

Supplement: Recent Questions on Conservation Easements

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Since the publication of “Conservation Easements: an Introductory Review for Wyoming” in 2002 (University of Wyoming Cooperative Extension Bulletin B-1132), a number of related questions have arisen. Questions about term easements and tax issues are covered in the original publication. This supplement addresses questions on perpetuities, mineral estates, and purchase of development rights.¹

Does Wyoming’s Rule Against Perpetuities bar conservation easements held “in perpetuity”? No. The term “perpetuity,” in the conservation easement context, refers to **how long** the easement is in effect and reflects the permanent nature of the easement. By contrast, the term “perpetuity” in the context of Wyoming’s constitutional and statutory Rule Against Perpetuities refers to when a property interest **vests**, that is, when the transfer in property takes effect.² Because conservation easements vest immediately upon transfer, the Rule is not triggered.

Are many types of property held “in perpetuity”? Yes. In fact, most interests in property are permanently conveyed upon transfer—for example, buying a house. In addition, many other types of easements, such as for public utilities and rights-of-way for roads, are often expressly held in perpetuity.

What is the relationship between conservation easements and mineral rights? The answer depends on who owns the mineral rights and the type of mining involved.

- If the **mineral and surface rights are owned by different parties** (severed) the mineral estate owner generally has the right to reasonable use of the surface estate to access and extract the minerals.³ If the mineral extraction involves surface mining, the owner of the surface rights may not be eligible for a tax deduction for donating a conservation easement because the tax code requires that surface mining be prohibited as a condition to receiving such a deduction.
- If the **landowner owns both the mineral and surface estate**, the landowner may be required to limit surface mining on the property to benefit from federal tax deductions.⁴ Regarding other forms of mining (which may include oil and gas development), federal tax law allows “certain methods of mining that may **have limited, localized impact on the real property but that are not irremediably destructive of significant conservation interests.**”⁵ For example, a deduction will not be denied in a case where production facilities are concealed or compatible with existing topography and landscape and where surface alteration is to be restored to its original state.⁶ In other words, it is possible for a landowner to retain the mineral rights, recover those minerals and still obtain a tax deduction for the easement donation or bargain sale, provided that the impact of such recovery complies with these provisions.

How do conservation easements differ from purchases of development rights (“PDRs”)? In most cases, a conservation easement involves the donation of development rights by a landowner. When a conservation easement is paid for, and traded in a market between a willing buyer and a willing seller, it is sometimes referred to as a “purchase of development rights” or “PDR.” PDRs are more commonly associated with government-sponsored programs.

¹ This information is not intended to provide legal advice to individuals. Consult an attorney if you are interested in donating or selling a conservation easement.

² In Wyoming, the Rule Against Perpetuities is embodied both in statute and in the constitution. See WYO STAT. ANN. 34-1-138, et seq., WYO. CONST. art. I, § 30; See *Williams v. Watt*, 668 P.2d 620, 629 (Wyo. 1983).

³ *Mingo Oil Producers v. Kamp Cattle Co.*, 776 P.2d 736 (Wyo. 1989).

⁴ Internal Revenue Code § 170(h)(5)(B), Treasury Regulations § 1.170A-14(g)(4)(i).

⁵ Treasury Regulations § 1.170A-14(g)(4)(i).

⁶ Treasury Regulations § 1.170A-14(g)(4)(i).