

SUMMARY *of* PROCEEDINGS



SELECT NATURAL RESOURCE FUNDING COMMITTEE

COMMITTEE MEETING INFORMATION

August 23-24, 2012
Lander Center
Lander, Wyoming

COMMITTEE MEMBERS PRESENT

Senator Eli Bebout
Senator Bruce Burns
Senator Larry Hicks
Representative Kermit Brown
Representative Jim Roscoe
Representative Jeb Steward

COMMITTEE MEMBERS NOT PRESENT

None

LEGISLATIVE SERVICE OFFICE STAFF

Ian Shaw

OTHERS PRESENT AT MEETING

Please refer to Appendix 1 to review the Committee Sign-in Sheet for a list of other individuals who attended the meeting.

THURSDAY, AUGUST 23, 2012

CALL TO ORDER

Representative Brown called the meeting to order at 9:00 a.m. The Committee proceeded through its agenda, a copy of which is included as **Appendix 2**.

The Committee Meeting Summary of Proceedings (meeting minutes) is prepared by the Legislative Service Office (LSO) and is the official record of the proceedings of a legislative committee meeting. This document does not represent a transcript of the meeting; it is a digest of the meeting and provides a record of official actions taken by the Committee. All meeting materials and handouts provided to the Committee by the Legislative Service Office, public officials, lobbyists, and the public are on file at the Legislative Service Office and are part of the official record of the meeting. An index of these materials is provided at the end of this document and these materials are on file at the Legislative Service Office. For more information or to review meeting materials, please contact the Legislative Service Office at (307) 777-7881 or by e-mail at lso@state.wy.us. The Summary of Proceedings for each legislative committee meeting can be found on the Wyoming Legislature's website at <http://legisweb.state.wy.us>.

Ian Shaw, LSO, provided information about Management Council's directive to conduct the meeting.

Bob Budd, Executive Director of the Wyoming Wildlife and Natural Resource Trust Fund, introduced himself and Trust Fund Board members, Delaine Roberts, Pidge Fulton and Gwyn McKee. Mr. Budd also introduced Christine Adams, Grants Manager for the Board.

Chairman of the Board, Delaine Roberts, provided a history of the Wyoming Wildlife and Natural Resource Trust ("WWNRT") Board since its inception in 2005. He discussed the purpose of the funding that the Board provides and the benefits of open space preservation in Wyoming.

Bob Budd then presented the information contained in **Appendix 3 and 4**. Mr. Budd's presentation provided a broad overview of the Wyoming Wildlife and Natural Resource Trust, its Board, its function, the process for reviewing and analyzing project applications, the Board's legal basis and the types of projects the Board has funded. Mr. Budd's presentation included an outline of the Board's powers and limitations. Mr. Budd praised the statute creating the Board in that it gives the Board considerable flexibility in managing funding and responding to variable circumstances. For example, where a project was funded for forest preservation, but a wildfire subsequently burned the forest, the Board had the ability to allow the funding to be used for fire rehabilitation. Mr. Budd explained that a "large project" (one in which the aggregate of funding is larger than \$200,000) will be reviewed no less than 18 times before any funding is released. On average, funded projects provide \$5.75 of total funding for every \$1 that is funded by the Board. The materials in **Appendix 4** include an economic analysis conducted by the University of Wyoming which supports the conclusion that the dollars invested by the Board contribute significantly to Wyoming's economy. Upon questioning, Mr. Budd explained that the Board does not spend significant funds on federal lands to do work that should be paid for by the federal government.

Mr. Budd explained the types of projects that have been funded and the shift in the nature of funding toward conservation easements. He explained the factors that impact the types of projects for which the Board receives applications. **Appendix 3 and 4** outline those factors.

Mr. Budd estimated that there is probably a 60% / 40% split between funding that has been dedicated to private versus federal lands, in favor of the private lands. If mixed projects that involve both federal and private lands are included as private projects, there is probably a 80% / 20% split in favor of private projects. Mr. Budd believes that, although the Board does fund projects on federal lands, the Board is not providing funding that the federal government should be providing. The Board has refused to fund projects until the federal government has provided adequate funding or completed tasks for which it should be responsible.

Mr. Budd's presentation included a summary of each of the project categories funded and the benefits of each. Those categories include conservation easements, Aspen habitat projects, water development, invasive species eradication, range enhancement and river restoration.

Pidge Fulton spoke to the Committee and emphasized that conservation easements are important because of their ability to preserve healthy ecological environments as opposed to paying for rehabilitation after damages are done. Chairman Hicks asked whether most projects are primarily designed for wildlife or agricultural conservation. Mr. Budd stated that projects are very much designed to promote both. The Committee discussed the idea that, without agriculture, Wyoming does not have wildlife habitat.

Mr. Budd explained that the recent spike in conservation easement funding has been largely due to the increased need to address Sage Grouse habitat and to prevent the Sage Grouse from being listed as an endangered species. Mr. Budd also reviewed Tabs 8 and 9 in **Appendix 4**. The tabs show the amount of mineral leasing activity on properties where the Board has helped create conservation easements. The tabs show the variety of economic and cultural activities that occur on lands that are subject to conservation easements.

Attorney Thomas Reese, Beatty & Wazniak in Casper, gave the Committee a presentation on his experience with conservation easements in Colorado and Wyoming. He explained that Wyoming's statutes are favorable to energy development on lands subject to conservation easements, particularly when compared to Colorado's statutes. He explained that, where there is a split estate, the mineral rights still prevail because the surface owner cannot impede mineral rights by allowing a conservation easement without the full consent of all mineral owners. In his experience, oil and gas development can occur on lands subject to conservation easements. Further, in his experience, this hasn't been a problem in Wyoming. The companies and land owners he represents have voiced no concern nor found it necessary to file lawsuits to force development opportunities. Mr. Reese reviewed the law in Wyoming regarding strip mining rights. He believes the surface owner has more rights of consent when strip mining is at issue but that this is the case with or without a conservation easement. The Committee discussed the restrictions on surface mining created in federal law and under the IRS statutes guiding landowners who hope to get tax credits by dedicating their land to conservation easements. Federal law prevents surface mining and surface owner consent to surface mining. The Board's conservation easement contracts reserve mineral rights and do not specifically address strip mining.

Attorney John McKinnley, Davis & Cannon in Cheyenne, provided testimony regarding the law of conservation easements and development on lands subject to conservation easements. Mr. McKinnley's law practice involves oil and gas development and he has considerable experience in conservation easements. Mr. McKinnley first discussed oil and gas development. Mr. McKinnley discussed conservation easements that are purchased, those that are donated and those that are a combination of the two. On purely donated easements, where the landowner wants to take advantage of federal tax benefits, the landowner must comply with the federal tax code which limits development more than otherwise. Surface mining is prohibited under such easements, but "limited and localized" oil and gas development is allowed. Wyoming's statutes require the consent of every mineral estate owner before a conservation easement can impact any mineral right. In his experience, conservation easements are never placed on lands where there might be value to surface mining. Most parties obtain a "letter of remoteness" prior to signing an easement agreement which declares that there are no economically viable mineral deposits under

the land. From an oil and gas development standpoint, Mr. McKinnley testified that there is no significant difference between dealing with conservation easement property compared to other property. The priority of all developers is entering into a fair land use agreement which simply includes the conservation easement grantee where there is a conservation easement.

Paul Shelton from the National Resource Conservation Service ("NRCS") provided testimony consistent with the materials contained in **Appendix 5**. Mr. Shelton explained that the vast amount of money available for NRCS supported conservation easements is due to Sage Grouse conservation. He explained the history of the Sage Grouse issue and why it led to significant funding for conservation easements. NRCS knew that if the sage grouse was listed as an endangered species, it would negatively impact its customers, the agriculture community. NRCS concentrated many funding sources into the program and made a large amount of funding available to support projects that promote Sage Grouse habitat. The Committee discussed whether the Fish and Wildlife Service may list Sage Grouse as an endangered species regardless of conservation efforts. The Committee discussed the standards that the federal government has set to prevent the listing. Senator Bebout suggested that NRCS encourage the participation of the BLM, Fish and Wildlife Service and all other players in approaching the Sage Grouse problem and not only focused on tying up private lands.

Mr. Shelton reviewed the three easement programs that NRCS operates to promote conservation easements. They are the Wetland Reserve Program, the Grassland Reserve Program and the Farm and Ranch Lands Protection Program. He explained what lands qualify and how NRCS determines the value of each easement. Landowners are expected to contribute at least 25% of the value. This is where the Wyoming Natural Resource Trust comes into play since it often supplies a portion of this money. Wyoming received \$52 million in funding last year, 1/3 of the total that was available. Mr. Shelton explained that Wyoming gets a significant portion of NRCS money in large part because of the availability of state funding to reach the 25% matching requirement.

Harriet Hageman, Hageman & Brighton in Cheyenne, testified against the use of perpetual conservation easements in Wyoming. Her presentation is included as **Appendix 6**. While she does not oppose conservation easements, she opposes those conservation easements that are perpetual. She explained how they impact landowners' rights for hundreds of years and bind landowners who did not enter into the agreements. She believes that perpetual conservation easements remove a future landowner's right to make choices about the use of their land and hand decision-making power to third party easement grantees. She testified that Wyoming is considered a "semi-sovereign" state because of the large quantity of federal land ownership. She believes that the approximately 50% of Wyoming that is privately owned needs to be preserved for development and not limited in its use. She discussed the growth of land trusts and conservation easements and believes that they threaten our state's well-being. She believes that we are federalizing our private property rights. This is accomplished through the purchase of conservation easements by programs such as that operated by NRCS. The Stockgrower's Land Trust also enters into agreements which allow the USDA to control Wyoming's property. Ms. Hageman testified that a landowner may have liability to the federal government if the conservation purpose of an easement is violated. Ms. Hageman promotes state laws that limit

conservation easements to a specific period of time, perhaps 99 years. Ms. Hageman believes that the language in some conservation easement contracts can actually impede conservation and multiple-use land policy. Ms. Hageman also discussed the other points made in her presentation packet, **Appendix 6**.

After Ms. Hageman's presentation, the Committee had a lengthy discussion about whether conservation easements are likely to be enforced or enforceable if their operation becomes impracticable or unwise in the future. The Committee also discussed whether or not conservation easements have been bought, sold or traded after being formed. Mr. Budd testified that he is not aware of any conservation easement ever being bought, sold or traded.

Representative Brown adjourned the meeting at 4:30 p.m.

FRIDAY, AUGUST 24, 2012:

Chairman Hicks called the meeting to order at 8:05 a.m. He called for public comment.

Leah Burgess from the Rocky Mountain Elk Foundation ("RMEF") explained the Foundation's purpose, mission and involvement in Wyoming. They facilitate permanent land protection and conservation easements in Wyoming. They hold 9 conservation easements in Wyoming on approximately 9,000 acres. She testified about RMEF's Long Canyon Easement and the CBM development that has occurred on the property. RMEF served as an advisor to the landowner when entering into the land use agreement for the CBM development. The easement did not delay or complicate the CBM development. RMEF believes that the use of public money is appropriate for conservation easements because of the public benefit of habitat and wildlife conservation. Ms. Burgess explained that her organization is not tied to conservation easements, but that they appear to be the most useful way to accomplish land conservation and protection while providing tax benefits to the grantor/landowner. With regard to the discussion about the perpetual nature of conservation easements, Ms. Burgess testified that permanent protection is important to their mission. She noted that, once property is developed, you also have made a permanent decision about its use. Ms. Burgess testified that RMEF has not sold or traded any of its easements and that there is no market for such easements. Conservation easements impose an obligation and burden on the grantee and generally are not valuable. She explained that the easement contracts do contain language specifying landowner input regarding a replacement grantee should RMEF no longer be able to meet its stewardship obligations. RMEF does require a stewardship payment from the landowner to help cover the costs of stewardship. This is standard in land trusts.

Senator Hicks asked whether the state should only fund conservation easements that have a limited period. Ms. Burgess explained that state funding is very important in meeting the matching fund requirements for most easement programs, including those operated by NRCS. Most of those programs provide money only for perpetual easements.

Wyoming Land Trust ("WLT") director, Lara Ryan, testified. Her testimony included the information contained in **Appendix 7**. WLT has 30,000 acres conserved in Wyoming. They are working in 7 other Wyoming counties to conserve another 30,000 acres. Their goal and mission is to promote market-based, pro-private rights-of-ways to preserve land. She explained WLT's funding sources and her opinion that public funding is the key to leveraging other funding sources and, thereby, making conservation possible. On the issue of perpetuity, she testified that allowing development and subdivision of farming property is as equally binding as is the decision to allow a conservation easement. WLT believes that it is the current owner's right to determine what should be done with the property. She explained that their organization has a policy not to contact landowners to promote conservation. They also believe that easement language is well considered and that landowners fully understand the obligations that are imposed by conservation easements. She read a letter from Guy Landers which described his family ranch and the benefits of the conservation easement that he placed on his ranch through the Wyoming Land Trust. She explained the due diligence that goes into determining if a plot of land is appropriate for a conservation easement and the calculations used to measure the success of the easement. Ms. Ryan explained the protections offered to landowners in easement contracts, including protection from liability, the ability to amend the agreement and the ability to exercise significant control should the initial easement grantee be unable to continue its stewardship obligations.

Senator Bebout stated that conservation easements create a hurdle to developing mineral resources which can cause developers to go to another state. Ms. Ryan explained that it can be a benefit for a developer to work with a conservation easement holder who typically understands the rights of mineral developers and is experienced in facilitating the process. Ms. Ryan also explained the flexibility that is in easement contracts which can, for example, allow a change from no hunting to hunting if there is a change in circumstances. She explained how WLT works with new landowners and real estate agents to assure that a buying landowner understands the conservation easement to which a property is subject. This avoids a disconnect where the new owner does not understand easement restrictions. New owners have ample notice of a conservation easement because the easement travels with the deed in the county records and is revealed to the new owner before the sale and during the title search.

Ellen Vanuga then provided testimony on behalf of the Jackson Hole Land Trust. She provided a copy of a landowner letter concerning the Ring Lake Ranch conservation easement. The letter is included as **Appendix 8**. Ms. Vanuga explained how the WVNRT provided critical catalyst money which allowed the Ring Lake Ranch conservation easement to happen. WVNRT contributed \$282,400 at a leveraged amount of approximately \$5 to \$1. The total easement was \$1.2 million. This project did not require federal funding. It involved a guest ranch and was not purely agricultural in nature. The guest ranch has customers who come back year after year and who contribute to Wyoming's economy. She explained how the Jackson Hole Land Trust avoids hunting-restricted lands. In order to fund its due diligence and stewardship obligations, landowners are asked to contribute at the time of entering into the conservation easement.

Pam Dewell testified on behalf of the Wyoming Stockgrowers Land Trust. She introduced attorney Alvin Wiederspahn who testified. The Wyoming Stockgrower's Land Trust has a

specific mission that focuses on the protection of agricultural production and which facilitates the intergenerational transfer of ranch and farming properties. Stockgrower's easements provide for open space and wildlife habitat while keeping land in production. Mr. Wiederspahn explained that the easement agreements do not control day-to-day operations and allow considerable flexibility. The Stockgrower's rely on the WWNRT to support these efforts and WWNRT money is very important. The Stockgrowers do ask for a \$20,000 stewardship fee from each landowner which helps cover the costs of administering the conservation easement. Mr. Wiederspahn introduced Rob Hendry, chairman of the conservation committee of the Stockgrower's Land Trust. Mr. Hendry explained that Stockgrower's land owners are generally land rich and cash poor. Purchased conservation easements allow them the cash to make an agricultural lifestyle work. The benefits of placing their lands into a conservation easement range from wildlife and habitat protection to continued open spaces to enhanced agricultural operations. He explained how hunting access has been promoted through an easement that Stockgrower's have in the Big Horn mountains. Mr. Hendry testified that other legal methods to promote conservation are available, such as deed restrictions, but that they also are permanent and he believes conservation easements are a valuable tool.

Upon questioning from Senator Bebout, Mr. Wiederspahn acknowledged that conservation easements can represent a modest additional hurdle for energy developers. But, he testified that Stockgrower's easements, and many others, accommodate appropriate development, especially oil and gas development. Mr. Wiederspahn testified that surface mining issues are handled upfront and that surface mining lands generally are excepted from any easement. He feels that energy development has worked well within the bounds of Wyoming's existing laws and encourages some restraint in making changes to statutory language. He praised Wyoming in the development of its scenic, wildlife, habitat, mineral and agriculture resources. He believes our current system of funding conservation easements meets a very good balance.

Pam Dwell then addressed Ms. Hageman's testimony from Thursday and pointed to the flexible nature of the Stockgrower's conservation easement contract language. Ms. Dwell introduced landowners who have completed easements with the Wyoming Stockgrowers Land Trust. The landowners included Marvin Schmidt, Maggie Miller, David Slover, Brain Espenshied and Lilly and Stan Hoovendick. Each landowner provided testimony about the nature and benefits of the conservation easements placed on their land. The testimony concentrated on the benefits of having state money available to help fund the easements, the economic benefits to Wyoming which result from the easements and the agricultural and cultural benefits of the easements. Several of the landowners testified about successful oil and gas operations on their easement-encumbered property.

Graham McGaffin, external relations manager for The Nature Conservancy testified. The Nature Conservancy maintains 166 conservation easements in Wyoming. None have been transferred or sold. The Nature Conservancy supports the use of conservation easements as a tool to reduce estate taxes, make agricultural operations profitable and to promote conservation. They believe that it is wise and responsible to use state funds for conservation easements. The dollars invested have a beneficial return in the form of tourism, recreation, agriculture and wildlife. Mr. McGaffin explained that conservation easements can make mineral development easier by

allowing a developer to deal with one landowner rather than multiple landowners on a property that has been subdivided. Mr. McGaffin introduced Amen O'Tool who sold a conservation easement on his property to The Nature Conservancy. The money that was paid for the easement has allowed him to make his agricultural operation bigger so that it will support his entire family. He also has been able to pay debt with easement funds.

The Committee then heard testimony from Jim Magagna, Wyoming Stockgrower's Association. Mr. Magagna did not speak on behalf of the Stockgrower's Land Trust. The Stockgrower's believe that conservation easements are very important. They believe they are important enough to cause them to create the Stockgrower's Land Trust. Stockgrower's does not pursue easements and does not force them on anyone. The Stockgrower's Association believes that the WWNRT is a success story for Wyoming and they highly support WWNRT efforts. WWNRT has promoted agricultural interests while providing many other benefits. He pointed to the fact that properties with conservation easements are very desirable to agricultural operators who are trying to obtain properties at reasonable prices. He would support limiting state funding for conservation easements in appropriate ways. He thought the state may not want to support easements which prohibit public access.

Ken Hamilton testified on behalf of Wyoming Farm Bureau Federation. Wyoming Farm Bureau Federation has concerns about perpetual conservation easements. The problem is the impact of the easements 100 or 200 years from now. He believes we should explore a process that would allow the same benefits as are provided now, but on a shorter-term basis. He pointed to the federal CRP which has made available 10 year, extendable easement contracts.

Mr. Budd reminded the Committee that there is a 2-4 year process from the day a landowner starts to consider a conservation easement to the day the easement is in place. Consequently, the easement decision is well considered by the landowner. The WWNRT Board is willing and able to fund limited-term easements. However, Mr. Budd cautioned that they may not be attractive to landowners because landowners look at the value they can get from a permanent easement versus the value of a limited-term easement. The permanent easement is more valuable. Further, most other funding sources will not be available for limited-term easements and so WWNRT will be paying almost 100% of the value of such easements with no ability to leverage additional funding. Mr. Budd explained that WWNRT easements do not micro-manage the landowner's use of the land or dictate business practices. With regard to hunting on easement lands, WWNRT approves hunting restrictions only where there is a compelling wildlife or resource reason. Mr. Budd cautioned against making substantial changes to Wyoming law regarding WWNRT conservation easements. He believes the system is working very well and to everyone's benefit. He is fearful of unintended consequences if the law is substantially changed. If changes are needed, he believes rule amendments may be more appropriate than statutory changes.

The Committee then engaged in discussion. The Committee discussed the idea of using means-testing to award conservation easement grants and making amendments to the statutes to more clearly identify a broader range of resource management goals (not simply renewable resources). The Committee acknowledged the lack of testimony indicating that Wyoming easements are

being misused or that they have hindered mineral development. The Committee discussed the testimony indicating that current conservation easement practices are generating multiple benefits on Wyoming lands. The Committee acknowledged that any proposed statutory changes should be vetted with the WWNRT Board so as to fully understand their impact. Members of the Committee believe that conservation easements may play a big role in preventing the Sage Grouse from being listed as an endangered species. The Legislature should not remove any tools needed to fight this battle. The Committee discussed their belief that the current composition of the WWNRT Board, and its approach toward funding, seems to be appropriate and effective.

After further discussion, the Committee asked that Mr. Budd compile a list of possible restrictions on Wyoming's funding of conservation easements. Mr. Budd will review the list with the Board at the Board's October meeting. Committee members are encouraged to attend the Board's October meeting. The list will then be presented at the Committee's December meeting. At that time, the Committee will consider whether statutory or rule changes are appropriate.

MEETING ADJOURNMENT

There being no further business, Senator Hicks adjourned the meeting at 12:30 p.m.

Respectfully submitted,

Senator Hicks, Co-Chairman

Representative Brown, Co-Chairman

Committee Meeting Materials Index

Appendix	Appendix Topic	Appendix Description	Appendix Provider
1	Committee Sign-In Sheet	Lists meeting attendees	Legislative Service Office
2	Agenda	Meeting Agenda	Legislative Service Office
3	WWNRT Board	Slide Show Presentation by Bob Budd	Bob Budd – Wyoming Wildlife and Natural Resource Trust Fund– Executive Director
4	WWNRT Board	Notebook of Information	Bob Budd- Wyoming Wildlife and Natural Resource Trust Fund- Executive Director
5	NRCS-Paul Shelton	Paul Shelton, NRCS presentation	Paul Shelton
6	Public Comment	Harriet Hageman Presentation	Harriet Hageman
7	Public Comment	Wyoming Land Trust Presentation	Lara Ryan, Wyoming Land Trust
8	Public Comment	Ring Lake Ranch Letter	Ellen Vanuga, Jackson Hole Land Trust