

*SELECT REVENUE MEASURES SUBCOMMITTEE  
OF THE  
COMMITTEE ON WAYS AND MEANS  
OF THE  
UNITED STATES HOUSE OF REPRESENTATIVES*

*H.R. 2036*

*PAUL COVERDELL  
OPEN SPACE CONSERVATION  
FARMERS AND RANCHERS RELIEF ACT*

TESTIMONY

of

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Mr. Chairman: Thank you and your Members for the invitation and opportunity to appear before your Committee.

My name is Christopher Glenn Sawyer. I reside in Atlanta, Georgia, where I have practiced law for 24 years.

During this period of time, I have had a unique experience with land usage in America. As a lawyer, I have advised and represented real estate companies across America relating to issues of development and institutional real estate investment. In addition to the experience of this legal practice, I also represent and serve today as a member of the Board of Directors of one of the largest, privately held development companies in America. I have also been nominated to serve on the Board of Trustees of the Urban Land Institute.

Over the last twelve years, I have also been active with land conservation issues throughout the United States. In addition to serving on the Georgia boards of the Trust for Public Land and The Nature Conservancy, I have also served as chairman of the National Real Estate Advisory Board of The Nature Conservancy, as current President of the West Hill Foundation for Nature in Wyoming, and currently and for the last six years as the National Chairman of the Trust for Public Land headquartered in San Francisco.

While these experiences have certainly exposed me to the broad issues of our environment, I have also worked on specific projects. Most notably, five years ago I helped start the Chattahoochee River Greenway Program, an effort to create a greenway along the banks of the Chattahoochee River from Helen to Columbus, Georgia, a linear distance of approximately 180 miles. As part of that effort, we came to Congress and received an appropriation of \$25 million to increase significantly the size of the Chattahoochee River National Recreation Area. Since that time, we have taken those funds and, through creating an active partnership among federal, state and local governments, a number of nonprofits, and many businesses and individuals, we have not only essentially doubled the size of the Chattahoochee River National Recreation Area, but by leveraging those federal dollars we have also raised over \$130 million in addition to the federal grant and, now four years later, have acquired by gift or acquisition a total of 60 miles of river frontage. As founding and current chairman of the Chattahoochee River Coordinating Committee, the organizing body of this effort since its inception, I have learned a lot about our environmental needs and what we, I believe, must do to respond to them.

This work, as well as work with other national organizations, has required me to travel 40,000 to 60,000 miles a year within the United States over the last ten years working on, and learning about, land use and environmental issues. While I wish to make it clear that I am here today as a private citizen and not as a formal representative of these various organizations, these experiences have certainly informed and shaped the opinions that I wish to share with you this afternoon.

My fundamental perspective as a result of these experiences is that America has a very significant land use crisis that threatens the bounty of our natural resources and the rich diversity of our culture. This crisis poses an immediate threat to us today and the promise, without immediate and dramatic action that scales to the true needs of our country, of a greatly degraded and irrevocably altered natural estate for all generations to come.

While I have offered more extensive support for this assertion in materials that I have submitted with this testimony, let me offer some support here for this position, as well as a sense of the current pace of this degradation and depletion.

- ? Over our history, the lower 48 states have lost 52% of their original wetland areas and they continue to lose these areas at the rate of 109,000 acres per year; because each acre of wetland provides significant annual economic

benefits<sup>1</sup>, this continuing annual loss of 109,000 acres amounts to a loss of billions of dollars each year, losses that continue and compound with new losses year after year. Geologically significant grasslands have and are disappearing at similar rates.

- ? When one surveys the environment regionally, the loss seems, if possible, even greater: the Central Valley of California has lost 95% of its original wetlands and 90% of its riparian corridors have been lost or severely degraded; 50% of the forest and wetlands have been cleared and drained around the Chesapeake Bay, severely deteriorating the quality of its water; 80% of the original 24,000,000 acres of forested wetlands in the Mississippi Alluvial Valley are gone; 96% of the original 167,000,000 of the tallgrass prairies in the Midwest are gone; 98% of the formerly dominant long-leaf pine in the Southeast region are gone; and the Pacific Northwest has lost 90%, or 25,000,000 acres, of its ancient forests.
- ? Of the 14 major living groups of organisms, including all vertebrates and vascular plants in the United States, 1/3 of them are graded of "conservation concern", meaning that they are either extinct, imperiled or significantly vulnerable. Similarly, of the 76 eco-regions in the 48 contiguous states, only nine are considered not to be critical, endangered or in a vulnerable condition as habitat for the species they contain. Indeed, an astounding 30% or more of the natural communities in areas such as Hawaii, Oregon's Willamette Valley, and vast portions of the Midwest and Southeast are in danger of vanishing from our natural landscape.

While it is easy to read these as statistics, these statistics report the condition of our natural estate. That estate has been the remarkable physical platform for our wealth and our strength, and it is obviously diminished and imperiled. But it is not just the natural estate; it is also our culture and our quality of life. For example:

- ? From 1982 to 1992, more than 1,000,000 acres of agricultural land across the United States was converted annually to residential and other development purposes, one-third of which was classified as prime and unique farmland. From 1992 to 1997, the conversion rate doubled, with 11.2 million acres converted from farmland to other purposes.
- ? In the last two decades, over one million acres of rangeland in the Greater Yellowstone area have been split into plots of 200 acres or less, changing irrevocably those ranching communities and fragmenting the landscape that some say defines America.

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<sup>1</sup> See, e.g., the attached article: "The Value of Conservation Easements: The Importance of Protecting Nature and Open Space", by Amanda Sauer, World Resources Institute, April 9, 2002

- ? From 1992 to 1997, the United States created 15% of its total urban footprint – the other 85% took approximately 220 years.
- ? This development pattern is dependent on the automobile and the result of that is that the average American now spends approximately 445 hours in a car annually or the equivalent of 55 eight hour work days – all at a great cost to our land, our air, our water, our families, and our communities.

While we need economic growth, to continue to develop in this same pattern not only wastes our land base, but it also diminishes our water quality, our air quality, our sense of community, our natural habitat for plants and animals, and our culture. It is especially harmful to our ranching and farming communities because so much of their land is being irreparably lost to other land uses.

Without dramatic change, the future bodes no better for the future of our beautiful country:

- ? For example, the scientists at Yellowstone National Park report that, unless development patterns are addressed in the three states surrounding the park, the large mammals within the park will no longer be able to exist naturally. They will, in effect, become museum pieces because they will no longer be able to follow their migratory trails in and out of those spectacular areas that their natural existence requires.
- ? The demographers in the Southeast are now reporting that we should anticipate that there will be one metropolitan area that connects Birmingham to Atlanta to Greenville to Charlotte to Raleigh in the very near term. Not only will this change the culture of the Southeast forever, but it will obviously affect the natural communities as indicated above.
- ? Recent flooding of the Mississippi reminds us of the astounding costs of channeling these great rivers and losing the wetlands that cushion and absorb the natural flood stages of our riparian systems. This will become an even greater problem throughout the nation.
- ? If current development and population trends continue, it is estimated that by 2050 our farmers and ranchers will be required to produce food for 50% more Americans on 13% less land.

As a nation, we have simply worked our land and natural estate hard for 225 years, a fact that would stress any system. This stress, however, is greatly exacerbated today by the fact that we now have 281,000,000 people, a 13% increase since 1990, and it is anticipated that that number will increase by 58,000,000, or 21%, by 2020.

Collectively this is a very difficult picture. It is the result of many causes and stresses and will require new and dramatic solutions that scale to the depths and breadth of these challenges to restore fully a balance that is worthy of this great land and nation that we share.

It is, however, an especially disturbing picture, not just from the perspective of what we have lost, which is extraordinarily significant, but even more so when we fully realize that this is also the picture of the physical platform for our future strength. We are the beneficiary and the product of our natural estate. And just as it has been throughout our history, the strength, power and wealth of our nation in the future is absolutely dependent upon its condition.

This disturbing conclusion is underscored by the fact that we no longer have any time left for wasted opportunity or misguided activity.<sup>2</sup> It is the same as when we started the Chattahoochee River Greenway project. We simply looked at the aerial photographs and realized that unless we began that day to create our Greenway, we would lose the opportunity to create those parks and conserve and enhance those river and water resources forever. As one travels over our country, one knows that there are identical aerial photographs in every state. It certainly is so around Yellowstone National Park; as the South morphs into one metropolitan area from Birmingham to Washington, it is certainly true there; as one looks at development leap up the Hudson River or consume more of the desert of Arizona or as another ranch or farm family elects to sell its land, we know that it is true in those places and elsewhere in America as well.

As we consider all of this and wonder how we might effectively respond, we must admit one clear fact. We must acknowledge these statistics as a troubling report card at best on our generation's stewardship of our natural estate. We must also agree that it is a report card that demands response today and a response that is predicated on the certain knowledge that we can no longer afford any course that does not begin to improve this report card dramatically, immediately and permanently.

So the question is not, do we need to make a reinvestment, or when, it is simply what is the best way to do it? And even this question has its own urgency because we are at a point in our history where the economy is difficult, there is heightened turmoil in the world, and governmental dollars are especially precious. We need to make certain that every dollar we spend on conservation is wisely invested. And every dollar we spend, whether it is through direct appropriation or through tax policy, should be tested through the prism of whether or not that dollar best assures us of a significant and lasting improvement in our natural estate report card.

This new course will require over time many things. There will be new conservation opportunities to seize, maintenance and operational issues to address, and

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<sup>2</sup> See, e.g., the attached lecture: "The Cascading of Environmental Consequences: Are We Running Out of Time?", by James Gustave Speth, Dean, Yale School of Forestry & Environmental Studies, April 11, 2001

new park needs to be met. But business as usual will clearly not by itself achieve our goal.

We must begin today a thoughtful new national initiative, on a scale that is beyond any historical standard, that allows us to conserve and allow for the restoration of our natural estate. And it must be an initiative that gives all of us confidence that its inevitable result will be significant improvement in the protection of our rivers, conservation of our forests, the providing of sufficient habitat for the diversity of species that we need to survive, the setting aside of our precious farm and ranch land, and the enhancement of cities through appropriate "green space". To fail to create such a program, or to create a new program that is not structured and coordinated to achieve these results nationally, will not work.

The question then is how do we craft such an initiative that will best spend our dollars, most effectively and most expeditiously, with the greatest chance of success against our goal?

While one can debate many of the details, my experiences have taught me that the following principles, strategies and values must be incorporated in any plan for us to be successful against this goal. Those include the following:

- (1) Hybrid land estate: We must recognize that our emphasis on land being either public or private has been too simple and a real part of the problem. A great deal of the required solution is coming to understand that we need a greater emphasis on the creation of a larger hybrid land estate throughout America that can achieve our conservation needs and in many instances connect our fully public land to our fully private and enhance them both. This hybrid land estate must remain privately owned and managed, but simultaneously must also be burdened with the loss of certain development rights that the public has acquired voluntarily from the owner at fair market value and holds in perpetuity for the benefit of all of us. These hybrid lands, while staying in private ownership and supporting private purposes, would also serve the public and its collective needs by protecting our water, cleaning the air, conserving habitat for our natural species, maintaining our farm and ranch lands, and by offering "green" space to all of us. Fortunately, we have a 25-year or more history of working with conservation easements, which is the legal tool that creates this hybrid estate. Funding conservation easements must therefore be at the center of any such program.
- (2) Leveraged Focus: The program's focus must be sharp and it must be on reinvesting in, and thereby strengthening, our natural estate. The use of conservation easements would allow us to acquire from the landowner only that portion of the real estate necessary to accomplish our goals. Use of conservation easements would therefore offer the substantial advantage of allowing us to accomplish a great deal more conservation

than we would with equivalent dollars expended for the full acquisition of the property. This strategy would also allow us to avoid the on-going costs associated with managing and operating the property.<sup>3</sup>

- (3) State Involvement: Every state must be involved and incented to participate in this program. While a portion of this reflects that every state has environmental stresses that must be addressed, this also recognizes that environmental systems, such as rivers, prairies, forests, and all of the species that they support, do not know state lines. To be successful over time, and to protect our overall investment, we must therefore have every state moving in a similar direction.
- (4) Partnerships: We must recognize that the most effective conservation has been the result of public/private partnerships and therefore any plan must put their creation at its center. Congress must set the strategic direction and must set both the importance and pace of the program by the amount of capital that it allocates to it; the states must be involved in coordinating the activities at their level and in helping to set local priorities; and the private sector must lead the execution. As part of this, we must understand and appreciate that conservation easements are bought and sold one family landowner at a time. The best and most expeditious way to negotiate and close those transactions will be to leverage the existing resources of the nonprofit conservation community, including the community leaders across America that serve on their board of directors. The nonprofit organizations therefore must also be at the center of any such plan.
- (5) Use and scale of capital: Use of capital under this program should be limited to the acquisition and requirements of conservation easements. By doing so, Congress would be putting specific restrictions on the use of the capital in accordance with existing law that happens to be consistent with our program's objectives. The scale of the capital should reflect the deep needs of our country but should also be calibrated between what is possible to execute as well as what is needed to unlock the focus, imagination and energy of the most people to respond to this challenge.
- (6) Urgency: The dollars should be allocated to states pursuant to specific deadlines and, if the money is not spent within those deadlines, it should

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<sup>3</sup> This is more succinctly stated in the attached report published by the Western Governors' Association, The Trust for Public Land, and National Cattlemen's Beef Association, entitled "Purchase of Development Rights: Conserving Lands, Preserving Western Livelihoods", January, 2001: "[Purchase of development rights through conservation easements] makes economic sense in the West: it is a compensatory approach to conservation that protects land from development pressure at prices that are more affordable for the public than outright purchase, and it helps keep farmers and ranchers on the land, providing essential stewardship and contributing to the tax base." (Page 5) and "The dire need to create substantial, dedicated funding sources for state and local [Purchase of Development Rights] programs can hardly be overstated." (page 12)

be redistributed to those parts of our country with more pressing needs and that also have the immediate capacity and desire to execute.

- (7) Equity: We must recognize that the conservation and restoration of our natural estate is everyone's responsibility. Paying for it rather than simply accomplishing it through regulation or relying on the generosity of the few reflects this value. We should certainly keep our current donation system in place and encourage its generous use. But by creating a system that is based on acquisitions of conservation easements at fair market value, we can move to a program that not only allows everyone to participate, but also allows us to negotiate for clearer results, act more strategically, and establish our own pace of execution: all critically important to the success of our effort.
- (8) Tax credits: To be successful, we must get as many people involved in America as possible. The best way to achieve this is not through direct appropriations, which is a process involving relatively few people, but instead to use tax credits, which is a process that ultimately includes a lot of people. A program based on tax credits will invite and incent those organizations that wish to deploy the credits to get more individuals and businesses involved in these issues and their solutions. This will require a process of education and engagement that will result in much more attention, understanding, and commitment to the resolution of these issues. It will also allow us to move at the much quicker response pace that our natural estate crisis requires.
- (9) Strategic conservation: Because of the way in which we have financed a great deal of conservation in this nation, much of it has been done opportunistically as distinct from strategically. What this means by example is that we have acquired a site here and there as they have become available or as someone has been able to afford to give them, but collectively they do not necessarily support or maintain an ecosystem. In those instances, not only do they not fully accomplish a natural estate goal, but by failing to do so they devalue, in some instances, the investment or gift that has been made. The system that we establish must allow us to move to strategic conservation. By allocating a set amount on an annual basis on a state-by-state basis with appropriate sunset provisions, we would allow and incent states and landowners to respond strategically to these issues. This is essentially what happened with our successful Chattahoochee River project.

These are the nine elements that I believe must be included to craft a plan that will dramatically improve our natural estate report card immediately and permanently. That is why I am here to urge consideration, and ultimately, passage of H. R. 882.



H.R. 882 prescribes a plan that reflects each of the nine values, strategies, and principles stated above. It is entirely centered on conservation easements; dollars are allocated to every state on a fair basis which assures the participation of every state; it puts a non-profit conservation organization at the center of the plan, but in the context of a direct working partnership with federal and state government; the capital that it allocates may only be used for the acquisition and requirements of conservation easements; it proposes a spending level that scales to the need as well as communicates the importance of the need; there are specific deadlines that will motivate states and land owners alike; it allows each of us to participate in the conservation and restoration of our natural estate; it is centered on tax credits rather than direct appropriations; and it will allow strategic conservation planning and execution.

While over time experience may require us to alter some of its provisions, all dollars spent in the interim will move us closer to our goal. The reason for this is that under H.R. 882 dollars can only be expended for the acquisition of conservation easements and their requirements. This will assure two results. Because of the current legal limitations on conservation easements, whatever dollars are spent during that period will have resulted in significant conservation goals having been met. In addition, because we can achieve a great deal more conservation for the equivalent dollar with conservation easements than through outright acquisition of property, we will have substantially leveraged all of the dollars that we have spent.

It is also important to appreciate that this is not just an investment in "America the Beautiful". While that might be reason enough to make such an investment, given the beauty and wonder of this great land, these investments will bear economic results: they will filter our water and protect it; they will clean our air; they will keep our fisheries and food stocks healthy and productive; they will help assure genetic diversity and a healthy array of species; and they will provide the much needed relief of "green space" to us all, while simultaneously allowing us to avoid the costs of artificially replacing these same services. These savings and returns will significantly lower the cost of this program if not pay for it altogether.

These are complex issues, but, given what we have lost, and what we are losing and what we urgently need, this complexity should not keep us from taking dramatic action today. Where there is a sound idea with a certain promise of significant improvement in these critical issues, we must seize it and put it into place. H. R. 882 is just such an opportunity.

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