



Charitable Trust Doctrine or Not

**AMENDING
CONSERVATION
EASEMENTS**

Charitable Trust Theory

- Nancy A. McLaughlin, *Amending Perpetual Conservation Easements: A Case Study of the Myrtle Grove Community*, 40 U. RICH. L. REV. 1031 (2006)

Hicks v. Dowd, 157 P.3d 914 (Wyo. 2007)

Perpetual conservation easement encumbering 1,000 acres. The CE had been donated by a partnership which claimed \$1 million in tax deductions. The partnership sold the land to the Dowds. A mineral company, not subject to the conservation easement, began CBM drilling on the property. Dowds persuaded the county to transfer the easement to the mineral company with the purpose of terminating the conservation easement. A member of the local community sued alleging that without a *cy pres* judicial order, the county could not terminate a conservation easement. The court dismissed the plaintiff on standing grounds.

Timothy Lindstrom, *Hicks v. Dowd: The End of Perpetuity*, 8 WYO. L. REV. 25 (2008)

- In addition to changing the authority of the holder of a conservation easement to modify or terminate the easement as it sees fit and vesting standing to challenge easement modifications or terminations in a potentially range of new persons; application of the *cy pres* doctrine to conservation easements would change the express the criteria for the modification or termination of a conservation easement.
- Conservation easements are based in property law and that the doctrine of charitable trusts is not a part of that law.
- The doctrine of charitable trust has never been applied to conservation easements and is generally unsuitable to easements as property law constructs.
- Insertion of the charitable trust doctrine into conservation easement law will create uncertainty in easement law in the future.

Nancy A. McLaughlin, *In Defense of Conservation Easements: A Response to The End of Perpetuity*, 9 WYO. L. REV. 1 (2009)

- Lindstrom's assertion that there would be chilling effect on donation of property for conservation purposes with the injection of the charitable property doctrine into real property law is backwards, and in fact, the opposite effect would occur.

PRO-CHARITABLE TRUST

- **RESTATEMENT (THIRD) OF TRUSTS § 28 cmt. a (2003)**(Gifts made to charitable institutions which are used for a specific charitable purpose, create a charitable trust, of which the institution is a trustee)
- **UNIF. TRUST CODE § 414 cmt. (2005)**(The creation and transfer of a conservation easement will frequently create a charitable trust.
- The termination or substantial modification of the easement could constitute a breach of trust.)

PRO-CHARITABLE TRUST

Bjork v. Draper, 886 N.E.2d 563 (Ill App. Ct. 2008)(court invalidated amendments to a conservation easement which land trust approved at the request of the new owners. The land trust argued that a state enabling statute provided a conservation easement can be released by its holder regardless of tax deductible status, charitable purpose, and prohibitions and methods of termination described in the easement itself. The court held that tax-deductible perpetual conservation easements may not always be substantially be amended at their holder's will)

SO SO-CHARITABLE TRUST

I. R. C. § 170(h)(5)(A) (1986)(The conservation purpose of a tax deductible easement should be protected into perpetuity)

Treas. Reg. § 1.170A-14(g)(1)(The interest in the land retained by the donor must be subject to legally enforceable restrictions that prevent any use of the land inconsistent with the easement's purpose.)

Treas. Reg. § 1.170A-14(g)(6)(The easement must be extinguishable by the holder only in what essentially is a *cy pres* proceeding.)

Anti-CHARITABLE TRUST

UNIF. CONSERVATION EASEMENT ACT § 2(a)(A conservation easement may be modified or terminated in the same manner as other easements. By agreement of the owner of the encumbered land and the owner of the easement.)

Anti-CHARITABLE TRUST

WYO. STAT. ANN § 4-10-403 (A trust is only created if the settlor indicates an intention to create a trust)

WYO. CONSTITUTION. art 16, § 6 (“Neither the state nor any county, city, township, town, school district, or any other political subdivision shall loan or give its credit or make donations to or in aid of any individual, association or corporation...”)

Anti-CHARITABLE TRUST

Tallman v. Outhouse, No. 08-E-0238 (N.H. Sup. Ct., Oct 27, 2009) (The court rejected plaintiff adjoining landowner's claim to enforcement conservation easement. "[W]hy would anyone grant a conservation easement if they understood that their present and future neighbors have the right to interpret and enforce the easement they implemented?")

New Information

- **Salzburg v. Dowd**, Complaint for Declaratory Judgment filed in the District Court of Johnson County, Wyoming, July 8, 2008. Stipulated Judgment filed February 17, 2010
- Wyoming attorney general asserted application of the charitable trust doctrine (doctrine of *cy pres*) to the conservation easement in *Hicks v. Dowd*.
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- Parties settled the case voiding the county resolution transferring the conservation easement in *Hicks v. Dowd* without reference to charitable trust doctrine.