The Basics of Conservation Easements

Voluntary agreements

• Landowner retains title to the property
• Perpetual
• Runs with the land
• Recorded in the property records
• Created under both state and federal law
• Meant to restrict certain uses in order to protect certain resources
Land Eligibility Requirements

- Legal requirements
  - Relatively natural habitat
  - Outdoor recreation or education
  - Open space/scenic
  - Historically important areas

- Organizational requirements
  - Depends on the organization that you work with
What a conservation easement does...

- Restricts development (including oil and gas) and subdivision
- Protects designated resources

What a conservation easement does NOT...

- Require public access
- Prohibit the property from being sold
- Stop condemnation
What rights are typically conveyed through an easement?

- Development rights (including mineral rights if owned by landowner)
- The right to subdivide
- The right to share in proceeds earned from condemnation
- The right to be a party to negotiations with third parties

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CCALT Form Easement Language

Water Rights. “...Grantor shall not transfer, lease, sell, abandon, or otherwise separate the Water Rights from title to the Property itself; provided that Grantor may lease from the Property such portion of the Water Rights which Grantor demonstrates to Grantee, in Grantee’s sole discretion, are no longer necessary for present or future agricultural production on the Property at historic levels, or to maintain the Conservation Values.”

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CCALT Tailored Easement Language

Water Rights. “…Further, the parties recognize that adverse environmental conditions, such as drought, occur from time to time, and that such conditions may pose a greater threat to the environmental quality and life sustaining ecological diversity of streams, rivers, lakes, and reservoirs than to the Conservation Values of the Property. Therefore, the parties agree that the Grantor may enter into legally enforceable water leases, contracts, emergency water loans, or similar agreements of limited duration pertaining to use of the Water Rights for conservation purposes, excluding industrial, commercial or municipal uses, to temporarily increase in stream flows and/or water levels in streams, rivers, lakes and reservoirs to preserve the natural environment of such water body(s) provided that: (1) such uses are limited to those in connection with the South Arkansas River drainage, (2) Grantee has given prior written consent to such arrangements, and (3) the Water Rights shall not be used for such uses more than three (3) out of every ten (10) years without a written determination by the Grantee that such use would not jeopardize the long-term Conservation Values of the Property.
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