



To: House Agriculture & Natural Resources Committee  
Representative Larry Powell, Chair

From: Mike Beam, Executive Director  
Ranchland Trust of Kansas

Re: Testimony in opposition to House Bill No. 2587, a bill limiting the duration of a conservation easement.

Date: March 14, 2012

*The Ranchland Trust of Kansas (RTK) is a land trust affiliated with the Kansas Livestock Association (KLA), headquartered in Topeka, Kansas. In 2003, KLA leaders formed RTK as a separate charitable conservation organization, with a mission to preserve Kansas' ranching heritage and open spaces for future generations through the conservation of working landscapes. The use of voluntary perpetual conservation easements is the primary tool that RTK and cooperating landowners utilize to conserve working lands.*

The Ranchland Trust of Kansas (RTK) is opposed to HB 2587 because the bill would (a) jeopardize opportunities for landowners to sell conservation easements in the future; (b) make Kansas conservation easement grantors (landowners) ineligible for the federal income tax deduction; (c) rescinds the fundamental benefit and value of the 1992 Kansas conservation easement act; and (d) strips Kansas landowners of a property right that is available under current law.

### **Background**

Before I address the concerns with HB 2587, it may be helpful to provide a little background about land trusts, RTK, and the use of conservation easements to conserve agricultural land. The attached Frequently Asked Questions should provide insight into our interest in this topic. About ten years ago the Kansas Livestock Association (KLA) members learned what their peers were doing, primarily in western states, to create agricultural land trusts to hold and administer perpetual conservation easements. Beef cattle trade associations in states such as Colorado, California, and Wyoming, had formed affiliated "land trusts" and were working with private landowners to enter into perpetual conservation easements that were crafted to keep land in farming and ranching, while preserving its agricultural use and open spaces for perpetuity.

KLA leaders learned that landowners in these states, with a strong private property rights philosophy, were entering into conservation easements as a way to capture the developmental value of their ranchlands while assuring their lands remained available for

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agricultural use for future generations. In most instances these agreements were for perpetuity.

After considerable study and consideration, the KLA board created RTK in 2004. RTK was the first agricultural land trust in Kansas. We discovered there was considerable interest in selling conservation easements in this state, but funding for the purchase of these development rights was the limiting factor.

As RTK was beginning, USDA/Natural Resources Conservation Service was unrolling the details of the new Grassland Reserve Program (GRP) which was a new conservation easement purchase program enacted by the passage of the 2002 Farm Bill. The first application period of this program was the summer of 2003, and Kansas grassland owners lined up to enroll over 68,000 acres in the GRP perpetual conservation easements. To date, Kansas landowner enrollment in GRP has outpaced all other states in the degree of interest and participation in GRP. This level of application and enrollment was a signal to KLA and RTK leaders that there is strong demand for perpetual conservation easements in this state and there was a place for an agricultural land trust.

#### **Why do agricultural landowners consider conservation easements?**

We've found there are several factors that drive landowner interest in conservation easements. In some instances, when the funds for the purchase of these agreements are available, agricultural landowners look to conservation easements as a means of leveraging the development value of their property without changing the use of the land. A conservation easement can be a valuable tool for a farm or ranch family's succession plan.

In some instances, especially in states where open space sells for a premium, a conservation easement can lower the appraised market value and lessen the estate tax liability for future generations. Depending on the future estate tax provisions, this could become an increasingly important factor.

The number one driver of conservation easements, however, is the desire of the landowner to preserve the agricultural legacy of the family by conserving the land and its use for the future. It may have taken a couple of generations to build the family's ranch by making sacrifices and paying for the land with sweat equity and by being sound stewards of the landscape.

#### **How does HB 2587 change current law?**

The Kansas conservation easement statutes allow a grantor (landowner) to assign a conservation easement for a time period designated by the provisions of the conservation easement deed. The law does not prohibit a conservation easement from being less than perpetual in duration. HB 2587 would limit conservation easements in Kansas to no more than 50 years or for the lifetime of the grantor. In addition, the bill would allow a grantor to revoke the conservation easement at any time.

### **The implications of passing HB 2587**

There are limited sources of funding for the purchase of conservation easements in Kansas. How can we expect Kansas landowners to access these programs if the state law is changed to prohibit conservation easements for fifty years or less?

If a landowner donates part or all of the conservation easement to an eligible entity (such as RTK) he/she may take a federal income tax deduction for this charitable deduction. This federal tax provision [Section 1.170A-14 (a)] specifically requires that "To be eligible for a deduction under this section, the conservation purpose must be protected in perpetuity".

The Kansas conservation easement act was passed in 1992. The purpose of the act was to give Kansas landowners the opportunity to grant conservation easements on their land to preserve or conserve their land. While the law allows for these agreements to be less than perpetuity, it's clear that most of the conservation easements to date have been for perpetuity. Limiting conservation easements in Kansas to fifty years is unprecedented and contrary to how the law has been applied to date.

Why should the Kansas Legislature pass HB 2587 and strip our state's landowners of the opportunity and the right to grant perpetual conservation easements? It's a voluntary agreement, and there is obviously considerable interest and desire by landowners to grant perpetual conservation easements.

In closing, we urge the committee to reject HB 2587. In addition, we suggest the Kansas Legislature consider more positive measures such as a dedicated source of funds to help purchase conservation easements on our state's working landscapes. Such a move would be a benefit to families wanting to leverage the development value of their property. This alternative would help conserve one of our state's most treasured natural resources and assure there is considerable agricultural lands that will remain as such to provide a source of food to the world's increasing population.

Thank you for considering our testimony.



## Frequently Asked Questions about Land Trusts and Conservation Easements

### What is a land trust?

Land trusts are private, non-profit organizations with the primary mission of conserving land and open spaces. In most instances, the Internal Revenue Service (IRS) expressly recognizes a land trust as a charitable organization.

### How do land trusts conserve land?

While land trusts may own title to land, they more commonly hold, manage, and administer *conservation easements* from landowners who desire to preserve the conservation values and open spaces of their land.

### Are there many land trusts?

According to the Land Trust Alliance (LTA), some trusts organized over 100 years ago. Today, LTA estimates over 1,200 local and regional land trusts protect over 6.2 million acres in the United States.

### What or who is the Ranchland Trust of Kansas?

This entity is a non-profit organization founded by the Kansas Livestock Association (KLA) in 2003. The Ranchland Trust of Kansas (RTK) is an affiliate of KLA, and is recognized by the Kansas Secretary of State and IRS as a separate, stand-alone organization with its own articles of incorporation, bylaws, budget/checking account, and board of directors.

### What is the purpose of RTK?

The mission of the Ranchland Trust of Kansas (RTK) is to preserve Kansas' ranching heritage and open spaces for future generations through the conservation of working landscapes. To fulfill this mission, RTK is authorized in its bylaws and IRS filings to acquire, own, hold, protect and defend conservation easements.

### Why did KLA create a land trust?

KLA leaders in the Flint Hills expressed interest in forming a land trust in 2001 to provide a rancher/landowner-governed organization to assist landowners who are considering *conservation easements* on their working ranchlands. The ranchers and landowners involved in forming the RTK believe the vast acres of open-spaced ranch lands of Kansas will be under more intense developmental pressure in the future. These leaders believed many landowners would prefer voluntary conservation easements as an economic alternative to development, especially if the easements could be held and administered by a qualified and competent agricultural land trust.

**Have other agricultural organizations formed land trusts?**

Yes. In fact, RTK is a member of a coalition of land trusts that are affiliated with seven state livestock producer organizations. This group, called the Partnership of Rangeland Trusts, collectively holds over 1,100 conservation easements on over 1.7 million acres of working agricultural lands.

**What is a conservation easement?**

A conservation easement is a legally recorded agreement or contract, between the landowner and a land trust, which limits a property's uses to protect its conservation values. These agreements are entered into on a voluntary basis.

**How does a conservation easement impact ownership and land management?**

A landowner who donates or sells a conservation easement retains title to the property and continues to determine who may have access to the property. A conservation easement runs with the title to the property regardless of future changes in ownership.

**What activities are prohibited or restricted with a conservation easement?**

Each conservation easement is tailored to the conservation desires of the owner(s) and grantee, but usually restricts (a) sub-division for residential or commercial purposes; (b) construction of non-agricultural buildings; and (c) surface mining.

**What activities are allowed under a conservation easement?**

Most conservation easements on agricultural land expressly authorize a continuation of farming and ranching activities. RTK's purpose is to preserve working agricultural land for subsequent generations.

**Are there any economic incentives for donating a conservation easement on my property?**

The donation of an easement may qualify as a charitable contribution for federal income tax purposes. Furthermore, a conservation easement may reduce estate and gift taxes.

**Can I receive a payment for placing a conservation easement on my farm or ranch?**

Funds to purchase conservation easements in Kansas currently are limited. The USDA-Natural Resources Conservation Service (NRCS) Grassland Reserve Program (GRP) has provided money to purchase conservation easements on over 36,000 acres of grazing lands in Kansas, since 2003. In addition, the USDA-NRCS Farm and Ranchland Protection Program (FRPP) has provided cost-share funds for 21 conservation easements, on 31,000 acres during the last nine years. Additional GRP & FRPP dollars may be available, on a limited basis, for the next few years. Securing a sustainable source of state funds for the purchase of conservation easements is a long-term goal of RTK.

**Why would anyone consider placing a conservation easement on their property?**

A conservation easement is not for every landowner, but it is a tool that many are using to preserve their land and their legacy for future generations.