

BUSINESS

Easement program failures penalize taxpayers, landowners

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Rocky Ford hay farmer Timothy Crow despises staring at bankruptcy. The 61-year-old says he hates it even more that Colorado put him there. "This was supposed to be a good thing for everyone," Crow says of the state's conservation easement program, where land-rich but cash-poor ranchers and farmers like him can preserve their property forever in return for needed income. "It's become a living nightmare," he said.

Crow and thousands of others like him preserved millions of acres of land in return for state income-tax credits they could either sell for cash or use to pay their own income tax bill.

Now, the state is forcing a handful of those landowners — and hundreds of people who bought those credits — to pay as much as \$220 million in back taxes because the state says the land isn't worth what the landowners claimed.

"It's like a bait-and-switch scam," Crow said. "Now my land is worth nothing, and I'm broke because of it. The only one making out is the state."

At issue are nearly 500 conservation easements like Crow's, the bulk of them donated between 2003 and 2007, that were created under a state law that for years had no oversight.

Things went wrong from the start. Wealthy investors and their lawyers latched onto an apparent loophole where the amount of tax credits they could get — and later sell at huge profits — were maximized by way of an appraisal method the state later said was flawed.

And although many landowners went into the program honestly, they relied on appraisers who used the flawed method.

Although it took years to unravel, **state investigations ensued**, and corrective action was taken to **prevent further abuses and works well today**.

But the fallout to taxpayers who bought in during the program's earliest days is just now reaching a crossroad.

Instead of looking to the landowners who reaped the cash from selling the tax credits, the state is reaching into the pockets of the taxpayers who used the credits to pay their tax bills. The taxpayers say they bought the credits believing the state had scrutinized the process.

"This just stinks all the way around," said Fort Collins businessman Michael McCurdie, who today is staring at a \$100,000 bill for back taxes and penalties because he bought \$65,000 in easement credits in 2003.

"How is any of this our fault?" he asked.

Landowners also are reeling, with many pushed into bankruptcy or its edge, because the taxpayers who bought the credits now want their money back.

Landowners, such as Crow, used the tax-credit money to keep their farms and ranches operating. A few made improvements to homes or vehicles. There isn't much left for refunds.

"The state created, advertised, and promoted the conservation easement program with the full understanding of the (land) appraisals, and (knew about) them for years," said Fort Collins businessman Mark Lueker, who paid \$52,000 to buy about \$60,000 in easement tax credits. The state has since disallowed most of his credits and forced him to pay an additional \$43,000 in taxes and penalties.

State officials say they're merely collecting on taxes due.

"It is inaccurate to suggest that buyers of (conservation easement) credits, which were subsequently disallowed, have paid their tax twice," state Department of Revenue spokeswoman Daria Serna said in an e-mail to The Denver Post. "They were private deals negotiated by private parties, and as with any investment there is risk."

Serna said the original idea in creating the tax credits was for landowners and tax-credit buyers to keep each other honest, not for the state to police them.

The legislation was enacted in 1999 "with the intention the program would be self-regulated," Serna said.

Lueker, like others, says the state is culpable for creating the monster and not keeping track. The mere existence of the state tax credits led many buyers to believe they were safe, he said.

"The state has to accept responsibility for fiscal losses due to its internal negligence," Lueker said.

Triple play

The conservation easement program was to be a triple play for Colorado.

"You want landowners to put their property into easements. That's what makes our state beautiful. That's a win," McCurdie said. "And the tax credit helps us, the taxpayer, facilitate it. Everyone is winning."

The state wins because easements are donated to a nonprofit land trust that ensures it remains pristine forever, protected from urban sprawl and development.

That's how Crow saw it when he placed his 30-acre farm into an easement in 2003. He said he wanted to ensure it would never be developed, "that it would stay part of the valley forever."

Crow claimed income-tax credits worth \$160,000 based on an appraisal that valued his land on its potential use for a housing development should nearby Rocky Ford reach him.

Crow either could apply the credits against what he owed on his own income taxes, or he could sell the credits to someone else, who in turn could use the credits to pay their taxes.

To entice buyers, tax credits are typically sold at a discount, so \$10,000 of tax credits would sell for as little as \$8,000. The buyer can claim the whole \$10,000 against their state income-tax debt or stretch it out over a few years.

And instead of paying the state, the buyer's money went to the landowner.

Thousands bought into the idea. To date there have been 4,243 easement donations comprising nearly 2 million acres of land since it began.

Like hundreds of other ranchers, Crow had little use for tax credits — he never owed that much — and preferred the cash-flow for his small farm.

"I'm one of the small guys," he said. "Like so many others, I'm usually just waiting around for the wrath of God to change things."

He sold the credits through a broker.

"We didn't get rich, but that money sure helped when times were tough," Crow said. "Those were not easy years."

Everything would have been fine had state revenue agents not noticed some tax-credit buyers were making claims in dollar amounts that were out of line from others participating in the program. **Something was wrong.**

Money-making scheme

Investigators found a small group of investors and attorneys had **twisted the fledgling program into a monumental money-making scheme.**

Not only were land appraisals abused, but the investors decided a 1,000-acre donation could garner many more times the state maximum of \$260,000 in tax credits by carving it into smaller donations.

Suddenly one property was worth millions of dollars in tax credits that could then be sold for cash.

Retired attorney Stanley Mann led a group of real-estate investors whose 1,000-acre development near Walsenberg was at a near stand-still with only two houses built.

"Developing in Walsenberg doesn't happen overnight, and we saw a minimum of 19 years to get it done," Mann said. "But we were getting older, and the (easement) idea made perfect sense."

The group pared the land into two dozen 35-acre donations at \$260,000 in tax credits each, then sold them.

It was a payday. Between 2003 and 2007, there were 2,417 donations statewide totalling \$498 million in tax credits, state officials said.

About a third of them — covering nearly half the tax-credit total — were found to have faulty appraisals.

Landowners such as Crow saw only needed money they could make on land they never wanted used for anything other than what it had been for generations — for pasture and plow.

"There were those who got sucked in because it probably seemed like just another Farm Bill program," said John Swartout, special policy adviser to Gov. John Hickenlooper and former executive director of Outdoors Colorado.

Faulty appraisals

Irregularities first caught investigators' eyes in about 2007. The early abusers eventually were taken down, some **attorneys were sanctioned**, a **handful of appraisers lost their licenses**, and a few speculator investors repaid millions of dollars of credits they had sold to hundreds of unsuspecting taxpayers.

Meanwhile, the state backtracked through hundreds of other donations, disallowing tax credits that were claimed on 682 donations based on faulty appraisals from 2000 to 2010.

More than 80 percent of the problem donations were from 2003 to 2007.

So many credits were disqualified that the state Department of Revenue, which was in charge of the easement program at the time, couldn't keep up. Cases were tied up in administrative red tape and legal challenges for years.

In 2011, the legislature devised a shortcut in HB11-1300, creating three regions of conservation easement district courts where the cases would go. All those involved — the state, the taxpayers and the landowners — would be part of a court process to work out who was to pay and how much.

Although landowners could choose a hearing before revenue department administrators, few did. Ultimately 478 easements headed to court, each with a dozen or more credit buyers.

"The state encouraged the conservation easements then turned around to nail everyone who had one," said Walter Kowalchik, a retired lawyer in Jefferson County who was part of Mann's group. "It was a horrible disappointment to hundreds of people."

In dozens of cases since, tax-credit buyers have been told they can either repay the original amount of income tax they owed from as long as a decade ago — penalties and interest forgiven — or fight it out and risk hefty add-ons later.

"Basically I had two choices: Settle, be happy and pay the smaller amount, or complain and then pay the whole thing with penalties and interest," said Julius Medgyesy, who runs Front Range Cancer Specialists in Fort Collins. "I had to cut another fat check."

Not every credit buyer had to pay. Some wealthy landowners and developers, like Mann's group, covered the tab because tax credits are sold with a promise of indemnity. If something goes wrong, the seller agrees to pay up.

Many, like Crow, couldn't afford that. They had little money left or not enough equity in their property to pay the taxpayers back.

The money was spent long ago on their farms. Worse, their land is permanently stuck in a conservation easement that's worth nothing now. They can never develop it, never change its current use. Selling won't get very much. For Crow, it's forever a hay farm.

"It's a State of Colorado Ponzi scheme," Medgyesy said.

"The state doesn't care"

When the Department of Revenue told Crow the appraiser's error on his easement donation meant he should not have gotten \$160,000 in tax credits, his heart sank.

"When they pulled the plug, that was it for us," Crow said.

The 10 people who bought the tax credits from Crow had to pay up.

That meant Jeannine Thomas, who in 2003 paid Crow about \$12,000 for \$15,000 of his income tax credits, had to write a second check for taxes she thought she'd handled years ago.

In all, she's repaid about \$40,000.

"What I've paid the state is on top of what I gave the land donors," she said. "I can put a lien on their property or force a sale of what little they have left."

Thomas takes a long pause.

"So, I can either kick them out of their homes or simply be quiet and eat the loss," she said. "The state says the easements did not meet their standards, and that it's just business. Is this what this program was intended to do? Pit the tax-credit buyers against the conservation easement donors? To hurt people?"

Many say they've simply put their head down and accepted their fate.

"We've tried to make noise, but no one wants to go toe to toe with state (tax) revenue," McCurdie said.

The Lamar landowner from whom McCurdie and 13 others purchased tax credits works three jobs today, his land nearly worthless because of the easement on it and the subsequent disallowance of its donation value. All the money from the tax credits he sold years ago was put into the farm.

With penalties and interest, Colorado pegged McCurdie and the others for roughly \$1.4 million — on top of the nearly \$1 million they'd already paid for the tax credits.

"We've tried to make the point that we bought into (the program) on good faith," McCurdie said. "The state simply doesn't care. They're very clear this is their money and they will have it."

No one has helped

Efforts at fixing the problem have fallen on deaf ears, several say. There have been letters to officials, meetings with agencies, phone calls to the governor's office. No one has helped.

"Our point is that the (Department of Revenue) had by far the better chance to catch this abuse back in 2004 than we did," Fort Collins builder David Neenan wrote Hickenlooper in March, appealing for a solution.

Neenan bought \$80,000 of tax credits for himself and his family for \$64,000. Earlier this year, he paid the state \$128,000 in back taxes, penalties and interest.

A tax bill of \$80,000 has now cost him more than \$200,000.

"I received a form letter thanking me for my letter," Neenan said of his plea to Hickenlooper.

The farmers from whom Neenan bought the credits have gone bankrupt or have only a small house or a few tractors in assets.

"There's nothing to collect from," he said.

Sen. John Kefalas, D-Fort Collins, said he'd like to take up the cause, but it's uphill. Two earlier legislative efforts at amnesty have died.

"There's an element of fairness here, and we need to find a way to deal with that," Kefalas said. "But it's a challenge."

Even some businesses have suffered.

"We thought of participating with the state for a good cause," said Mark Bower, executive vice president and CFO at Home State Bank in Lafayette. "It was their program. We thought we'd be a good corporate citizen and participate."

In all, the bank lost \$225,000 because of disallowed credits. Bower said it was "unpleasant" having to explain the loss to the bank's board of directors.

"And what were we going to do, evict a rancher over it?" Bower said.

Today, mostly disabled and a widower, Crow gets by on his wife's death benefit, too proud, he says, to apply for disability.

"This whole thing sucked the last bit of life right out of my wife," he said of his wife, Jane, who died last year.

Looking north over the barren land behind his small home, Crow sighs.

"I was broken-hearted about how it's all fallen apart," he said, "and now we're all backed into a corner."

Even if Crow had the money to pay the buyers back, nothing would change.

His small farm is trapped in an easement for Colorado to enjoy — forever.

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