

**COLORADO
Conservation Easements**

**FINANCE COMMITTEE
HEARING**

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SB 16-044 - by Senator Jerry Sonneberg

February 09, 2016

Colorado State Capital
200 East Colfax, Rm LSB-B
Denver, CO 80203

Testimony
of:

Jillane Hixson
7943 County Road DD
Lamar, CO 81052
jrh@centurytel.net
719-336-4285

First, and foremost, I extend my sincere gratitude to Senator Sonneberg, for recognizing the injustice imposed upon land owners, who made the mistake of believing they could rely upon the law. Thank you Senator Sonneberg, for introducing SB16-044, as a measure to finally **make land owners WHOLE**, after a decade of **INJUSTICE** and subsequent **DAMAGES**

It's difficult to convey, *in just a few short minutes*, the "Decade of Hell" that conservation easements have caused me and my family; with ongoing damages, that will continue indefinitely. It's a similar sense of being raped, &/or the traumatic effects of PTSD ... that has forever scarred us; mentally, physically, and financially. To say that Conservation Easements have "damaged" me and my family, is an understatement.

In 2003, our family donated a conservation easement. The Colorado statutes said, that if we did "A", B", "C", & "D"; that we were qualified for the C/E program and tax credits. Our family performed our due diligence and completed "A", B", "C", & "D", per the letter of the law, and furthermore sought review of two law firms, who assured us, we were in full compliance with the requirements of the law.

However, in 2007, the Colorado Department of Revenue (CDOR), arbitrarily and capriciously denied our tax credits, asserting our land had \$0 value. Although we filed timely appeals with the CDOR, four years lapsed without the CDOR granting us an Administrative Hearing. – We were not alone, these absurd "disallowances" were being imposed upon approximately 800 other land owners. – Meanwhile, my family, as well as others, began fending off law suits from those who had purchased our tax credits.

Between 2007 – 2011, the CDOR invited the IRS to come help "audit" the allegedly "over-valued" C/E appraisals, since the Colorado statute (CRS 39-22-522) identified that IRS 170(h), was the only standard, and because the statute did not provide the CDOR with the authority to review appraisals.

In our particular case, after an extensive review, in 2010 the IRS determined that the Hixson conservation easements met all of the IRS standards and were fully qualified. The IRS accepted 100% of the appraisal value. -- Our family presented the IRS determinations to the CDOR. However, the CDOR refused to accept the IRS's determination, but instead continued to work relentlessly to claw back 100% of the tax credits + 200% penalty and interest.

In 2011, Representative Wes McKinley, introduced HB--1208, a similar bill as Senator Sonneberg's, presented here today. But instead, in 2011, the legislature adopted HB1300, sponsored by Representative Marsha Looper; which essentially required all affected land owners to seek resolution in District Court, or otherwise wait indefinitely for the CDOR to provide an Administrative Hearing.

As a result of HB-1300, approximately 678 cases were filed in CO District Courts. However, not a single land owner could withstand the power of the CDOR and the State Attorney General. Only one case actually made it to Court, ... not on the premise of over-valued appraisals, but regarding an instance of the CDOR issuing a "Disallowance notice" beyond the 4 year "statute of limitations", the CDOR argued the statute of limitations was 20 years, the Court ruled against the CDOR's interpretation.

Meanwhile, my family (along with hundreds of other land owners) came to the realization, that it was impossible to overcome the extortion & bully tactics of the CDOR and State Attorney General. The “extortion” & “bully” tactics, of penalty and interest, on top of incurring enormous attorney fees, ... caused my family and countless other land owners/tax payers to “settle” under financial duress.

SB-044 is a good start to “Right” the “Wrongs” suffered by the law-abiding citizens and tax payers. However, in my opinion, a few amendments/adjustments to the Bill will make this bill stronger and more equitable in providing measures to make everyone WHOLE.

AMENDMENTS / ADJUSTMENTS to SB2016-044

1) CONSERVATION EASEMENT REMAIN INTACT

& Land Owners compensated for damages (Tax Credits + Attorney fees)

In the existing text of this bill, include language that land owners/tax payers are not only compensated for their denied tax credits, but also for their **attorney fees**, that were incurred with defending their easements.

2) CONSERVATION EASEMENT EXTINGUISHED

& Land Owners compensated for damages (C/E set up costs + Attorney Fees)

Provide an alternative option for Land Owners to forego compensation of C/E tax credits, and instead receive **compensation for C/E “Set Up” Costs and “Legal” costs** incurred in the litigation battles with the CDOR. Upon land owners choosing this option, the **respective Conservation Easement is mandated to be extinguished**, as a matter of law.

3) FISCAL IMPACT = \$0.0

Suspend new Conservations Easements / to offset reparative compensation

Provide a provision, to **suspend new Conservation Easements**, to offset funding required to implement the reparative financial measures. Since 2000, the State Legislature has expended **\$680 Million** (excluding the claw-backs) of the tax payers dollars to Conservation Easements, .. \$45 million was allocated in 2015.

By suspending new Conservation Easements in future years, (\$45 million/year, for the next “X” years), would very simply resolve the Fiscal Impact of SB-044, \$0 (zero dollars).

4) LAND TRUST REGULATION

Establish Regulations on Land Trusts

Implement regulations, forbidding Land Trusts to collateralize, sell, or exchange Conservation Easements; with any other Land Trust, Financial Institution or any other Government &/or Non-Government entity.

For further background, I have have provided you, by e-mail, references to the special legislative committee that was convened by Senator Sonneberg, August 2015; which highlights important testimony, along with the Constitutional violations of the CDOR and the injustice endured by the citizens and taxpayers, as well as the problems that have arisen without proper regulations of the Land Trusts.

Thank you,

Jillane Hixson