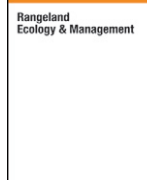




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Balancing Property Rights and Social Responsibilities: Perspectives of Conservation Easement Landowners[☆]

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ABSTRACT

Currently, > 20 million acres in the United States are protected through conservation easements. While the role of property rights in enabling conservation easements is well documented, attitudes of landowners living under those property rights regimes have not been thoroughly researched. To address the knowledge gap, landowners in Texas with perpetual conservation easements participated in a mail survey and resulting data were compared with prior research on the property rights perspectives of a group of noneasement-owning rural landowners. Our study indicates that easement and noneasement landowners differ in their attitudes concerning both property rights and social responsibilities with respect to land management. While landowners in both groups agreed that property ownership conveyed certain fundamental rights, noneasement landowners expressed stronger conventional property rights attitudes than easement landowners. Counter to expectations, noneasement landowners were also more likely to express a stronger land stewardship ethic. We also found significant demographic differences between the two groups with easement landowners tending to be younger, having more formal education, being less likely to live on their rural property and owning their property for a shorter period of time. Those demographic differences, combined with differences between the two groups of landowners with respect to dependence on their land for income, locational differences of the two surveys from which data were obtained, and the 9-yr span between the two surveys limited our ability to extrapolate our findings to a broader population of landowners. Intragroup comparisons among easement landowners failed to find differences between easement-granting and successive generation easement landowners with respect to property rights orientations, but we did find some attitudinal differences between male and female respondents. Our research implies that landowners willing to accept substantial property rights adjustments designed to facilitate environmental protection goals may have inherently different attitudes concerning property rights ideals.

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Introduction

Effective natural resource conservation on private lands is essential for protecting the full suite of ecosystem functions required for sustaining life (Scott et al. 2001; Hilty and Merenlender 2003). While private landowners do derive benefit from some of the services provided by the ecosystems on their land (e.g., open space, wildlife habitat, air and water filtration) and incur most of the costs of maintaining them, these benefits also accrue to broader society for little to no cost. In other words, many ecosystem services are nonexcludable public goods (Daly and Farley 2004). Landowners are often unable to maintain publicly important ecosystem services that are negatively affected by land

development (e.g., endangered species habitat), without public payments to cover some of the maintenance costs. More problematic is that landowners are sometimes forced to sell parts of their land to cover increasingly high property or estate taxes. When conservation easements are established, many of the development rights are removed, reducing the value of the land. Conservation easement landowners may benefit from this in one of three ways: They may receive direct payments for the opportunity cost; they may claim the reduced value of their property as a charitable deduction for income tax purposes; and/or they may incur lower property taxes. This creates an incentive for some landowners to grant conservation easements on their land to reduce the pressure to subdivide and/or sell their land for development. In turn, this positively influences the maintenance of ecosystem services by encouraging the retention of large tracts of open space.

Increasingly, conservation easements (or easement) are used as a mechanism to provide compensation for private land conservation and, by extension, the protection of associated ecosystem services. Such compensation is provided to landowners with conservation easements through either direct payments or tax reductions for the conservation

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easement. A conservation easement, called a *conservation covenant* outside of the United States, is a voluntary deed restriction that alters property rights by restricting how the land can be used, specifically by preventing most development and subdivision. In addition, through the establishment of such easements, conservation organizations that assume ownership of the easement can protect more land at a lower cost compared with outright acquisition of the property (Fairfax et al. 2005).

Recent research has begun to empirically evaluate the ecological and economic effectiveness of conservation easements (Newburn et al. 2005; Kiesecker et al. 2007; McDonald et al. 2007; Rissman et al. 2007; Pocewicz et al. 2011; Noone et al. 2012; Iftekhar et al. 2014). However, since conservation easements are a property rights constraint, they also have social implications and understanding the sociological dimensions of conservation easements is essential for evaluating their overall ability to produce the desired conservation outcomes. Several studies have examined motivational drivers of easement conveyance (Wallace et al. 2008; Miller et al. 2010; Farmer et al. 2011a); however, only limited research has been conducted about landowners' attitudes regarding their conservation easements (Cheever 1996; Rilla 2002; McLaughlin 2005). In addition, while the role of property rights in enabling conservation easements is well represented in the literature (Demsetz 2002; Heltberg 2002; Stoms et al. 2009; Adams and Moon 2013; Rissman 2013), no research has been conducted to illuminate the property rights orientations of landowners with easement-encumbered properties.

Property rights systems in the United States were traditionally established by common law, which is determined by precedent or case law and distinguished from statutory or regulatory laws that are promulgated by legislatures or the executive branch, respectively. Under common law, courts were unlikely to enforce perpetual conservation easements because they are considered a type of "negative easement," meaning that certain actions are not permitted, with the intention that the restrictions will confer a benefit to the wider public. Historically, common law courts would not recognize negative easements unless the primary beneficiaries of the easement were adjacent landowners, not the broader community (Parker 2004). Furthermore, in order to prevent "dead hand control" where the desires of the deceased control the actions of the living, common law courts would not recognize deed restrictions that "run with the land"; in other words, restrictions that transfer to subsequent landowners (McLaughlin 2005). In response to these legal limitations, the National Conference of Commissioners on Uniform State Laws authored a statutory model in 1981, called the Uniform Conservation Easement Act (UCEA) to serve as a model for state statutes enabling permanent conservation easements (Parker 2004). By 2010, most states (all except North Dakota) had adopted conservation easement-enabling statutes, many modeled on the UCEA (Levin 2010). Since then, the application of conservation easements as a conservation tool has increased drastically. Current estimates approximate > 20 million acres in the United States that are protected through conservation easements held by private and public entities (Pidot 2005; Chang 2011; USDA 2013).

Property rights are used to define owners' rights, privileges, obligations, and constraints with respect to a resource. Most commonly, the state defines and enforces the nature of property rights but property rights can also be enforced by implicit social institutions (Reynolds 2005). Private property rights are generally perceived as a bundle of rights (synonymous with a "bundle of sticks"). A private landowner may purchase a piece of property but not own all of the rights (or sticks) associated with that specific piece of land. For example, an owner may have the exclusive right to use the surface of the land but may not own the rights to water or subsurface minerals on the property. Similarly, once an easement has been conveyed, some property rights have been effectively split between two owners: the landowner who retains the right to use the land in a restricted manner and the easement-holding organization that owns the rights that have been separated out (e.g., subdivision and development rights).

It is possible that concerns over the loss of property rights may influence landowners' desire to challenge the terms of the conservation easement restrictions. Moreover, understanding conservation easement landowners' property rights orientations is important because attitudes often affect behavior (Lopez-Mosquera and Sanchez 2012; Stern 2000). Opinions concerning property rights have been found to influence landowner willingness to convey conservation easements (Kabii and Horwitz 2006). In addition, Kreuter et al. (2006) found that property rights orientations were better predictors of landowners' use of socially desirable management on their properties than other sociodemographic variables, including age, education, income, or residency on their land. Specifically, they found that landowners who held stronger social responsibility and land stewardship orientations were also more prepared to adopt socially desirable land management objectives including protecting water quality, providing hunting access and protecting endangered species habitat.

To analyze landowner perceptions about their property rights, we compared two data sets. The first data set was derived from a 2011 survey of easement-landowners across Texas. The second data set was obtained via a 2002 survey of a broader range of rural landowners in two counties, Llano and Sutton, located in the Edwards Plateau ecoregion of Texas (Jackson-Smith et al. 2005). In both surveys, landowners were asked about their private property rights attitudes. These two data sets enabled us to compare property rights and responsibilities orientations of landowners with and without conservation easement-related constraints. The two data sets also allowed us to explore how differences in such orientations affect decision making about the management of natural resources on private property in our study area. In this study, we tested four hypotheses:

H1. *Landowners with easement-encumbered properties will express weaker property rights attitudes than other rural landowners.* This is because easement landowners do not enjoy the full suite of traditional private property rights and, therefore, their expectations of strong, inalienable property rights may be diminished compared with other private landowners.

H2. *Compared with other rural landowners, those with easement-encumbered properties will express a greater sense of responsibility toward protecting natural resources on their properties in a way that provides benefits to society.* Previous research investigating motivations for easement conveyance indicated that most easement landowners or potential easement grantors exhibit strong pro-environmental attitudes (Rilla 2002; Ernst and Wallace 2008; Farmer et al. 2011a; Farmer et al. 2011b; Brenner et al. 2013), which we believe will be reflected in their attitudes toward stewardship of natural resources on their property. For the purposes of this paper, we define stewardship as the responsible management of land entrusted to the care of landowners for their benefit and for the benefit of future generations.

H3. *Grantor easement landowners will exhibit weaker attitudes about property rights than successive generation easement landowners.* Previous research suggests that property rights notions influence landowners' decision making with respect to easement conveyance (Kabii and Horwitz 2006; Miller et al. 2010). In conveying the conservation easement, grantor landowners voluntarily surrender some of their property rights, whereas landowners who acquired their properties after the conservation easements were established may be more concerned about the relinquished property rights.

H4. *Women are more tolerant of property rights restrictions and assume a greater social responsibility to manage natural resources for the benefit of others than men.* Previous research found that women are more satisfied than men with conservation easements and the relationship with their easement holding organization (Stroman and Kreuter 2014). In addition, women tend to exhibit more pro-environmental

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