Letter to a Wisconsin Property Owner  
Name and Address withheld  

Dear Wisconsin Property Owner::

Thank you for your letter of June 20, and the attached May 17, 2012 news release from the Wisconsin Department of Natural Resources announcing a two-phase acquisition of conservation easements on 67,346 acres of land currently owned by the Lyme St. Croix Forest Company. It is good to know that you are monitoring these government land acquisitions.

You ask how I would counter this specifically in a newsletter and/or get more information.

Let me respond to your question in two parts:

1. How to Counter the Conservation Easement Acquisition.

The first question that you asked is how would someone “counter this specifically in a newsletter”?

As you know, I have given a number of speeches, written many articles raising questions and arguments against conservation easement, and PRFA has hosted speakers on this topic at our annual national conference on private property rights. I’ll just point out below some of the general negative aspects of the acquisition of conservation easements, related to active timberland, which you could develop as arguments:

First, the expenditure of taxpayers’ funds for a purpose that is directed to the benefit of a particular landowner. Generally, these timberland owners rent out land on a quasi-permanent annual basis to hunting clubs where men and women own individual camps and their families and some of their friends have access to hunt. So, generally, the timberland owner already has a group paying the real estate taxes plus a significant additional amount to lease the land. When the state acquires the land to “open it to the public,” this is a ploy, as the land is already open to the public insofar as members of the public who are interested in spending their money for the privilege of hunting on the land are already paying..
Therefore, the state’s acquisition of the conservation easement is almost all gravy for the timberland owners and is a waste of taxpayer money in relation to access to the land by hunters. Phenomenal amounts of money change hands from the taxpayers to the timberland owners in this way. I do not know whether this Lyme timber is related to the Lyme timber company that has sole conservation easements to New York State on large tracts of land, but a Lyme timber company is among many here that have sold a total of about 800,000 acres of conservation easements to New York State.

I regard the purchase of conservation easements as ‘crony capitalism,’ a word that the financial publications use in various contexts where, in my opinion, the word “fascism” would have been used in earlier days: a melding of government and the “private sector” in a way that preferred corporations receive government protection and favors. A business becomes neither a private company nor government, but a “partnership” of both. A conservation easement is a peculiar form of split title, certainly not an “easement” (where, say, the county gets the right to put through a sewer right-of-way across your land) but instead a land covenant, where the two owners of the split title retain a very tight relationship, the one with the negative encumbrance holding the upper hand, as in all encumbrances, and the holder of the remaining title the “residual” owner, the holder of the leftover rights. But it is meant as a rather friendly situation, with the government and the residual owner rather intertwined, somewhat like marriage.

I would not expect the government to go to court to enforce terms of the conservation easement, but, if either the law or the terms of the conservation easement allows, a third party such as a land conservancy or other environmental group might add that further negative factor to the conservation easement.

A negative aspect of conservation easements is that the hunting clubs who hold existing leases may be treated in ways that are impractical for them to live with. For instance, it is important to ascertain in advance whether the hunting clubs will denied exclusive use of a significant area of land.

A further negative could be that it can be a loss to the people of the state as a whole to allow hunters unto the land without registering and obtaining daily access permits. The hunting club members act as stewards of the land because they have a property interest and a lease to respect, a relationship with the timber company. A hunter who drives up an old logging road to search for game on land where he has no stake can be a responsible, respectful person or can be the opposite; yet all may have access. The state may not allocate funds to increase ranger patrols once the additional conservation easement lands are opened to hunters.

Another negative aspect of conservation easements is that the timber company may be saddled with positive requirements. This means that, in addition to the harvest restrictions based on sustainable production of timber, there are often nebulous requirements that can become expensive, namely requirements to successfully sustain certain species and habitats to the satisfaction of the conservation holder or its third party enforcement entity. Something that seems innocent enough as a clause in the proposed easement may result in a procedure that is analogous to having the U.S. Fish and Wildlife Service on your land.
These points lead one to see a general negative feature of conservation easements, where the timber production is essential to the local economy. As I’ve written earlier, there may come a time when the global economy or whatever may make the logging unprofitable under the terms of the conservation easement and the timber company may want out. The only buyer may be the state, or the state may exert its power to be the only buyer. So the conservation easement will simply be acquired by the state, with the state thereby establishing full title. The land will become state park or preserve, or whatever. So the promise of retention of forestry-related jobs will be broken.

A negative aspect of the acquisition process is the secrecy. The actual terms of the conservation easements are not available under the freedom of information law here in New York before the deal is executed, so the public is not able to comment in an informed way. Also, here in New York, questions during the acquisition process are not answered and statements are made that the question is too technical or that the person conducting the meeting will get back to the questioner with the answer later, or that the requested information is confidential because the information is part of the internal records of the timber company. The latter point makes it impossible to analyze pre-conservation easement timber production in comparison with subsequent production. Also, the use of a third party acquisition agent, generally a land conservancy, further obscures the financial and other aspects of the transaction. The only way we have found to ascertain the actual mark-up from the price paid by the third party acquisition agent to the price paid by the government is to actually research through every individual deed, and it takes a large number of deeds to make up one large tract. Furthermore, the transaction may go through a number of levels of deeds on its way to the state, which requires even more title study to “follow the money.”

“Countering,” the work you used in your letter, may also mean actively working in any number of ways to defeat conservation easements, in addition to commenting and getting out information, as in a newsletter.

2. Getting more information.

In response to the second part of your question, if you would like more broadly applicable information on timberland conservation easements and their effects, as far as I know, PRFA is the main organization writing critically about this issue. Others have begun to consider this issue, often relying on my work, but basically no significant new information is surfacing, except that, sadly, my predictions about future conflicts and problems are coming true, e.g., case law is developing—especially in situations where a second generation becomes the title holder to the underlying land. Almost everything PRFA has published is posted (including articles pertaining to timberland conservation easements) on our web site www.prfamerica.org and is freely available at no charge, without signing in or using a password, etc. I’ll mail you a few of our publications under separate cover.

If you seek specific information about the particular features of the announced Wisconsin conservation easements, the source would naturally be the Wisconsin Department of Natural Resources, with the particular materials available reflecting the specifics of the State of Wisconsin’s freedom of information law. There may also be information accessible through the Forest Service of the U. S.
Department of Agriculture, as the “Brule-St. Croix Forest Legacy easement” is mentioned in the press release, which implies that the U.S. Forest Service’s Forest Legacy program is involved in the funding. This could mean that your Member of Congress would dig up any information you may request, such as a copy of the conservation easement that is under negotiation, even if it is not accessible under either the Wisconsin or the Federal freedom of information law.

These are ways that you or I could get more information. Of course, only you would have access to your Member of Congress and my Congressman would not do research on a Wisconsin issue.

This is actually a topic about which I could write a book if I could devote the time. Hopefully having provided a useful reply to your letter, I am compelled to leave the subject here, however.

In addition, I did want to make a brief comment related to your postscript: Conservation easements are being utilized as a preservation device all over the country, whether to preserve farmland, timberland, grasslands, or any other land. It should be kept in mind that the ostensible purpose, such as to preserve the timber industry or to keep farms operating, may not be the real purpose. David Foreman, the radical environmentalist, once remarked that they do not do “monkey wrenching” anymore—they do conservation easements. One of the most prominent environmental preservationists in upstate New York said a couple of years back that he thought that it could happen that the lands under conservation easements would ultimately be owned in full title by the state.

With very best regards,

Sincerely,

Carol W. LaGrasse
President