

HCR 4002 testimony

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The subject of conservation easements and the US Fish & Wildlife Service has long been fodder for the committee rooms of the N.D. Legislature. A good summary of the factual history and political back and forth on the subject was well encapsulated by ND's Legislative Council in this 2021 memorandum:

<https://ndlegis.gov/sites/default/files/resource/committee-memorandum/23.9049.01000.pdf>

It's worth reading, although not all of the memo discussion is apt for today's concurrent resolution. There is value in noting that the right to sell a conservation easement (30 year, 99 year, perpetual, etc.) is, itself, a private property right for the person selling, whether the buyer is an individual, an organization, or an agency of the federal government. It's a real estate transaction between a willing seller and a willing buyer, who discuss the price and parameters of the transaction, one makes the offer and the other decides if it's an offer they want to accept. If they do accept, it is attached to the deed, signatures are notarized and it's publicly recorded in the county courthouse. A conservation easement is one of the sticks in the 'bundle of sticks' of many private property rights (the right to farm, to graze, to drill for and pump oil or gas, to mine gravel, to dig for coal, to refine and sell frac sand, to subdivide and build houses, or to conserve and maybe not develop or drain). A quick primer on the "bundle" is here, <https://www.ctas.tennessee.edu/node/771/printable/print>

Conservation easements, like fee title land or mineral rights or gravel rights, represent a recorded sale between a buyer and seller. Some occurred long ago at what seems like a small price today. Some may have been sold yesterday and could represent 40 percent of the market value of the land for the landowner to agree only to graze the land, hay it after July 15, or only farm the wetlands when they are dry, but not to convert the grass to crop, or build on it, or drain the wetlands. Whatever was agreed upon and sold, or bought, voluntarily, is what is recorded and honored.

Concurrent resolutions are statements by the members of the state legislature, sometimes passed by voice vote, to urge someone to do something, and, admittedly, are not law or statute. But it might be worth giving SCR 4002 some thought. DU does not hold perpetual easements in North Dakota, but we support them as a voluntary tool for landowners who decide to conserve their land, if they so choose, in that manner (in North Dakota, it's with the USFWS) just like they might conserve their land with other, short-term options. Things like cross fencing and rotational grazing, or planting cover crops, or reseeding native grass on marginal cropland, or restoring a wetland. And those are things we do a lot of and that ranchers and farmers work with us on to cost share things like fence and water development and seed costs and even virtual fence technology. It's all in the toolbox of choices for a landowner to pick from of their own free will. And we hear from some producers who have used an easement sale to help expand their ranch and accommodate a son or daughter returning to the operation, or pay down debt and free up capital for other needs and value-added advancements.

One final precedent-setting thing to ponder—if, as the resolution desires, a real estate transaction should be voided and disappear from the courthouse, with the buyer from 10, 20, or 50 years ago told they have to sell what they had bought back to the original seller at the original price... In the early 80's,

my dad bought some McHenry County pastureland for \$80 an acre. At the time, he thought he paid too much for it, but today very similar pasture is selling for as much as \$1,100 an acre at auction. The original seller has children or grandchildren who maybe don't understand why Grandpa sold that good sand for \$80 an acre, and maybe I should be forced to sell that \$1,100 land back to that seller's heirs for \$80, and we'll just rip up that portion of the land abstract at the courthouse. I think it's worth being careful about making that kind of statement about real estate transactions, even in a concurrent resolution.

I encourage you to oppose SCR 4002.

Thanks for your consideration and for the long hours you put in to serve in the North Dakota Legislature.