flood plain.

Iowa ranks number one in the number of farmers who have signed up, over 900, and second in the number of acres, at 106,000. It is a popular program that allows us to restore the flood plain, reducing ongoing costs and impacts of flooding.

The Farmland Protection Program. We have the first program in Iowa in Iowa's fragile Lost Hills, and that will be important to us. A reduction or elimination of the capital gains tax for conservation easements would encourage many more landowners to take advantage of this tool.

So, in conclusion, what can you do to encourage use of private property rights to obtain public natural resources conservation goals? One, continue to support the Nation's land trusts and encourage private land conservation. Two, provide ample funding for the Wetland Reserve Program and the Farmland Protection Program.

Three, eliminate or reduce taxes on the sale of conservation easements or other property interests for conservation purposes. Four, extend the income tax deductibility for donations of easements so that farmers can afford to donate such easements.

Thank you for this opportunity.

The CHAIRMAN. Thank you very much, Mr. Ackelson. That was very helpful.

[The prepared statement of Mr. Ackelson appears in the appendix.]

The CHAIRMAN. Mr. McDonald?

**STATEMENT OF HON. WILLIAM W. McDONALD, MALPAI
BORDERLANDS GROUP, DOUGLAS, AZ**

Mr. McDONALD. Yes. Chairman Baucus, Senator Grassley, and distinguished members of the committee, and Senator Kyl, I certainly thank you for that gracious introduction.

In 1994, the Malpai Borderlands Group was formed as a 501(c)(3) nonprofit by local area ranchers, including myself, folks from the environmental community, and, at our invitation, individuals from land management, wildlife agencies, and the NRCS who work in the area. We are focused on an area that is over 800,000 acres in southwest New Mexico and southeastern Arizona along the Mexican border.

This is an especially biologically rich area. It is at the confluence of two major desert ecosystems, the Sonoran and Chihuahuan Deserts, and also at the upper end of the Sierra Madre mountain range, going down into Mexico.

We were concerned about two things. Basically, the encroaching domination of woody species on the grasslands, and we were also concerned about what we could see in the future, which was a possible fragmentation of the area through leapfrog, or what you call ex-urban development, subdivision.

We can be described as, certainly, a collaborative local grassroots effort. These are gaining in popularity all over the country. They are coming under some disparagement from some of the established organizations that choose to make black and white issues out of land issues and choose to be pro and con and say, they are all about rhetoric and no results.

I think, with the Malpai Borderlands Group and our 7-year history, we can point to some results. We have not lost a single ranch. Not a single property owner has gone out of business since our existence. We have had no acres sell into subdivision.

We have established excellent agency relations, working cooperatively in a whole ecosystem approach to managing a huge landscape with many landowners.

We have a proactive endangered species program, which includes things from leopard frogs to the Mexican jaguar, pictured in that photo which was taken by one of my neighbors on my Forest Service grazing allotment.

We have reintroduced fire's positive role into the ecosystem through prescribed burning, again, working closely with the agencies, and also have initiated a programmatic approach to naturally-ignited fires.

We have established and maintain programs of research, technical assistance, and cost sharing to supplement Federal and State programs to encourage landowners to invest in conservation in their properties. We have established excellent relations with our neighboring ranches in Mexico.

We have also created something called a GRASSBANK™, which, on one ranch which has excess grass, is made available to neighboring ranchers in return for conveying conservation easements to the Malpai Borderlands Group. I will talk a little bit about how a little tweaking of the Tax Code could help us there.

Despite our frustration with some laws, especially trying to move ahead sometimes with some of the restrictions in the Endangered Species Act, we have managed to get things done. We have never come before Congress asking for relief or help, until now.

But we do have a serious concern about our land that is not protected from subdivision, and how to encourage landowners to come forward and place conservation easements on their land.

You have to understand that any development within this large area could drastically alter the character of that land. You are talking about an area where it takes 40 to 50 acres to run a cow, so you have only got a few places where you have permanent water.

Almost all of these are in private hands. Because of the restrictions of the Homestead Act, obviously people homesteaded on the best land. Everything else that was not bought became public land of one kind or another.

So the future of the public lands, the character of the public lands, is very much dependent on what happens to the private lands. The future of the private lands, conversely, could depend on whether or not, for instance, ranchers are allowed to continue to graze on the commingled and adjacent public lands.

If ranchers, for instance, can no longer graze on them, then you have a situation where a rancher may be forced to try to sell his assets to the highest best use which would be subdivision.

The Malpai Borderlands Group has moved to purchase easements. We, in fact, acquired 35,000 acres on seven different ranches, and we are negotiating on another one. But it is an uphill battle to raise that kind of money. There is not a lot of incentive for some ranchers.

For instance, in my own situation where our ranch was homesteaded at the turn of the century, we have a very low basis, so we are looking at a punitive capital gains tax if we sell an easement, say, to the Malpai Borderlands Group.

So, a 50-percent reduction in that tax, as has been proposed, would be a great help to us in moving us along in that direction.

Now, some ranchers can donate, because they have enough income, easements to the group. We would certainly be in favor of Senator Baucus' idea of raising that deductible amount up.

We also could use some help involving the GRASSBANK™. It would be very helpful for Congress to enact a tax rule allowing landowners to donate grass at its fair market value to a GRASSBANK™ program and to obtain the benefit of the charitable contribution deduction as a result. Right now, we have to purchase that grass.

Finally, it would be helpful to have clarifying language that, when the Malpai Borderlands Group, for instance, exchanges the right to have cattle graze on grass that is paid for in the GRASSBANK™ program for the exchange of a conservation easement, that such an exchange would qualify as a like-kind exchange under the Tax Code.

Thank you very much for this opportunity to talk about something near and dear to my heart. I appreciate it.

The CHAIRMAN. Thank you, Mr. McDonald.

[The prepared statement of Mr. McDonald appears in the appendix.]

The CHAIRMAN. Mr. Schley?

STATEMENT OF STEPHEN W. SCHLEY, PRESIDENT, PINGREE ASSOCIATES, INC., BANGOR, ME

Mr. SCHLEY. Thank you, Chairman Baucus, Senator Grassley. Senator Snowe, thank you for that very kind introduction.

I work for and represent a seven-generation's-old ownership of Maine timberlands that started in 1840. This spring, we closed on the sale of the largest conservation easement on forest land in U.S. history, almost 762,000 acres, a project that protected wetlands, endangered species, and other wildlife habitat of statewide significance, high mountain, and especially important riparian zone areas, and it prohibits all development not associated with the ongoing sustainable management of our forests.

Our easement, in particular, supports private ownership and allows us to continue supporting Maine's forest product sector that amounts to 18 percent of our State's GDP.

We do this while participating in Maine's multiple-use management tradition that keeps these private lands productive for wildlife, wood products, and recreation. By supporting both the economy and the ecology of Maine, we are truly benefitting residents and visitors, alike.

Every landowner has different motivations and rationale for using easements. We needed a solution that would ensure the long-term protection of our forests, while simultaneously providing some immediate economic return and helping protect our future estate tax issue.

Federal tax policy, all of the issues that you are considering here today, should support any and all of these efforts, so long as the land is protected from the natural resources degradation that is inherent in fragmentation and sprawl.

Flying into this city, witnessing the incredibly—in my opinion—destructive process of carving up some of the country's most productive farmland to build houses is testimony toward the public good that would come from providing incentives to landowners to protect high-quality land as green space.

The form and function of our ownership has evolved over 140 years through changing tax laws and the realities of probate. Because of those laws, tax laws and current fiduciary laws, we were not able to use current tax incentives to enhance and strengthen our project.

When we started, the tax law, for example, suggested that remote lands were not worthy of protection. I compliment your efforts to make that change in the most recent set of rules that were signed last week.

The tax treatments you have heard described here and are considering will be vitally important to future landowner consideration of projects like ours. Most landowners do not operate at our scale, almost a million acres in total, or with the efficiencies and economics that size can create.

Tax incentives would clear and smooth what is inevitably a difficult path. I understand that two potentially substantial projects in Maine are somewhat stalled. They would be greatly encouraged to finish their work if some of the tax concepts you are considering

here today were to pass. Green space preservation easements are forever and, therefore, very difficult to commit to without recognizable benefits for the landowner.

We happened to pick a perfect private partner for our transaction. The New England Forestry Foundation worked with our needs. They abandoned the traditional trappings of old easement language. We crafted a project that protects some of Maine's finest natural resources forever.

We had, and took the time, and we used the necessary legal and other expertise to do the job right. It took us 3 years just to develop satisfactory easement language.

We spent considerable time determining which acres should be in the easement and permanently protected from development. We worked very carefully with our easement partner ahead of time to identify the goals and objectives for the land well into the future so that there will not be any surprises.

Families all over the United States have managed and protected some of this great country's most remarkable real estate. Most of the families, though, are struggling on how to pass these lands on. Parts of the Tax Code work against their efforts.

The concepts you are considering would certainly encourage those landowners heretofore unwilling to engage in the necessary machinations to consider the permanent stewardship legacy that easements can create.

Flexibility is the key. I urge you to avoid detailed and proscriptive parameters. Instead, described desired green space outcomes and let the landowner figure out how to get there.

Bureaucratic inflexibility is why we chose to make ours a totally private project. In everyday regulatory matters, I am forced to spend way too much time trying to explain to bureaucrats how every acre is different, and one size never fits all.

Easements can be a great tool, but they are forever and families are reluctant. Recognize good stewardship and reward those who are willing to make the effort.

I thank you for inviting me here today, and would be happy to try to answer any questions.

The CHAIRMAN. Thank you very much, Mr. Schley. I could not help but note, when you mentioned you are a seventh generation man, that the fellow sitting next to you on your right side is a fourth generation Montanan. But we are a much younger State than Maine. [Laughter.]

We do not have much of a chance to have families as old as yours. But we are working on it.

[The prepared statement of Mr. Schley appears in the appendix.]

The CHAIRMAN. I would like to introduce Mr. Chase Hibbard. Really, I cannot think of anybody more uniquely qualified to address this subject. Chase runs and manages a major ranch in Montana, and also runs ranching services in Montana. He is very deeply involved in the livestock industry. He has run sheep and cattle, primarily.

He also has a lot of experience in the public sector, serving the Montana legislature. He is chairman of the Taxation Committee. He is chairman of the Montana Taxpayers' Association.

On his conservation side, he is a charter member of the Montana Land Reliance, and is very active in the Montana Land Reliance, which is involved in all of the areas that we are talking about here today.

I do not know anybody who has more of a love of the land than Chase, and also spends more time trying to figure out how to help our State grow in a smart way, and appropriately, and also help ranchers who are, as one of the witnesses said, sort of land-rich and cash-poor. It is a great way to live, but sometimes you wonder if it is a great way to live when the income is so low.

Anyway, Chase, I am very honored to have you here, particularly since we are cousins. I will not tell this assembled panel everything about you, but I have told them the best things about you, and there are a lot more.

So, why do you not proceed?

**STATEMENT OF CHASE T. HIBBARD, SIEBAND LIVESTOCK CO.,
HELENA, MT**

Mr. HIBBARD. Thank you very much, Senator Baucus, Senator Grassley, members of the committee. I appreciate the very nice introduction.

It is, indeed, my honor to be here today before the Senate Finance Committee. This is, believe me, a real honor for me to address you. I certainly hope that I can help you with these issues. I am certainly willing to do what I can to do so.

As Senator Baucus said, I am a fourth generation Montanan, with roots going back to 1868 in Montana. The fifth generation is coming along. One of our goals is to be able to pass this family legacy, family heritage, way of life, and way to contribute to Montana and the community down to them.

Farming and ranching is a very critical part of the heritage that makes Montana such a special place to live. It is not only a critical part of our culture and heritage, but it is Montana's number one industry. It is our number one industry by a substantial margin. We are 160 percent above the number two industry, which is tourism.

Unfortunately, the profitability does not quite follow that status. When one considers transfer payments to farmers and ranchers in Montana, in 1999, which was the last year for which data is available, the net income, after transfer payments, was minus \$8 million in agriculture in Montana. That is a trend that has been getting worse and worse every year.

Most of the State and most of our rural communities are dependent upon agriculture and agriculture's well-being. As our ranches struggle and fail or succumb to subdivision, or sell to wealth dot.com-ers from out of State, of which there are several buying our ranches lately, we lose a very critical part of the social fabric that binds us together and defines who we are as Montanans.

If we can preserve Montana's farms and ranches, we can preserve open space and the traditions and heritage of Montana and the west. Farmers and ranchers are stewards of our vast grasslands, watersheds, timberlands, and wildlife.

I was one of three founding directors of the Montana Land Reliance in 1978. The Land Reliance is a private, nonprofit land trust

that utilizes conservation easements to permanently protect Montana's private lands. The Reliance has protected over 365,000 acres in Montana, including 700 miles of stream and river frontage.

Our goal when we started this organization in 1978 was including agriculture as we knew it, and providing a means for young people to enter agriculture. As prices of farm and ranches continued to climb even back then 20 years ago, it seemed as though it was virtually impossible for youth to have an opportunity for land ownership.

We saw donated easements as a tool to bring totally unrealistic values that were tied to trends and things not at all related to the land's inherent ability to produce back in line with one another.

We also perceived easement as a way in which a farmer or rancher could protect the land he or she has stewarded and loved for generations, protect it from subdivision and protect it from other uses, protect the open space and the values that that represents.

The easement program of the Land Reliance has been extremely successful. However, most easements are donated after a property sells by the purchaser, who then realizes a substantial tax reduction.

This easement program has fallen short in its ability to accomplish the most meaningful and purest form of land protection. Incentives have been lacking to encourage existing owners and stewards of land to place it under easement and protect it in perpetuity.

I am very pleased at the actions of Congress and this committee, particularly Senators Baucus and Grassley, in their efforts to revise estate taxes, which will help immeasurably in handing down our ranches to the next generation and make access to land ownership for our youth more of a reality.

I also applaud the committee for repealing the mileage restrictions in the most recent tax bill. I am also very encouraged by Senator Baucus' S. 701, known as the Rural Heritage Conservation Act, which would expand the current conservation easement tax incentive program, making it work for the bulk of real working families and ranchers, incenting them for the first time to donate easements on existing properties they own and operate.

With the estate tax revisions, plus the ability to incent landowners to donate easements, not only will the two unfulfilled objectives of the Land Reliance be closer to reality, but a win-win solution will be at hand, a solution that will help our struggling farmers and ranchers stay in business, a solution that will provide private enterprise, land conservation, and protect open space, but perhaps most importantly a solution that encourages the purest and most meaningful land conservation. Easements donated by the people who actually love, live, and work the land.

Thank you for your attention. I would be pleased to answer any questions specifically regarding S. 701, or our family operation and how it relates to this as we get to that.

Thank you.

[The prepared statement of Mr. Hibbard appears in the appendix.]

The CHAIRMAN. Thank you very much, Chase.

I would like to ask a question, generally, to the entire panel, and maybe begin with you, Mr. McDonald.

There are some who think that tax deductions, say, for land contributions, including easements, are merely tax cuts for the rich. There was an article in the Wall Street Journal a short while ago basically panning this general movement, saying it is Ted Turner, it is Robert Redford, all the rich and famous, there are easements on Martha's Vineyard, for example.

Could you address that? Or if anyone else in addition to you, Mr. McDonald, would like to address that subject. Is it for the rich and famous only or are these tools that help the average American?

Mr. McDONALD. Well, I believe they can be tools that help the average American. I think that certainly your proposal would make that more reachable for many average Americans.

I think the fact that we lifted the geographical restrictions—again, yourself and Senator Grassley deserve a lot of credit for that—is another huge step in the right direction.

The whole issue with the death tax, if we can finally get that thing put to rest, that is going to make the chances of keeping this land in open space much, much greater than otherwise would be.

But certainly wealthy people, I think, have been the ones who have benefitted the most from the way the tax incentives have been written in the past.

I think what we are trying to do here, is move it in a direction where the average, what I call the working rancher or farmer family, such as myself, where their income comes right off the land, can access some of these incentives.

So, I think that that would answer the critics by saying this is where we need to go with this thing. Before, it has been focused on the land without regard to who owned the land. Now we are looking at ways that we can deal with the people who are most vulnerable, I think, to sell it to subdivision, which is your average individual who depends on that income each year.

The CHAIRMAN. Anybody else want to take a crack at that? Chase?

Mr. HIBBARD. Senator Baucus, members of the committee, our form of business organization at our ranch is a C corporation. It is a family-owned C corporation. It is a small business, by all standards.

There have simply not been enough incentives in the conservation easement provisions to really make donation of a conservation easement economically feasible. It is the right thing to do, and for other reasons they are very attractive. But Senator Baucus's S. 701 changes that. It makes it so that there are meaningful incentives, financial incentives, to donate a conservation easement.

In terms of the rich, I think Mr. McDonald is absolutely correct, I would agree with that, that the way the current law is written, the biggest benefits to conservation easements go to purchasers of these properties, who usually are quite well-heeled. They get a very significant tax reduction by placing an easement on their property.

S. 701 would change that. That advantage would flow to the everyday ranchers and farmers who are struggling to make a living and would be a very good incentive for them.

Farmers and ranchers, I think, are looked at as being the rich and famous. The reality is, the returns—at least in our operation—are about 1 percent of assets. We have got a lot of money tied up in land and our assets, but not all that much money generated, not all that much money there to live in.

The important thing, to us, is we do not want to sell that ranch. We want to keep it in the family, preserve it, preserve the way of life and the heritage.

The CHAIRMAN. So you are basically saying that for a lot of farmers and ranchers, who are just scraping by, a greater easement incentive would help individuals so they would not have to sell off the land in some less desirable way.

Mr. HIBBARD. I think so. Definitely. Yes. I think that conservation easement makes a lot of sense, but to bring an incentive in like this that has a significant financial benefit for what little income you have, would be a very important tool.

The CHAIRMAN. You all can sit back and listen to this basic question, though there is not a lot of time left. Could you address the potential for more conservation utilization in America and what you see as the impediments that are preventing that from happening? And how much of that can be cured by changes in the Code? If you can just give me a kind of bigger, broader brush, down to the basics.

Mr. SCHLEY. Mr. Chairman, if I might.

The CHAIRMAN. Yes. Mr. Schley?

Mr. SCHLEY. Relative to forest land, a vast majority of the forest land in this country is still privately owned, despite the ownership of the U.S. Forest Service. Statistics show that 48 percent of that is owned by people who are 65 years old or older.

In our personal study on our ownership, we have managed to eke out a 2.5 percent return on our timberland investment over the last 50 years, on average.

The difficulty within the current Tax Code system are these adjusted gross income figures, where if you are land rich but cash poor, you cannot possibly take advantage of the provisions in current law.

Yet, the opportunity for that 48 percent of forest land-owning Americans who are getting ready to push their land through an estate tax system that, despite last week's bill, comes back in 10 years, and therefore we cannot plan for it. It is very difficult. You need to make that permanent.

The opportunities in what you are considering today would be tremendous. The opportunity for people who want to make permanent their family's ownership/stewardship and create that legacy under a system that currently does not allow them to, I think the opportunities are tremendous.

The CHAIRMAN. All right.

Mr. Ackelson?

Mr. ACKELSON. In Iowa, most of our easements are done with current landowners and not buyers, although we are seeing more of that as well. So, helping devise incentive that allow current landowners to extract some of their equity out through the Tax Code is extremely helpful, helping offset other income, and keep

that land in its current use. It may be, frankly, the only way to be able to pass it on through the families.

There are other things buried inside some of the programs in addition to the Tax Code that I think are important. Most donations made by landowners or individuals dealing with land are really bargain sales rather than outright gifts.

So, being able to have higher deductions, more carry-forward, whether it's extending the deduction of the AGI up to 50 percent, or extending the carry-forward of the deduction from 6 years to, say, 10 or more, allows those landowners to get some value out of that equity that they have.

The other thing, is that some of the Federal programs that require a match, such as, let me say, the Farmland Protection Program, which is one that provides funds to acquire conservation easements. Frankly, I think if we are going to protect the critical lands, not only in our State but around the country, we cannot rely entirely on donated easements. We have got to be proactive and look at which ones should be acquired.

Under that program, for example, it requires a 50 percent match, hard dollars, cash, by someone to make that happen, whether it is a local government or a nonprofit entity. Allowing landowners to bargain sale those easements and having the value of that easement contribution show as the match, would accelerate that program greatly as well.

So, ways of looking how we can use those deductions more effectively, but certainly we have got to remember that most landowners truly are land-rich, income-poor. This is a way of extracting equity for all landowners of all scales and sizes. Let us provide them additional incentives to help match local and Federal incentives.

The CHAIRMAN. All right. Thank you, Mr. Ackelson. My time has expired. Next time around, I will let you answer that, Mr. Kennedy.

Senator Grassley?

Senator GRASSLEY. I think I will be ploughing, a little bit, the same ground you did. But I want to ask, particularly Mark because of his experience in Iowa, and not necessarily limit it just to Iowa.

Now, it is my understanding, Mark, that the Natural Heritage Foundation has gotten most of its land and conservation easements in outright donations, and that Iowa landowners have donated about \$11 million in easements.

What could the U.S. Senate do in order to promote further contributions of this kind?

Mr. ACKELSON. Thank you for the question. Let me reemphasize some of the things I just mentioned.

Certainly, expanding the contribution deduction on appreciated lands from 30 percent to at least 50 percent, either of sale of conservation land outright or interest in land such as conservation easements.

Extending the deduction carry-forward would also help. So, for example, now, on a contribution, you can carry forward what you cannot use up to an additional 5 years. So, extending that would be extremely helpful.

Eliminating the capital gains on the sale of conservation lands or easements on lands, realizing what we are gaining is public benefit and we ought to be providing additional public incentive there.

Again, I would come back to allowing landowners, especially, to contribute a portion of the value of their land and allowing that to be matched for such programs as the Farmland Protection Program.

Senator, the reality is that, although donations are extremely important and they always will be in the scheme of things, we also have to look at how those work in combination with programs that purchase conservation easements.

So, certainly extending the deductibility of contributions of easements is important, but also looking at ways which we can provide incentives for those landowners in local governments who need to acquire easements would be helpful.

Senator GRASSLEY. Mr. Kennedy, I would like to have you think about a portion of a bill that Senators Baucus, Conrad, Lincoln, and myself have put in. S. 312. It takes care of the problem of IRS treatment of CRP payments like their self-employment income. It proposes to treat it as income from rental real estate. Would that be helpful, or is that a problem today? Maybe I ought to ask it that way.

Mr. KENNEDY. Senator, it is a problem. It would be very helpful. I appreciate you all co-sponsoring the bill. It would help in that more landowners in the program would be more apt to go into CRP than they would now.

The other thing is, so many of the people that are under contracts now, when they went in, did not realize it would be treated this way. The department did not mean that the income from CRP payments should be farm income. It is no more than a lease/rental, like you lease your other properties. The department has allowed the amount of the leases to the local areas.

So, I think that if you have got a CRP contract, that the public has leased that land from you and you should call it land rentals.

Senator GRASSLEY. All right.

Mark, before you leave, I would like to have you speak about how the repeal that we had in our recent tax bills dealing with the Metropolitan Statistical Areas will help conservation programs around our State.

Mr. ACKELSON. Well, first of all, as you indicated earlier, Senator, now we have all of our State eligible under this program, which is extremely important. Maybe the best way to describe its impact, is to cite an example that we are working on now that has come about just because of this change in the Tax Code.

A piece of property in the eastern part of our State that has the headwaters' spring source of a trout stream near an area that is developed, but also has extremely diverse agriculture, is now in an estate with five heirs, three of which have strong conservation interests, two of which have no conservation interests.

Certainly being able to provide this estate tax incentive for them to donate an easement and receive some value for the estate to help offset what they might have received in revenue, may very well make this project work. That would not have occurred had we just had the previous incentives.

So, it will work. It will work on a variety of lands, whether they are agricultural or special natural resources lands, unique lands. We are delighted that you were able to get that changed. Thank you.

Senator GRASSLEY. Thank you, Mr. Ackelson.

Thanks to all of you for your testimony today on these very important issues, and the very important pieces of legislation that this hearing is reviewing.

As the tax code goes, conservation easements are a fairly new concept. Our witnesses today have described major accomplishments in just a few short decades. We have heard the stories of individual private landowners who have saved forests in Maine, wetlands in Louisiana, flood plains in Iowa, short grass prairie in Arizona and the Big Sky Country of Montana.

May we as the Finance Committee continue to consider tax code incentives to help private landowners preserve millions of acres of our children's heritage.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Grassley.

Senator Kyl?

Senator KYL. Thank you, Mr. Chairman.

Mark, you talked about my father's work on the Iowa Natural Heritage Foundation. In fact, I think you have a publication which he receives regularly and is very fond of.

Let me address my first question to Mr. McDonald, since I have spoken to him about this. We have talked about the charitable deductions being an important part of the Code right now. But that does not work for all ranchers. Would you explain why that is?

Mr. McDONALD. Well, frankly, as has been pointed out many times, agriculture is a low-return-on-investment business and many ranchers simply are not in a position to take advantage of many types of income tax incentives.

Certainly, the estate tax angle is appealing, but with the situation with the estate tax, we are not sure what kind of a selling point that would be on easements. There are other ways that you can protect your estate that might not be as costly for some ranchers.

Frankly, some ranchers simply need compensation to sell a conservation easement. We have sold conservation easements to eight different ranches. In every case, they took that money and were able to invest it back into their or other land to make their operations more sustainable into the future. It was accomplishing two things, protecting the land and making the operation more economically and ecologically sustainable.

So, I think this should not be discouraged and we should not simply look at donations, as important as they are.

Again, Mr. Ackelson made that point very well, that we need to encourage landowners to come forward and sell to conservation organizations, not to developers. One way to do that would be the proposal to reduce the capital gains 50 percent, but I like the idea of eliminating it in those particular cases.

If we could get that, I think it would be a great incentive, certainly for folks like my family, where our basis is so low, if we were

to sell a conservation easement we would take a huge capital gains hit.

Senator KYL. I appreciate that point. With respect to the deduction, I gather there are some places that simply do not have enough annual income for the deduction to be of great benefit to them.

Mr. McDONALD. That was the point I was trying to make.

Senator KYL. So there are a variety of things that we could do here, one of which would be to try to address that issue so that it could be stretched out. It could be advanced in terms of the amount, stretched out in terms of the time within which to claim it.

Mr. McDONALD. That would be helpful, too. Yes.

Senator KYL. The estate tax incentives.

Is there land being acquired as a result of the estate tax provisions now, do you know?

Mr. McDONALD. We have not acquired any land as a result of the estate tax provisions.

Now, as I mentioned, there are other avenues that landowners can take to try to protect their estates. We are continuing to explore that possibility. Now that the geographical limitations have been erased so we can explore the possibility, perhaps we will have some success.

Senator KYL. I should have let any of the rest of the panelists comment on these points, too. Would anybody else like to make a point? Mr. Kennedy?

Mr. KENNEDY. I might add, in my experiences with the conservation easements, it was mentioned earlier that the wealthiest benefitted more. I think if you analyzed this, and of course any program is not perfect, but in my case, I could have done a whole lot better selling to the developers. I think that is true in a lot of the cases which we have all mentioned.

I think there are so many farmers, so many ranchers that want to preserve. Not only do they want the cash out of it, but they want to preserve what they have had and keep it intact. So, I do not think it is always to the wealthy and particularly for the money.

Senator KYL. Incidentally, if there were some way to do it, I am sure that Arizona would be happy to take some of those extra wetlands that you have. [Laughter.]

Mr. KENNEDY. That is not a problem for us.

Senator KYL. We do not have near enough. But Mr. McDonald pointed out that that is where some of the private land is, is around those very valuable little water spots. We want to be sure that we can preserve and conserve those to the maximum extent possible.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Snowe?

Senator SNOWE. Thank you, Mr. Chairman.

I thank all the panelists here today for really making some very valuable recommendations in terms of how we can approach this crucial issue for the future.

Hopefully, in the short term, we can address this issue as opposed to postponing it for the long term. I think what you said, Mr. Ackelson, is that we have to be aggressive in our efforts for land

conservation, because otherwise we are going to lose this land forever. Once it succumbs to a bulldozer, it is gone forever. So, it is something that we have to address.

Steve, obviously you represent a very unique situation, as you mentioned in your testimony as well, about the fact that your company decided to go with a private entity in negotiating the largest-ever conservation easement project in the country.

What was the bureaucratic inflexibility that you were referring to? What made it difficult, if not impossible, to do it with a governmental entity, and is that something we should be addressing at the Federal level, or was this more at the State level? What were the problems inherent with going that route?

Mr. SCHLEY. At the Federal level, the biggest problem is there is a kind of a top-down mentality where you do not get the opportunity for true local decision making and local control. So, quite frankly, we never even considered making a transaction with the Federal Government.

We did entertain the idea of working with the State government, but the State government artificially—there is no policy anywhere in the State, but the current administration, probably justifiably but somewhat artificially—created some parameters that any easement must fall under.

There were quid pro quos. If we are going to be involved and we are going to help you do this, we need you to include the following provisions in your transaction. They were not provisions that we were willing to grant.

They had no real effect on the long-term conservation of the property. It was primarily, they wanted to ensure permanent public access to all of our private lands for whatever purposes permanently into the future, and we were not willing to do that.

The private parties recognized that all of the ecological conservation opportunities could be maintained, and perhaps even enhanced, without this guarantee of permanent public rights of use and access, and sometimes over-use that comes, so did not enforce that requirement on us.

So we were very careful about the things that we were willing to talk about, the things that we were willing to negotiate on. In our case, governmental entities simply could not go there, or would not go there.

Senator SNOWE. So were there things available to you in the Tax Code that might not have been available to somebody else or that was not useful enough to others that ultimately would lead towards developers buying the property?

Mr. SCHLEY. In our case, we are as much governed by fiduciary law as we are by tax law because, over the 160 years, a great deal of the land has passed into various forms of trusts which, simply, by fiduciary law, cannot grant or contribute an easement.

But within the Tax Code the best opportunity, as I look at the other private landowners who are considering these kinds of provisions, would be this capital gains tax provision, the opportunity to recognize, when you have bought land in 1840, and its current basis, even after adding in accretion and deducting depletion, is still less than \$1 per acre, in many cases less than 10 cents per acre.

Capital gains is going to eat you up when you go to sell that land for conservation purpose, or to a real estate developer. If you are going to get twice as much land from a real estate developer, that pays for your capital gains tax.

So the opportunity to reduce that capital gains tax penalty, if you will, for selling for conservation would be a tremendous incentive for landowners.

Senator SNOWE. As you know, Mr. Chairman, and I am sure you saw it, Steve, the Maine newspaper *Statewide* on Sunday, talking about, what they called "kingdom buyers," magnates who snap up huge tracts of Maine wilderness, causing conservationists to worry, as prices soar, that we will lose the ability to have access to this land.

We are talking about thousands and thousands of acres that are now being bought up for far more than I should say that you granted that you were willing to accept for the acreage and conservation easement, which was, as I understand it, approximately \$37 per acre for the conservation easement.

That is far below anything that could ever be sold in Maine, or would be sold, on a private basis. I think that was very commendable on your part for being willing to accept such a low dollar amount per acre.

Mr. SCHLEY. Without some landowner willingness as a part of the equation, the conservation community will never be able to compete with the developers. That is a fact.

Senator SNOWE. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. That is a very good point. I appreciate your both drawing that out so well.

Mr. Kennedy, I would like to talk to you a little about a problem in the Tax Code. As I understand it, any payments received under the Partners for Wildlife Program are taxable currently, whereas payments received under other conservation programs administered by the Department of Agriculture, under the current law, are not treated as taxable income. Does that make any sense, that distinction?

Mr. KENNEDY. Well, it really does not. As far as Partners for Wildlife, which I think is a great program, it has worked well for the small farmer especially. If you compare it to the other programs, it is one of the best programs that we have. I think that that should certainly be looked at.

The CHAIRMAN. Well, we are going to more than look at it. We are going to try to eliminate that status.

Mr. KENNEDY. Good. Thank you.

The CHAIRMAN. I have a story about this very issue. A few years ago I was working on a project in Montana. I go out—other Senators do this, too—and just show up at 8:00 in the morning with my sack lunch, and I am there to work all day long, not to watch, but to work. One day we were on a Blackfoot Challenge Project, on the Blackfoot River in Montana, and basically the local folks there, the ranchers, Trout Unlimited, and the community were all trying to figure out how to comply with the Endangered Species Act.

So they decided they wanted to change some of the channels of a stream there on this fellow's ranch to allow bolt trout to go up-

stream to spawn, to help avoid the problems that they otherwise might face down the road with the Endangered Species Act.

A few people tried to get the higher-ups at the Fish & Wildlife Service and the Montana Department of Fish, Wildlife, and Parks to agree to this project. Just as you might imagine, it got all stuck in red tape and paperwork, and nothing ever happened.

So the folks on the land said they were going to take this into their own hands and they were just going to do it. One of the persons who donated his time was a heavy-equipment operator in the town of Lincoln, Montana, and he provided the equipment to help change this channel around. Lo and behold, that in-kind contribution was treated as taxable income to these folks.

It just made no sense. Particularly, here is an effort, people trying to do what is right locally and on a community basis, all sharing. Again, it was the Trout Unlimited folks, it was ranchers, and people from the community, even some Fish & Wildlife Service personnel donated their time. But that strikes me as making no sense whatsoever, and we will do what we can to change that.

Mr. KENNEDY. Mr. Chairman, if I may go back to the Wetland Reserve. I am in Louisiana, where we have done so much of it. We have been talking about conservation easements here a lot. But the Wetland Reserve Program is one of the best programs that has come out of this country. You have got to be in the mainstream of it and see what is happening to really appreciate it.

In so many cases in my area, you have got a farmer that has 10 percent of an area that is non-productive. What the Wetland Reserve Program has done, is it gives that farmer cash in his pocket that he so badly needs in today's agriculture.

It also gives him an annual income, with recreational value from all types of hunting, mainly waterfowl, today. It gives him a great annual income. If you tie all this together, it is a great program. Again, I would urge that we could reactive this.

The CHAIRMAN. Well, I appreciate that very much.

During this hearing while some of you were speaking, it dawned on me that perhaps a much greater use of conservation tools might be a partial solution to the agricultural problems that we are facing. That is, the price problems we are also facing for some commodities, wheat, feed grains, and so forth.

The degree to which this is a practice, that is, much more use of conservation tools worldwide, could help very significantly. I would not be surprised if, on down the road, there were not more worldwide agreements, efforts, tax treatment, whatever it might be, to help promote, and stimulate, and give incentives to more conservation.

Clearly, one of the big problems facing commodities today is just the over-production worldwide, and export subsidies, and so on, and so forth. It is very complicated, but this might be an additional tool. In addition to helping the landowners, it would help the land stay as it was intended to be instead of subdivided too much.

It might also help, in a small way, with the problems that commodities producers face today and the low prices that they have today. I do not know, but I think it is worth pursuing.

Second, these are all great ideas you are talking about and I favor them. It is just a matter of trying to figure out a way of

where we fit things in. We may have a budget surplus, we may not. But, once projected, let us hope that those projections are accurate.

In the next weeks and months, let us see what we can do to get some of these suggestions enacted because they are good ideas and they are needed for the country.

With that, the hearing is adjourned.

[Whereupon, at 11:25 a.m., the hearing was concluded.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF MARK C. ACKELSON

Good morning, Mr. Chairman, honorable committee members and especially Senator Grassley. Thank you for the invitation to testify today regarding conservation easements, a public-private partnership for natural resource conservation. My name is Mark Ackelson. I am President of the Iowa natural Heritage Foundation and one of the founders and former Chair of the Land Trust Alliance.

The Iowa Natural Heritage Foundation was created in 1979 by leaders from Iowa's business community to bring the support of the private sector to natural resource conservation issues in Iowa. Over 5600 donors support us. And we are pleased to count among our loyal supporters, Senator Grassley and his wife, Barbara who have been members since 1983. We view protection and restoration of Iowa's natural resources as an important investment in the future of our state, quality of life, health and economic well being.

The Foundation is one of the more than 1,200 nonprofit land trusts that have been created throughout the United States. Every state now has at least one land trust. Iowa, for example, has 7 and Montana has 13. Land trusts are local non-profit organizations created by local citizens and dedicated to working with private landowners on land conservation within each of their communities. The Colorado, California and Wyoming cattlemen's associations have formed land trusts. Many land trusts are oriented toward preservation of agricultural lands; others have been formed to protect wetlands and other wildlife habitats. Others protect historical sites, including civil war battlefields and archeological areas.

These land trusts work together through our national association, the Land Trust Alliance.

Each land trust organization is responding to important local needs and using the tools available through voluntary protection. These tools include acquisitions of land by fee title and conservation easements using voluntary methods, public and private funding and incentives provided by local, state and federal taxing authorities. Federal tax incentives are a crucial element of the formula for preserving important lands throughout our country.

A conservation easement is a less-than-fee ownership interest in real property. Landowners who grant conservation easements give up some of their full ownership rights. The result is a shared ownership of that land that guides its future use and management.

According to *The Landowner's Guide to Conservation Easements*, a book released earlier this year with support from the American Farm Bureau Federation, "Conservation easements are becoming more popular each year among owners of open-space lands. They provide a means to save taxes, preserve the inherent productivity and character of property, and insure that the lands remain in their current use forever, free from the threat of development."

According to the Land Trust Alliance, the land trusts in the United States held more than 2.4 million acres of conservation easements in 1998, and we expect an updated census of land trusts being conducted this year to show considerable growth in that number. Over the past decade, the use of conservation easements by local and regional land trusts has grown 1.7 times faster than their acquisition of land in fee; and more than 2.7 times as fast as other forms of protection, including the transfer of lands to government conservation agencies.

Let me explain to you how important natural resource conservation is in Iowa and more specifically how tax incentives are being used and can be further enhanced. But first, you need to understand the Iowa landscape.

Iowa has one of the most altered landscapes in the country. We have lost 99.99% of our native prairie, which once covered approximately 85% of our state. We have lost 98% of our wetlands and physically eliminated approximately 3,000 miles of streams. In addition, last year the Environmental Protection Agency and Iowa Department of Natural Resources listed 157 water bodies as impaired. Recently expanded citizen and professional monitoring has begun to document other major water quality problems as well. These losses have not been without tremendous economic gain in the conversion to agriculture.

Ninety-eight percent of our land is privately owned. We are strong advocates of private property rights and responsibilities. Our public and private agencies are now working even more closely together with private landowners to help restore balance to our landscape. Protecting what we have and restoring a portion of what we have lost is our major challenge. Landowners are responding to this challenge.

Since our found in 1979 we have worked in partnership with landowners and other public and private agencies to permanently protect and restore over 65,000 acres of land in Iowa. Clearly, there is much more work to be done. We have been able to accomplish this work through partnerships with not only landowners and other agencies but also the general public, i.e. taxpayers, through tax incentives.

According to the American Farmland Trust, one million acres of agricultural land are converted annually to other uses. According to recent Iowa State University studies, Iowa, a state with extremely modest growth, is losing approximately 26,000 acres of agricultural land per year. The purchase or contribution of conservation easements on these lands can help guide growth and protect important natural resources and productive.

The Iowa Natural Heritage Foundation has completed over 60 conservation easements on 6,500 acres. All of these conservation easements were donated. The estimated value of these conservation easements is \$11 million. They were made possible because landowners wanted to see their special lands protected for future generations. Most of the lands remain in private ownership and on the local tax rolls. Landowners exercised their private property rights to insure the future integrity of these lands.

None of these donations would have occurred without the strong conservation ethic of the landowners that contributed the conservation easements. But most Iowa landowners are land rich and income poor, and many of them could not have afforded to make those donations without the deductibility of the fair market value for the donated easements under Section 170(h) of the Internal Revenue Code—it simply would not have been financially possible.

Many landowners in Iowa still cannot afford to donate conservation easements even with the current deductibility allowance and five-year carry forward provisions. Their land represents their principle asset for annual income and retirement. To make it possible for these landowners to make a commitment to conservation, we need to be able to give them more—by increasing the tax benefit to them of making a conservation donation, or by providing funds to purchase a conservation easement from them—or both.

The USDA's Wetland Reserve Program, WRP, is a voluntary conservation easement program. This program provides federal funds to acquire conservation easements from willing sellers on frequently flooded farmlands. Recent figures from the USDA's Natural Resource Conservation Service show that over one million acres have been restored and protected under this program since it was authorized in 1990. In addition, there are over 3,150 offers from landowners on another 562,000 acres. In Iowa alone, nearly 75,000 acres have been offered by over 700 landowners at an estimated cost of \$130 million. Purchase of these conservation easements awaits additional authorization and funding from Congress. Clearly this program is popular with landowners.

Another program that holds great promise in Iowa and elsewhere is the Farmland Protection Program. This program provides matching funds with local and state governments and non-profits to preserve agricultural land and open space.

A reduction or elimination of the capital gains tax on properties for conservation purposes would encourage many more landowners to take advantage of this conservation tool. In particular, it would encourage landowners who are thinking of selling their land to consider conservation as an option, and it would make scarce conservation funding go further. Section 126 of the Internal Revenue code exempts income from some conservation payments from taxation. Why not exempt the income from the sale of a conservation easement?

So, in conclusion, what can you do to encourage use of private property rights to attain public natural resource conservation goals?

1. Continue to support the nation's land trusts and encourage private landowner conservation;

2. Provide ample funding to the Wetlands Reserve Program and the Farmland Protection Program;
 3. Eliminate or reduce taxes on the sale of conservation easements and other property interests for conservation purposes; and
 4. Extend the income tax deductibility for donations of conservation easements or land, so that more farmers can afford to donate such easements.
- Thank you for this opportunity to appear before you today.

PREPARED STATEMENT OF HON. MAX BAUCUS

Before I get into the details of the hearing, I would like to take a few moments to comment on this historic, mid-session transition to majority. The Senate is made up of the same 100 members. We have different leadership, but we have the same faces in the chamber. That simple reality means that the Senate must operate in total bipartisanship. In a Senate so closely divided we must, in our approach to issues, seek to be closely united.

This also holds for the Finance Committee. While the Committee's agenda may change, the need for bipartisanship will not. Therefore, I hope to follow the example of my friend and colleague, Senator Chuck Grassley. During his Chairmanship, he served this Committee well. He led us through the tax debate with balance, fairness, and civility. Chairman Grassley, on behalf of all our members, I thank you for the honorable and professional way you have led the committee.

Now, let me turn to the subject of today's hearing.

In the wake of the big tax bill, you might be inclined to think this hearing is small potatoes. What's so important about tax incentives for land conservation? Here's how I see it. To my mind, tax incentives may be the next wave of success in the land conservation movement. They allow us to bring together landowners, conservationists, the federal government, and local communities to preserve our precious natural resources. They build public-private partnerships. And they encourage voluntary actions by private individuals who want to leave a legacy of natural heritage.

This hearing allows us to look at some of the details. It proceeds from the belief that the tax code has been an important incentive for land conservation. I think that premise is justified by the facts. Here's what the Land Trust Alliance tells us. In 1988, 600,000 acres of land were held by land trusts. By 1998, approximately 2.4 million acres were held. That's a more than four-fold increase in protected land over a decade. A lot of those donations of land were the result of incentives put into law in the 1970s and 1980s. First, Congress established an estate tax exclusion for conservation of land. Second, we allowed landowners to deduct the value of land conservation as a charitable contribution, limited to 30% of a taxpayer's adjusted gross income.

Today's hearing continues the work started by the tax subcommittee in a hearing last July. At that hearing, national organizations and large interests in land conservation gave testimony. Today, we will focus on local efforts. We will hear testimony from 5 witnesses involved on a local level in the stewardship and conservation of land across the country.

What do we want to accomplish? We want to find out what kind of conservation projects are happening. We want to find out how tax incentives have helped. We want to hear how they can be improved. I'll note that there are many types of land we may want to preserve. It may be crop- or range-land in Iowa or Montana or Oklahoma. It may be thick forests in Maine. It may be a wildlife habitat in Louisiana. Or it simply may be a place of beauty in Arizona or New Mexico. Whatever the resource, it needs to make economic sense for landowners to save the land. A bill that I have introduced, the Rural Heritage Conservation Act, would address this concern. I will ask the witnesses some questions about that bill later in the hearing.

Another area of land conservation is also worth noting and that is the purchase of conservation easements by governments. More and more, state and local governments are making purchases. In Montana, for example, Gallatin County voters just approved a bond issue to purchase conservation easements. And there may be ways to motivate more sales of land for conservation easements. Senator Jeffords and the Administration support such a proposal. I hope to learn from our panel about that idea as well.

I want to thank the witnesses for coming from across the country to be here today. The Committee is lucky to have you here.

Again, I thank Senator Grassley for his help in organizing this hearing. It is a pleasure working together.

PREPARED STATEMENT OF CHASE T. HIBBARD

Mr. Chairman and Members of the Committee, it is indeed an honor for me to appear before you today to talk about private land conservation. On behalf of the Montana Land Reliance, I thank you for holding this hearing and add special thanks to Chairman Baucus for the invitation to be here today.

I am a fourth generation rancher with roots going back to 1868 in Montana. The fifth generation is coming along and we hope that they will be willing and able to continue our family's legacy and tradition as Montana ranchers.

Farming and ranching is a critical part of the cultural heritage that makes Montana such a special place to live. Agriculture continues to be Montana's number one industry, 160% above tourism, which is number two. Most of the small towns and rural communities are dependent upon agriculture and the economic prosperity of the state is closely linked to the prosperity of agriculture. Unfortunately, it is in trouble.

Over the past twenty-five years, over 3 million acres of agricultural land have been lost to development in Montana alone. Many of these acres were lost when family farms, hit hard by tough times, chose to give-up their generations old farming operations and sold to developers in order to pay their outstanding debts.

Today, I want to outline a policy initiative we've been working on with Senator Baucus, and other Members of Congress, that could have a dramatic, positive impact on protecting open space, conserving private land and enriching the farm and ranch heritage that is such an important part of who we are as a people.

This legislation, Senate Bill 701, known as the "Rural Heritage Conservation Act," will expand the current conservation easement tax incentive program with an eye toward making the system work better for the bulk of real, working farmers and ranchers who would like to preserve their land for future generations but for whom the current system does not provide any meaningful incentive.

Before I give you an overview of the proposal, I'd like to give you some background on the work of the Montana Land Reliance.

The Montana Land Reliance is a private, non-profit land trust that utilizes conservation easements to permanently protect Montana's private lands. Founded in 1978, the Montana Land Reliance has been able, with the help of over 380 landowners, to protect just over 365,000 acres in Montana. This represents roughly 20 percent of all protected land by local or regional land trusts across the entire United States. This protected land includes 700 miles of stream and river frontage, over 140,000 acres in the Greater Yellowstone Ecosystem (Land that surrounds Yellowstone National Park).

All of this protection has been done with private conservation easements, typically with ranchers and farmers. At this point in The Montana Land Reliance's existence, we're finding that Montana's private landowners are facing incredible economic, estate and social pressures to develop their land. A vast majority are what we like to call "land rich, but cash poor." They typically hold a tremendous resource that they can't afford to keep. We need to find additional tools to help them keep their land in agricultural production and enable them to pass it on to their children.

So, how would S. 701 turn this around?

We believe the current tax code should be amended in a simple but meaningful way to significantly enhance private conservation efforts in Montana.

The heart of S. 701 is an expanded deduction that will allow qualified farm and ranch filers to donate a conservation easement to a qualified land trust. Put simply, the current limitations on deductions from gross income provide little real incentive for working farm and ranch households to place a conservation easement on their property. The issue is income. Too often, farmers and ranchers do not have an income level that allows them to use the current statutory deduction. This is not generally a problem for more affluent taxpayers, who are able to fully utilize an equivalent deduction amount within the existing carry-forward period.

The relatively small deduction that working farmers and ranchers can currently obtain by donating a conservation easement does not in any way equate to either the potential income they have forfeited by not selling their land for development or the value the public has gained from the donation. As a result, fewer and fewer farmers and ranchers are donating conservation easements and protecting their land for future generations. We've already creamed the crop, so to speak, under current law.

In our view, an expanded deduction and carry-forward period would turn this around in short order. This change in the law will equalize the tax treatment that potential donors of easements receive and will significantly enhance efforts to conserve critical farm and ranch lands.

By the way, to protect against abuse, S. 701 provides that only filers with a majority of their income from farm and ranch operations would qualify for the expanded deduction. This targets the incentive to the taxpayers who are working the land and not those with substantial income unrelated to active farming or ranching.

Second, we believe it is important to level the playing field between corporations and individuals. As you know, many farm and ranch operators do business as C-Corporations. S. 701 would equalize the tax treatment between those C-Corporations and individual filers who derive more than 50 percent of their income from farming or ranching.

This affects me personally as our ranch operates as a C-Corporation. A 10% deduction would not be a sufficient incentive to donate an easement. The expanded deduction and longer carry-forward period contemplated by S. 701 provides a much greater incentive and would allow a significant enough incentive to make the donation of an easement much more attractive.

The Montana Land Reliance estimates that in Montana alone there are 40,000 acres of land in the hands of operators using the C-Corp structure who have already identified to us that the 10% limit is a barrier to their contributing an easement.

Third, S. 701 would eliminate the 25-mile radius provision that provides additional estate tax relief to landowners only within a 25-mile radius of a metropolitan area. Here, I would appreciably note that the most recent tax bill passed by the Congress and signed into law repeals the radius rule, as part of the estate tax changes that were made.

Elimination of the radius rule will be a significant improvement to current law for many who are located close to metropolitan areas or national parks.

Taken as a whole, the Montana Land Reliance believes that the passage of S. 701 will increase participation in voluntary conservation easement programs in Montana by as much as 100% within the first year of enactment.

All of these tools can be added to the current conservation easement law. These ideas are simple, private enterprise solutions that we believe will have an immediate, positive impact on private land conservation in Montana, and in other states.

We believe encouraging private land conservation efforts is the right thing to do, and we sincerely thank you for taking a leadership role on this important issue. Here, we have an opportunity to provide landowners and the land trust community with the tools needed to take a meaningful step forward in preserving the very heart of America.

It is important to rebalance the tax code in the very near future so that the working farming and ranching families have more of an equal financial incentive to donate conservation easements, if that is in fact their predisposition. If we wait very much longer, the heart and the wallet will go in separate directions, with these ranching families who often have the most pristine open space, becoming forced sellers for development.

Attached to my testimony is a list of land trusts in the United States that have endorsed S. 701.

Enclosures: (1) Biography, (2) Land Trust List

CHASE T. HIBBARD
P. O. Box 835
Helena, MT 59624

EDUCATION

Helena High School, Helena, MT	Graduated 1966
Amherst College, Amherst, Mass.	B.A. 1970-Political Science
University of San Francisco, San Francisco, CA	Attended M.B.A. program 1972

WORK

Crocker National Bank, San Francisco, CA
1972-1976 Corporate Lending Officer
Sieben Live Stock Co., Helena, MT, President
1977-Present
Sheep and cattle ranch
Hibbard Management Company, Helena, MT, President
1984-Present
Ranch management services
Appraisals
Consulting
1993-2000 House of Representatives, State of Montana
Representative for House District 54

CIVIC

Montana Club - Past President
Montana Ambassadors
Montana Science and Technology Alliance - Past Chairman
(a State-funded venture capital company which makes seed capital loans to
high technology businesses and investments in research and development in
Montana)
Montana Taxpayers Association - Chairman
Montana Stockgrowers Association - Past Chairman, Taxation Committee
Montana WoolGrowers Association - Past President
American Sheep Industry Association-Board of Directors
National Referendum (Checkoff) Campaign Chairman
National Sheep Improvement Program Technical Committee-Chairman
National Sheep Improvement Program-Vice President
US Targhee Sheep Association - Past President
Candidate for Lt. Governor - 1988

Member - Montana House of Representatives, Four Terms-
Chairman House Taxation Committee
Vice-chairman Revenue Oversight Committee
Chairman Interim Committee on Revenue and Taxation
Norwest Bank Helena-Community Board of Directors
Montana Power Co. - Past Member of Board of Directors
Montana Land Reliance - Original Board of Directors and Co-founder
Devil's Kitchen Resource Management Group - Co-founder
Shodair Hospital - Past Member of Board of Trustees
Montana Chamber of Commerce - Past Director
Montana Electric and Gas Alliance-Board of Directors
Governor's Montana Wolf Management Advisory Council, Chairman

AWARDS

1993 Cooperator of the Year, Cascade County Conservation District
1994 Excellence in Grazing Management Award - International
Mountain Section, Society for Range Management
1999 National Alliance for the Mentally Ill Distinguished Legislator Award

PERSONAL

Have two grown sons, Marshall who attends the University of Montana in Missoula
and Tyler who currently resides in Helena.

Enjoy nordic and downhill snow skiing, fishing, hunting and motorcycling.

<u>Land Trust Name</u>	<u>State</u>	<u>Date Rec'd</u>
Iowa Natural Heritage Foundation	Iowa	4/1/2001
American Farmland Trust	D.C.	4/24/2001
The Lumber River Conservancy	North Carolina	5/4/2001
Missouri Farmland Preservation Trust	Missouri	5/4/2001
The Conservation Trust	Illinois	5/7/2001
Methow Conservancy	Washington	5/7/2001
Gallatin Valley Land Trust	Montana	5/7/2001
Kinnickinnic River Land Trust	Wisconsin	5/7/2001
The Land Trust of Huntsville and Northern Alabama	Alabama	5/7/2001
Red Tail Conservancy	Indiana	5/7/2001
Bayfield Regional Conservancy	Wisconsin	5/7/2001
Northern Prairies Land Trust	South Dakota	5/7/2001
Hennepin Park Preservation Society	New York	5/7/2001
Open Space Project	New York	5/7/2001
Land Preservation Trust, Inc.	Maryland	5/7/2001
Jefferson Township Land Conservation Association	Ohio	5/7/2001
Northern Virginia Conservation Trust	Virginia	5/7/2001
Land Trust for Central North Carolina	North Carolina	5/7/2001
Leelanau Conservancy	Michigan	5/7/2001
Middle Park Land Trust	Colorado	5/7/2001
Audubon Society of Greater Cleveland	Ohio	5/8/2001
St. Clair County Greenspace Foundation	Illinois	5/8/2001
Quail Ridge Wilderness Conservancy	California	5/8/2001
Genoa Township Land Conservancy Association	Ohio	5/8/2001
Tinkers Creek Land Conservancy	Ohio	5/8/2001
Land Preservation Society of Norton	Massachusetts	5/8/2001
Landcaster Farmland Trust	Pennsylvania	5/8/2001
Open Land Conservancy of Chester County	Pennsylvania	5/9/2001
Tensas Conservancy Coalition	Louisiana	5/9/2001
Loon Echo Land Trust	Maine	5/9/2001
Maine Farmland Trust	Maine	5/9/2001
The Teton Regional Land Trust	Idaho	5/9/2001
Black Canyon Regional Land Trust	Colorado	5/9/2001
Grand River Partners	Ohio	5/10/2001

Green River Valley Land Trust	Wyoming	5/10/2001
Lower Shore Land Trust	Maryland	5/10/2001
Southwest Land Alliance	Colorado	5/10/2001
The PCC Farmland Trust	Washington	5/11/2001
Great lakes Bioregional Land Conservancy	Michigan	5/11/2001
Wood River Land Trust	Idaho	5/11/2001
Peconic Land Trust	New York	5/11/2001
Genesee Valley Conservancy	New York	5/11/2001
Bitter Root Land Trust	Montana	5/11/2001
Feather River Land Trust	California	5/11/2001
Flanders Nature Center & Land Trust	Connecticut	5/11/2001
Wisconsin Farmland Conservancy	Wisconsin	5/11/2001
Covenant Community Land Trust	Maine	5/16/2001
Crested Butte Land Trust	Colorado	5/16/2001
Carroll County Land Trust	Maryland	5/16/2001
Sippican Lands Trust	Massachusetts	5/16/2001
Nantucket Land Council	Massachusetts	5/16/2001
Bedminster Land Conservancy	Pennsylvania	5/16/2001
Grand Traverse Regional Land Conservancy	Michigan	5/16/2001
American River Conservancy	California	5/16/2001
Harwinton Land Trust	Connecticut	5/16/2001
Franklin Land Trust	Massachusetts	5/16/2001
Deerfield Land Trust	Massachusetts	5/16/2001
Northeast Wisconsin Land Trust	Wisconsin	5/16/2001
Finger Lakes Land Trust	New York	5/16/2001
Sheffield Land Trust	Massachusetts	5/16/2001
Newton County Land Trust	Georgia	5/16/2001
North Branford Land Conservation Trust	Connecticut	5/16/2001
Sonoma Land Trust	California	5/16/2001
Keep Sedona Beautiful	Arizona	5/16/2001
North American Land Trust	Pennsylvania	5/16/2001
Worcester Environmental Trust	Maryland	5/17/2001
Five Valley Land Trust	Montana	5/17/2001
The Oblong Land Conservancy	New York	5/17/2001
The 300 Committee	Massachusetts	5/17/2001

Kachemak Heritage Land Trust	Alaska	5/17/2001
Rancho Mission Viejo Land Conservancy	California	5/17/2001
Prickly Pear Land Trust	Montana	5/17/2001
Delta Land Trust	Mississippi	5/17/2001
Flathead Land Trust	Montana	5/18/2001
Chippewa Watershed Conservancy	Michigan	5/18/2001
Lebanon Valley Conservancy	Pennsylvania	5/18/2001
Greenbrier Land Conservation Trust	West Virginia	5/18/2001
West Virginia Land Trust	West Virginia	5/18/2001
Greenbrier River Watershed Association	West Virginia	5/18/2001
North Central Conservancy Trust	Wisconsin	5/21/2001
Keweenaw Land Trust	Michigan	5/21/2001
Whitewater Valley Land Trust, Inc.	Indiana	5/21/2001
Chattooga Land Trust	Georgia	5/21/2001
Bethany Land Trust, Inc.	Connecticut	5/21/2001
Delaware Highlands Conservancy	Pennsylvania	5/22/2001
The Land Trust for Santa Barbara County	California	5/22/2001
Foothills Land Conservancy	Tennessee	5/22/2001
Monterey County Agricultural and Historical Land Cons	California	5/23/2001
Save Open Space	Montana	5/23/2001
North Branch Land Trust	Pennsylvania	5/23/2001
Medina Summit Land Conservancy	Ohio	5/23/2001
Vermont Land Trust	Vermont	5/25/2001
Blue Ridge Foothills Conservancy	Virginia	5/29/2001
The Westerly Land Trust	Rhode Island	5/29/2001
North Camden Land Trust	New Jersey	5/29/2001
Mountains to Sound Greenway Trust	Washington	5/29/2001
Montana Land Reliance	Montana	5/30/2001
The Nature Conservancy	Montana	5/31/2001
Heritage Foundation of Franklin & Williamson County	Tennessee	5/31/2001
Rocky Mountain Elk Foundation	Montana	5/31/2001
Land Trust for the Mississippi Coastal Plain	Mississippi	5/31/2001
Land Trust of the Treasure Valley	Idaho	6/1/2001
Tennessee Parks & Greenways Foundation	Tennessee	6/1/2001
Upstate Forever	South Carolina	6/4/2001

Shasta Land Trust	California	6/4/2001
New Fairfield Land Trust	Connecticut	6/4/2001
Nushagak/Mulchatna-Wood/Tikchik Land Trust	Alaska	6/4/2001
Mississippi Land Trust	Mississippi	6/4/2001
North Dakota Natural Resources Trust	North Dakota	6/5/2001
South Cumberland Regional Land Trust	Tennessee	6/5/2001
Volcan Mountain Preserve Foundation	California	6/6/2001
Ogden Valley Land Trust	Utah	6/6/2001
Lula Lake Land Trust	Tennessee	6/7/2001
Utah Open Lands Conservation Association	Utah	6/7/2001
Southeast Alaska Land Trust	Alaska	6/7/2001
Delaware Nature Society	Delaware	6/7/2001

PREPARED STATEMENT OF W. ELTON KENNEDY

Chairman Baucus, Ranking Member Grassley, my Honorable Senator John Breaux and distinguished committee members. My name is Elton Kennedy and I live in Mer Rouge, Louisiana. I'm in the agricultural business which includes crops such as rice, cotton, corn, wheat, soybeans, milo, as well as timber and wildlife. My investments in land are located in Alabama, Arkansas, Colorado, Louisiana, Mississippi, Oklahoma and Texas. I am currently participating in WRP in Louisiana, Mississippi and Texas and CRP in Louisiana. I have placed conservation easements on property in Colorado. Also, I have sold the United States Fish & Wildlife Service numerous properties in Louisiana, some directly and some indirectly through conservation organizations.

I have lived in an era that has seen most of our great Mississippi River alluvial flood plain converted from bottom land hardwoods to crop production. This huge conversion of approximately 20,000,000 acres to only 4,000,000 acres of remaining bottom land hardwoods happened in less than 35 years. It was due to not only to high soybean prices, but also to the encouragement of a society that did not realize the consequences of its actions. Over the last decade, we have seen many individuals go bankrupt in the farming business because of this lack of foresight.

As is the case with many farmers, I try to utilize my land for its highest and best use in order to make it economically viable. Many years ago, I realized, my highest and best use was not always crop production. Due to a high recreational demand by the public and the compatibility with rice farming, many of us in northeast Louisiana and other parts of the Lower Mississippi Valley have found that waterfowl hunting offers an alternative that can be economically rewarding. Waterfowl hunters are willing to pay for hunting in rice or other flooded agricultural fields. Other types of wildlife oriented recreation offer similar possibilities with an incentive to the landowner.

I might add that not only do waterfowl benefit from this new attention to wetland habitat, but shorebirds and wading birds as well. Water control structures and technical assistance for habitat development are being furnished through the United States Fish and Wildlife Service Partners for Wildlife Program. This mix of rice farming and waterfowl habitat development has reduced herbicide usage, helped recharge aquifers, and improved water quality.

During the late 1980s I began to take advantage of conservation programs offered by the United States Department of Agriculture (USDA), Fish and Wildlife Service,

and other nonprofit conservation organizations like the Rocky Mountain Elk Foundation, and Ducks Unlimited. Utilizing conservation easements and technical assistance from the respective agencies has allowed me to diversify my agribusiness interests and to put more reliance on the natural productivity of the land on a more sustained basis.

Conservation easements such as the Wetland Reserve Program (WRP), Conservation Reserve Program (CRP), and the Partners for Wildlife Program have enabled me to economically convert marginal farm land to wildlife habitat. This conversion has included former cropland that is now restored wetlands and former overgrazed pasture that is now prime elk range. Needless to say that as a former Board Member of the Louisiana Nature Conservancy, Ducks Unlimited Life Sponsor, and an active member of Safari Club International, Wild Turkey Federation, and the Rocky Mountain Elk Foundation, this perpetual restoration has given me great pleasure because of my strong interest in wildlife conservation.

I must say, however, that without the financial considerations of these conservation incentives, I would not have been able to make the switch in many cases. Even today, many of these USDA programs such as WRP are unfunded and the current tax deduction for qualified agricultural producers does not provide meaningful incentives for landowners to donate an easement. The result of this current situation is that tremendous conservation benefits are missed and we continue to support marginal agricultural operations on lands that are far better suited to conservation.

Unfortunately, not all of us in Louisiana own or lease land that is suited for both rice and commercial duck hunting. Most of us, however, do own land that can be restored to woodland for the benefit of a whole host of wildlife species including migratory song birds whose numbers are on the decline, resident game animals, and the threatened Louisiana black bear. Landowners just need the incentive to make this transition. After all, 74.0% of all wetlands are owned by private landowners.

I own a substantial acreage of farmland around Tensas River National Wildlife Refuge which is located in northeast Louisiana. This historic tract of bottom land hardwood was the last home for the now extinct ivory-billed woodpecker, and some of the last occupied range of the red wolf, and Eastern cougar in Louisiana. Today it has been identified as an important migratory bird zone for expansion of habitat for many species of neotropical song birds whose populations are being reduced globally. Utilizing WRP and conservation easements, I have already enrolled or I'm in the process of restoring most of this acreage to bottom land hardwoods and wetlands.

My restoration, along with other private landowners will increase the base size of the Tensas woodlands, thus increasing the productivity of many interior sensitive species of song birds by reducing the effect of fragmentation. The brown-headed cow bird parasitizes the nests of many of these species if they are in fragmented habitat. In addition the threatened Louisiana black bear will benefit from increased habitat.

In my home state of Louisiana, the WRP has enrolled 140,000 acres of marginal farm land for the benefit of soil conservation, water quality, air quality, a host of fish and wildlife species, and has benefited the American tax payer by reducing the financial burden of supporting agriculture that was marginal at best. The tragedy of this program is that in Louisiana alone another 500 applicants representing an additional 102,000 acres cannot be enrolled because the program has capped out and no funds or authority exists to continue this valuable program next year.

Government programs cannot provide all the protection or restoration that is needed. We must utilize a combination of conservation easements and government programs to restore and to protect unspoiled areas. I have personally donated 3,400 acres of my Colorado ranch to the Rocky Mountain Elk Foundation's conservation easement program. This critical migration and winter range will be perpetually protected as open space. We must increase tax advantages to the landowner to make this program and similar programs offered by The Nature Conservancy, Ducks Unlimited, the National Wildlife Federation and others reach their full potential.

I've been fortunate to be able to diversify my agribusiness operations and to take advantage of these conservation programs, but others have not been so fortunate and bankruptcy continues to be a problem in the farming community on marginal land. We desperately need more conservation programs and technical assistance to diversify our operations and at the same time protect and restore our important ecological communities. Long term protection and restoration of marginal farmland are so important to not only protecting the economy and the well being of the family farm, but protecting the environment as well.

I urge you to provide adequate incentives for all landowners to protect existing wildlife habitat and to restore marginal farmland that was once part of our Mississippi Alluvial Plain. It will provide for a cleaner environment, provide habitat for wildlife, reduce the hypoxic zone in the Gulf of Mexico, and reduce the tax payers

burden by reducing crop insurance, disaster payments and other associated costs for keeping marginal farmland in production.

PREPARED STATEMENT OF BILL McDONALD

Thank you, Mr. Chairman, Senator Grassley and members of the Committee, for the opportunity to appear before the Committee today.

I am Bill McDonald, Co-Executive Director of the Malpai Borderlands Group (MBG). The Malpai Borderlands Group is a grassroots, landowner-driven nonprofit organization attempting to implement ecosystem management on nearly one million acres of virtually unfragmented open-space landscape in southeastern Arizona and southwestern New Mexico. Our goal is “. . . to restore and maintain the natural processes that create and protect a healthy, unfragmented landscape to support a diverse, flourishing community of human, plant and animal life in our borderlands region. Together, we will accomplish this by working to encourage profitable ranching and other traditional livelihoods which will sustain the open space nature of our land for generations to come.”

The Malpai Borderlands

The Malpai Borderlands area includes the San Bernardino Valley, the Peloncillo Mountains, the Animas Valley and the Animas Mountains. It is roughly pyramid-shaped, with the base of the pyramid running just east of Douglas, Arizona to the far eastern boundary of the 500-square mile Gray Ranch in New Mexico. The apex is just south of Rodeo, New Mexico, on the Arizona-New Mexico state line, and runs to the Mexico border.

With elevations ranging from 3500 to 8500 feet, this diverse area of mountains, canyons, valleys and riparian corridors. Several rare, threatened and endangered plant and animal species are found here. It is the only place in the U.S. where Gould's turkey and white-sided jackrabbits occur naturally. It is also home to popular big-game species such as Coues deer, mule deer, pronghorn and Desert Bighorn sheep.

Perhaps the most remarkable feature of this huge landscape is that fewer than 100 human families reside on it. Many of the families who live there have been there for generations. Except for two small wildlife preserves, this is cattle ranching country.

In 1990 several area ranchers met at the Malpai Ranch in the San Bernardino Valley to discuss what we saw as a deteriorating situation. We were concerned about the resource we depend upon for our livelihoods and way of life—the diminishing quality of grassland for grazing. Fragmentation of the landscape, beginning with the subdivision of some ranchers on the fringe of our area, was also a looming threat. The inevitable result of the free market would seem to be 20-acre ranchettes. In 1994 we formed a nonprofit to bring ranchers and scientists together with partners including local counties, state land departments, federal land managing agencies, the Natural Resources Conservation Service, soil and water conservation districts, game and fish departments, the Desert Laboratory of the University of Arizona, The Nature Conservancy, the Animas Foundation and the University of New Mexico. The Malpai Borderlands Group now carries out a series of conservation programs and activities, including land restoration; endangered species habitat protection; cost-sharing range and ranch improvements; and land conservation projects.

I'd like to think that our private, citizen-based efforts at open-space preservation, support for a sustainable ranching way of life, and endangered species habitat protection are beginning to show good results. An encouraging sign of the health of our wildlife habitat was the recent sighting of a Mexican jaguar in the Peloncillo Mountains.

Conservation Transactions

Beginning in 1994 we have been involved in seven different land conservation transactions involving conservation easements totaling approximately 35,000 acres. The Finance Committee is no doubt familiar with provisions in the federal tax code that encourage the donation of easements to groups such as the MBG, which is qualified to accept such donations. However, the financial circumstances of typical ranchland owners often mean that they cannot afford to give easements away for tax benefits since they have little income to shelter. This is why Malpai Borderlands Group has had to pay for the land use easements in one of two ways.

First, we have purchased three of these easements outright for cash, with the purchase price agreed to by the MBG and the landowner and based on the appraisal of the current development value of the particular ranch. In those projects we were

fortunate to have raised funds as charitable contributions to pay for those projects. Second, we acquired the other four easements by trading grazing rights for the easements, under our GRASSBANK™ program. MBG raised private funds to pay the owners of a nearby ranch that had a supply of grass. The grass was used by the cattle of the ranchers who were willing to convey easements on their property to the MBG. The amount of grazing permitting was determined by the value of the easement conveyed, based on an appraisal of development value at the time of conveyance.

Each of these easements is individually crafted to meet the needs of the landowner and conservation goals of the MBG, which are primarily to prohibit subdivision, but often to encourage or prohibit certain activities affecting the health of the landscape. In the case of the GRASSBANK™ program, all of these easements contain an escape clause should government grazing policies make the goals of the easement unattainable. Thus, ranchers who can't continue ranching as a livelihood because of changed regulations of the industry would not be further penalized with loss of other economic use of their land.

Our experience with conservation easements is that they are useful for keeping land in compatible ranching use and for protecting land from habitat fragmentation and subdivision. However, they could be even more useful if we could provide a benefit to landowners who sell easements for conservation by reducing the capital gains tax on the sales. This would provide landowners with a higher net return for protecting their land.

Tax changes recommended by the Malpai Borderlands Group

We believe that there are a number of tax code changes that could enhance our conservation work.

First, we must remember that while farm and ranch land has generally appreciated greatly in value in recent years, income from farming and ranching is still relatively modest. Therefore, tax incentives to encourage landowners to protect their land must recognize that most farmers and ranchers are not able to take advantage of the charitable tax benefits for income that are currently available to other types of taxpayers. The financial benefit is simply not there because the landowner's annual income and tax liability is relatively low.

At the same time, because of the great appreciation in land values, the landowner faces a large capital gains tax on any sale that would reduce the net return to the landowner. In the case of the families in the Malpai Borderlands area, much of the land has been held by for several generations and has a low or no "basis" and a potential for particularly steep tax upon sale. Since the farm or ranch is often the only financial "nest egg" held by such owners, any reduction in the net after tax return from a sale will have a significant adverse impact on and often creates a barrier for the landowner to consider a disposition of his property.

For that reason, our primary and strongest recommendation is that Congress reduce the Federal tax burden on the sale of land, easements or other partial interests in land where the sale serves a conservation purpose. This is a proposal that would be most effective in the Malpai region and would help many landowners who are typically "land-rich, cash-poor." This proposal would also help conservation groups such as MBG stretch their limited resources further when purchasing a conservation easement. In fact, I understand President George W. Bush has included just such a proposal in his Budget Blueprint for FY 2002 and that this proposal grows out of legislation introduced in the last Congress by Senator Roth and others on the Senate Finance Committee as part of the Community Renewal tax bill (S. 3152). We strongly and respectfully urge Congress to enact such legislation to foster conservation efforts by private landowners.

As a secondary alternative, Congress should consider ways to make the gift of land or an easement for conservation purposes more valuable for tax purposes. Congress might, for example, as Senator Baucus has suggested, make the charitable contribution of land or an easement deductible up to a higher amount than would ordinarily be the case for other contributions. Senator Baucus' bill allows such contributions to be exempt from current adjusted gross income limitations and to be carried over for an unlimited period in order to use up all of the charitable contribution value for tax purposes. His bill also provides for special charitable contribution benefits for farmers and ranchers by allowing them to deduct gifts up to 100% of their adjusted gross income. We believe that it is entirely appropriate for Congress to provide these special rules for conservation-related charitable gifts. Land is an extraordinary capital asset and, once lost to an incompatible use, its conservation value may be gone forever. We hope that Congress will consider favorably Senator Baucus' bill.

Finally, based on the Malpai Group's experience with its GRASSBANK™ program, there are some tax code changes that we would recommend to clarify some of the issues we face with those transactions. First, incentives should be enacted to encourage landowners who have surplus grass available for cattle grazing and who are in an appropriate financial position to consider a charitable contribution. It would be helpful for Congress to enact a tax rule allowing such landowners to donate the grass at its fair market value to a GRASSBANK™ program and to obtain the financial benefit of the charitable contribution income tax deduction. Currently, such a donation is hampered by the uncertainty associated with the rules applying to and valuing such an unusual gift. Second, we want to make sure that, when the Malpai exchanges the right to have cattle graze on the grass it obtains in its GRASSBANK™ program for the conservation rights in the ranchers' land, there is no tax due on such a trade and that such exchanges qualify as like kind exchanges under the tax Code. If Congress were to enact clarifying legislation on these issues, the effectiveness of the GRASSBANK™ program would be greatly enhanced.

Conclusion

On behalf of the Board of Directors of the Malpai Borderlands Group and myself, as well as the numerous private ranchers with whom we work, I want to express my appreciation to the Committee and to Chairman Baucus and Senator Grassley for holding this hearing and inviting me to share with you the Malpai Borderlands experience. While we have made great strides in the conservation of this wonderful landscape, much more remains to be done; it is only with your help that we can hope to be successful. Thank you for the opportunity to present this testimony.

PREPARED STATEMENT OF STEPHEN W. SCHLEY

Chairman Baucus, Senator Grassley, Senator Snowe and other members of the Senate Finance Committee:

My name is Steve Schley of Bangor, Maine. I work for and represent a seven generations old family ownership of Maine timberlands that started in 1840. This spring, we closed on the sale of the largest forest conservation easement in US history. Its purpose, as described in the easement document, is "to maintain the Property forever in its present and historic primarily undeveloped condition as a working forest, and to conserve and/or enhance forest and wildlife habitats, shoreline protection, and historic public recreation opportunities on the Property for present and future generations." Our 762,000 acre project protects wetlands, endangered species and other wildlife habitat of statewide importance, sensitive high mountain and riparian zone areas, and prohibits all development not associated with ongoing sustainable forest management. Our easement enables the ownership to continue supporting Maine's forest products sector that amounts to 18% of the states GDP while participating in Maine's multiple use management tradition by keeping these private lands productive for wildlife, wood products and recreation. By supporting the economy and ecology of Maine, our project benefits all residents and visitors.

We crafted our easement to ensure future generations of landowners and workers will benefit from continued forest management and the incredible array of jobs, goods and services forest management provides. The lands currently support approximately 500 jobs on the land and in the mills that receive Pingree wood. Many more people make their living by providing remote recreational opportunities to a public increasingly removed from the land. Trees are America's renewable resource. Well-managed working forests can provide the owner and public with the prime ingredients for healthy living; clean air and water, diverse wildlife habitat, recreational uses, and economic returns through sustainable management of a renewable natural resource.

We call our project the Pingree Forest Partnership. It encompasses and protects 2,000 miles of river frontage, 215 miles of lake and pond frontage, 67 State of Maine designated rare and endangered plant sites, and over 1,180 square miles in total. Frontage on nationally recognized rivers including the St. John and Kennebec are forever protected from development. Sporting camp visitation opportunities, a staple of those enjoying Maine's remote lands for hunting, fishing and general recreation are protected into the future. Our easement project received support from organizations as diverse as the Maine AFL-CIO, Maine State Chamber of Commerce and the Ruffed Grouse Society.

Every landowner has different motivations and rationale for considering the use of easements. We needed a solution that would ensure long-term protection of our forestland while simultaneously providing immediate economic returns and relief from estate taxes. Federal tax policy should support any and all efforts so long as

the land is protected from the natural resources degradation inherent in fragmentation and sprawl. Flying into this city and witnessing the incredibly destructive process of carving up productive farmland to grow houses is testimony toward the public good that would come from providing incentives to landowners for protecting high quality land as green space.

The form and function of our ownership has evolved over 140 years through ever-changing tax law and realities of probate. Because of current fiduciary and tax law reasons, we were unable to use tax incentives to strengthen our project. When we started our project, tax law suggested remote lands were not worthy of protection. I complement the efforts some of you made to change that rule. I recommend *River Song*, by Joe and Monica Cook, published in 2000 by the University of Alabama Press for your consideration. The beautiful coffee table book is an account of the couple's trip down the Chattahoochee River. The developmental changes it describes as having already occurred in Georgia are pushing their way into Maine's "wildlands" and other areas around the country.

The tax treatment concepts you are considering today will be vitally important to future landowner consideration of projects like ours. Most landowners do not operate at our landscape type scale or with the economic and other efficiencies size creates. Tax incentives would help them clear and smooth what is inevitably a difficult path. Green space preservation easements are forever and, therefore, very difficult to commit to without recognizable benefits for the landowner.

We picked the perfect private partner for our transaction. The New England Forestry Foundation's mission is to provide for the conservation and ecologically sound management of privately held forests for the benefit of present and future generations. Few land trusts share their nationally important mission of conserving the working landscape for ranchers, forest landowners and farmers all looking for solutions toward long-term land conservation. NEFF worked with our needs, abandoned traditional easement trappings and together we crafted a project that protects some of Maine's finest natural resources forever. We had and took the time, and used the necessary legal and other expertise to do the job right. It took us three years to develop satisfactory easement language. We spent considerable time determining which acres should be protected from development. We worked with our easement partner ahead of time to clearly identify goals and objectives for the property and document everything so there won't be surprises in the future.

Families all over the United States have managed and protected some of this great country's most remarkable real estate. Most families, however, are struggling with how to pass their lands on while maintaining the land's natural resource character. Parts of the tax code work against their efforts. The concepts you are considering would certainly encourage those landowners heretofore unwilling to engage in the necessary machinations to consider the permanent stewardship legacy an easement can create.

Flexibility is the key. The public good is achieved when land is protected as green space; growing crops, gardens or trees instead of condominiums. I urge you to avoid detailed and prescriptive parameters. Instead, describe desired green space outcomes and let the landowners determine how they can work to meet broad objectives. All landowner's goals and objectives are different. Incentives directed toward protecting natural resources must adapt to each situation. Bureaucratic inflexibility is why we chose to keep our transaction between private parties and not involve governmental agencies. In every day regulatory matters, I am forced to spend way too much time explaining for bureaucrats how every acre is different and one size never fits all.

Easements can be a great tool but they are forever and many families are reluctant to permanently speak for and commit future generations of owners. Recognize and encourage good stewardship and reward those owners willing to protect the public good inherent in green space. Provide incentives to that majority of landowners trying to do the right thing who may not have the resources, tools or partners to accomplish sound stewardship goals. Thank you for your consideration and efforts.

