



# RIO GRANDE

HEADWATERS LAND TRUST



**LAND**



**WATER**



**WAY OF LIFE**

## Landowner Information Packet

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### Rio Grande Headwaters Land Trust

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Conserving Our Land, Water, and Way of Life  
in Colorado's San Luis Valley

# About the Rio Grande Headwaters Land Trust

Founded in 1999, the Rio Grande Headwaters Land Trust (RiGHT) is the community's land trust. We are a local non-profit organization that works with private landowners, public agencies and other conservation organizations to protect and support working ranches and farms, water resources, wildlife habitat, and scenic landscapes. RiGHT is the only local land trust that serves the entire San Luis Valley. We have a local Board of Directors with expertise and knowledge in farm and ranch management, biology, wildlife, water issues, archaeology, and fundraising. Additionally, our Board members are active ranchers who have completed conservation easements on their own property.

At RiGHT, we act out of a deep-seated belief that land and water conservation benefits us all. It secures the future for agriculture, keeping it viable as the Valley's long-term economic base. It maintains critical wildlife habitat and supports a variety of recreational opportunities. It sustains the unique beauty of our area, our rich cultural heritage, and the rural quality of life in the San Luis Valley.

To accomplish our mission, RiGHT works in the following three areas:

## **1. LAND & WATER PROTECTION**

RiGHT works to conserve land and water for agriculture, wildlife, and scenic views in the San Luis Valley for present and future generations. We do this by working with interested landowners on a voluntary permanent restriction of development rights known as a "conservation easement." We also partner with other conservation groups, community organizations, and local governments to assess and meet conservation needs.

To date, RiGHT has completed 34 conservation projects permanently protecting 22,760 acres in the San Luis Valley and over 19 miles of the Rio Grande and Conejos River corridors.

## **2. STEWARDSHIP**

The goal of RiGHT's Stewardship Program is to ensure the ongoing protection of our conserved lands and to promote a culture of conservation. Once we place a conservation easement on a property, RiGHT has the responsibility to ensure that the terms of that easement are upheld. We visit our protected properties at least once annually to meet with the landowner and conduct a site visit. RiGHT is also prepared to enforce the terms of our easements.

At RiGHT, we believe that just protecting land and water isn't enough without having knowledgeable people care for the land. RiGHT works with local and regional partners to provide resources and information to landowners regarding land management practices, effective water use, wildlife habitat enhancements, marketing, and other possible economic opportunities.

## **3. OUTREACH & EDUCATION**

The goal of RiGHT's educational program is to expand awareness and understanding of land protection tools, and how land conservation and estate planning can complement one another. We collaborate on and provide educational workshops for family farmers and ranchers that address issues of economic sustainability while encouraging land stewardship. We also work hard to educate our partners, elected officials, and the general public on the importance of our work for the entire San Luis Valley.

We also have an active outreach program that provides opportunities for the public to visit some of our protected properties. Events include birding tours, photography workshops, plein-air paint outs and our annual Headwaters Hoedown.

### **What is a Land Trust?**

A land trust is a non-profit organization established as a charitable entity under the laws of the United States and is qualified to “hold” conservation easements. Land trusts work with landowners on a voluntary basis to establish conservation easements that protect open space, working lands, wildlife habitat, and scenic views. Land trusts also verify that the terms of the conservation easements are being met and will be enforced in the future.

RiGHT is qualified under IRS standards and the laws of Colorado to accept charitable donations and to “hold” conservation easements. RiGHT is both a state-certified land trust as well as a nationally accredited land trust.

### **What is a Conservation Easement?**

A conservation easement is a voluntary, binding legal agreement between a landowner and a qualified conservation organization that identifies Conservation Values (see below) on a property and protects those Conservation Values by permanently restricting non-compatible uses of the property.

Land under conservation easement remains private land and the landowner retains ownership of the land and water and retains the right to sell or transfer ownership of the property. While certain terms are required by law, each easement is also unique to the parcel it is designed to protect and designed to the needs of the landowner completing the conservation easement.

### **What are Conservation Values?**

The Internal Revenue Code allows tax deductions for donations of conservation easements on lands that provide one or more of the following “Conservation Values.”

- Scenic enjoyment
- Open space
- Relatively natural wildlife habitat
- Public recreation and/or education
- Historic preservation

### **Why Should I Consider a Conservation Easement for my property?**

There are often deep emotions tied to land. Many landowners value the open space, agricultural productivity, wildlife habitat, and historic features of their land and it is important to them to keep their land and water intact. For some it is a life-long goal to be able to pass their land onto the next generations. When communities work together, conservation easements can serve to conserve an entire area with valuable agricultural land, wetlands, river and riparian corridors, and scenic viewsheds.

### **Does a Conservation Easement Require that I Permit Public Access to My Land?**

No, it is not required. However, public access may be written into a conservation easement at the request of the landowner and in consultation with the land trust.

## Commonly Asked Questions (continued)

### **What are some of the common use restrictions included in a Conservation Easement?**

Conservation Easements restrict certain uses in order to protect the property's conservation values. When they are specifically tailored to the property and the property owner's wishes, typical restrictions in RiGHT's basic conservation easement restrict or limit:

- The right to subdivide or to erect extensive buildings on the property. However, an easement generally permits the construction of new farm buildings and can allow the construction of a carefully located home for family members.
- The right to allow commercial mining, surface or subsurface.
- The right to allow commercial logging.
- The right to separate water rights from the land.

### **How Long Does a Conservation Easement Last?**

Conservation easements "run with the land," and bind the original owner and all subsequent owners to the easement's restrictions. Only perpetual easements can qualify for income and estate tax benefits. The easement is recorded at the county clerk and recorder's office so that all future owners and lenders will be notified of the restrictions when they obtain title reports.

### **How is the Monetary Value of a Conservation Easement Determined?**

The value of the conservation easement is the difference between the value of the land without any restrictions and the value on the land with the restrictions defined by the conservation easement. Usually, that amount is also the value of the charitable donation when the conservation easement qualifies under IRS regulations. A qualified appraiser determines those values and the difference between the two.

A "qualified appraiser" must be state certified and cannot be compensated based on the value of the land. The appraiser also must have experience with conservation easements and there should be no conflict of interest between the appraiser, the landowner, and other parties involved in the transaction.

Completing a conservation easement on your property has several benefits. Foremost is the knowledge that your land will be conserved and protected forever. Conservation easements can also be an important financial and estate planning tool. Due to the restrictions placed on the land, the value of the land is reduced, which in turn lowers inheritance taxes. Conservation easements can be a way to continue to use the land and receive potential Federal and State income and estate tax benefits. In Colorado, the donation of a perpetual conservation easement may allow the donor to claim a state income tax credit. All tax benefits hinge on the value of your conservation easement and compliance with the rules and regulations from the IRS and Colorado State

Disclaimer: RiGHT staff members are not attorneys, financial planners, accountants, geologists, biologists, or appraisers. As such, RiGHT is not qualified to dispense specific information regarding these fields of expertise. We urge you to hire experienced consultants to complete your conservation team. A list of qualified professionals is provided at the end of this document.

*Note that RiGHT will not knowingly participate in any project where we have concerns about the tax deduction. In addition, RiGHT cannot offer any guarantees or warranties with regard to any tax deduction.*

## Qualifying for Federal & State Tax Benefits

In order to qualify for any tax benefits, a conservation easement must meet the following requirements:

- ☞ The donation of the conservation easement must be made to a qualified organization that is exempt under section 501(c)(3) of the Internal Revenue Code, is a public charity, and has been in operation for a minimum of two years. The organization must be able to monitor the conservation easement and, if necessary, take enforcement action to uphold the terms of the easement.
- ☞ The donation of the conservation easement must meet the requirements of the Internal Revenue Code section 170(h) and the accompanying Treasury Department regulations as well as the requirements of the State of Colorado. The due diligence that RiGHT performs as we work together on your conservation easement is designed to help you meet these requirements. This work will include:
  - An appraisal in accordance with the IRS requirements (For more information on appraisal requirements, see Conservation Easements: The Process);
  - A Baseline Inventory, also called a Present Conditions Report;
  - A mineral remoteness assessment to verify that the likelihood of developing minerals on your property is so remote as to be negligible (Required if all or part of the mineral ownership is severed from the ownership of the surface of the land);
  - Identification and documentation of conservation values; and
  - Identification of governmental policies supporting the implementation of your conservation easement.

## Conservation Easement Benefits (continued)

### Federal Tax Benefits:

You may be eligible for the following tax benefits if your land qualifies for federal IRS benefits for a donation of a conservation easement:

1. A charitable income tax deduction for the donated value of the conservation easement.
  - a. The value of the conservation easement donation can be deducted up to 30% of an individual's Adjusted Gross Income (AGI).
  - b. There is a 5-year carry-forward on any unused deduction amount.

Note: This information is current at the time of this publication. Changes in the tax code may have occurred, so please be sure to consult your professional advisor(s) regarding the current status of benefits.

### Colorado Tax Benefits:

The State of Colorado also offers these potential benefits for donating a conservation easement:

1. A State income tax credit. For a qualifying donation, a landowner can receive a 75% tax credit of the first \$100,000 value of their donation and a 50% tax credit on the remaining value up to \$3,000,000 (example: for a donation worth \$1,000,000, a landowner could receive \$525,000 in tax credits). The credit can be carried forward for 20 years or transferred once to a third party who can then claim the credit. This enables people who cannot use the tax credit to receive cash by selling their credits at a reduced rate to a party that can use the credits. However, the entire credit must be used before a new credit can be claimed for an additional conservation easement donation.
2. A charitable income tax deduction for the value of the conservation easement in excess of \$3,000,000.
3. Agricultural properties that are currently designated as "agricultural" will maintain this status permanently if placed in a conservation easement. For non agricultural land, there may be a property tax reduction.

Placing a conservation easement on a property is a process that typically takes six to eighteen months. The time frame relies on how prepared the landowner is, the time needed by the conservation team of professionals, and how complex the project may be.

The following will give you a general idea of the most common steps to place a conservation easement on your property. Note that this is not meant to be a conclusive list for all projects and while we have tried to put the steps in chronological order, it is likely that several of these steps will be happening simultaneously.

## **Pre-Project Approval**

### **1. Determine if a Conservation Easement Meets Your Goals**

Often the decision of placing a conservation easement on your property is a family matter. Discuss the implications of an easement with the concerned parties and determine if a consensus can be reached. Consult with your financial advisor early and throughout this process to determine the potential federal and state tax benefits of completing a conservation easement and how that fits with your estate planning.

### **2. Determine if Your Project is a Fit for RiGHT**

Call RiGHT to determine if your property meets our criteria. After talking with you, RiGHT may choose to conduct a site visit on your property. RiGHT staff will present information on your property (notes from the site visit and discussion with the landowner, maps, photos, etc.) to the Board of Directors. If the Board determines that the property is a good fit, they will grant preliminary approval to move forward. RiGHT may decline to accept any conservation easement or other conveyance at any time, for any reason deemed appropriate by the Board.

## **Determine Your Title and Mineral Rights**

### **3. Title Commitment, Mineral Rights Search and Title Insurance**

Contact a title company and request a Title Commitment and mineral rights search. This will establish the legal description for your property, the legal landowners, determine if any title complications need to be cleared up, and indicate if your mineral rights are severed from the ownership of the property. If we complete the project, RiGHT requires title insurance in the amount of value of the conservation easement. If there is a mortgage on your property, RiGHT will require the lender to subordinate the mortgage to the conservation easement.

### **4. Mineral Remoteness Letter**

RiGHT requires that all projects with a severed mineral estate receive a Mineral Remoteness Assessment. You will need to contact a qualified geologist to receive a "Mineral Remoteness Letter." This letter indicates that the surface or subsurface minerals are highly unlikely to be mined because the likelihood of mining is "so remote as to be negligible." In certain cases, this letter may be required even if you own your mineral rights.

***If any problematic title exceptions cannot be remedied or you cannot obtain a Mineral Remoteness Letter for the majority of the property, RiGHT cannot complete a conservation easement on your property.***

# Completing a Conservation Easement (continued)

## Working to Complete Your Project

### **1. Find an Experienced Attorney**

It is important to have sound legal advice. Seek professionals who are knowledgeable about this subject and have them review all your documentation. It will save you time and money.

### **2. Determine Which Activities to Allow and Which to Prohibit**

Work with the RiGHT staff to create a list of restrictions and permitted activities that will be addressed in your conservation easement.

### **3. Obtain a Baseline Document**

Contact a qualified biologist to complete a “Baseline Document” (also called a Present Condition Report). Through narrative, maps and photos the Baseline Document establishes the present condition of the property when the easement is established. This is required by the IRS and serves to: 1) demonstrate that there are significant Conservation Values on the property, and 2) be the benchmark against which any violation of the conservation easement is measured.

### **4. Obtain an Environmental Site Assessment (If Necessary)**

If necessary, obtain an environmental site assessment for your property to determine if there are any hazardous materials on the property and if so, what action needs to be taken to clean them up.

### **5. Obtain a Survey (If Necessary)**

In some cases it may be necessary to complete a survey to outline property boundaries and create a new legal description or to outline building envelopes.

### **6. Draft the Conservation Easement Document**

While certain terms are established by the IRS and possibly by finders, each easement is tailored to the desires of the landowner and the needs of the land. You, your attorney, and the staff and attorney at RiGHT will work together to create mutually agreeable terms for your conservation easement deed. Drafts of the deed may need to be passed back and forth several times to produce the final product.

### **7. Obtain an Appraisal**

A complete appraisal is required for all projects. Appraisals of conservation easements are substantially different from typical residential or other property appraisals, making it critical that you work with an experienced, state certified appraiser who is familiar with valuing conservation easements and follows the Uniform Standards of Professional Appraisal Practice. You must obtain a written “qualified appraisal” of the property that meets federal IRS requirements under Treasury Regulations 1.170A-13(c) and it must be completed no more than 60 days prior to closing your conservation easement. RiGHT will require a copy of the appraisal and you, the landowner are responsible for any determination of the value. If you need to know the value of your property beforehand for financial planning purposes, you may order an additional appraisal earlier in the process. The cost of this additional appraisal is at your expense and the appraisal must be updated prior to closing.

### **8. Work with an Experienced Financial Advisor/Accountant**

If you are considering using the benefits provided by the Federal or State Government, RiGHT suggests having your documentation reviewed before you sign and record the Deed of Conservation Easement. They should specifically review your title, appraisal, and Deed of Conservation Easement.

### **9. Prepare a Management plan**

RiGHT requires a management plan for all of our conservation projects. The management plan helps facilitate communication between RiGHT and the landowner and is updated every five years. We encourage the active use of “best management practices” that will provide sound management of the Property’s soil, vegetative and water resources, restoration and/or enhancement of the agricultural productivity and protection of other Conservation Values.

# Conservation Easement Costs

## General Transaction Costs

The costs to complete a conservation easement, often called “transaction costs,” vary widely depending on what your needs are, who you hire and how complex the project is. The costs reflected below are approximate estimates only and meant to provide you with an “average range” of costs; they can be higher if your project is more complex. Many of these costs are necessitated by the IRS to prove that your property has monetary and Conservation Values associated with it.

**You are responsible for these costs.** The good news is many of these costs are due at or after closing, lessening upfront the amount you will need to start your project. RiGHT may be able to pursue funding to cover some costs and loan programs are also available with the loan due to be repaid after closing. You may wish to consult with your tax professional to determine the deductibility of these costs.

<b>General Transaction Costs</b>	<b>Cost Range</b>
Legal Fees*	\$5,000 - \$15,000
Title Insurance & Closing Costs	\$2,000 - \$4,000
Appraisal	\$15,000 - \$25,000
Baseline Inventory Report	\$3,500 - \$6,000
Mineral Remoteness Letter	\$2,000 - \$2,500
Survey	\$3,000 - \$6,000
Environmental Assessment	\$2,500-\$3,500
State of Colorado Tax Credit Application	\$8,300 and up
<b>TOTAL Transaction Costs</b>	<b>\$44,300 - \$75,300</b>

\* Legal Fees: Obtaining experienced legal counsel is necessary for completing a conservation easement. At a minimum, you will need to hire an attorney to review the actual conservation easement document. Additionally, some attorneys are available to coordinate the entire easement.

## RiGHT's Costs

<b>RiGHT's Fees</b>	<b>Cost Range</b>
Stewardship Endowment	\$15,000 - \$20,000
RiGHT's Fee for Service	\$7,500 for donated easements or 5% of amount fundraised

### **Stewardship Endowment:**

RiGHT requires a contribution to our stewardship fund for each project. As the holder of a conservation easement, RiGHT will place these funds in an interest bearing account and will use the interest accrued for annual monitoring of the property. Additionally, if needed, we may use the principal (as allowed) and the interest for legal costs associated with defending the terms of the conservation easement.

### **RiGHT's Fee for Service:**

This fee helps pay a portion of RiGHT's staff and legal review expenses. For donated Conservation Easements, the fee is a flat \$7,500. If RiGHT fundraises for a project, the fee is the higher amount of \$7,500 or 5% of the amount raised.

**Please note: If RiGHT does any fundraising for transaction costs, our entire fee for service and at least 50% of the Stewardship Fund will not be covered by those funds.**

**You are responsible for at least these costs.**

## Resource Providers List

<b>ATTORNEYS</b>		
Melinda Beck	(303) 228.2503 mbeck@duckerlaw.com	Ducker, Montgomery, Lewis & Bess, PC 1560 Broadway, Suite 1400 Denver, CO 80202
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Bill Silberstein	(303) 825.7000 bsilberstein@kaplankirsh.com	Kaplan, Kirsch & Rockwell LLP 1675 Broadway, Suite 2300 Denver, CO 80202
<b>APPRAISERS</b>		
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Maggie Love, or David Nichols	(970) 565.8578	Love Appraisals PO Drawer C Cortez, CO 81321
John Norton	(970) 247.8088 (970) 247.8306 (fax) norton@frontier.net	Norton Appraisal Services 2009 Highland Ave. P.O. Box 4506 Durango, CO 81032
Kevin D. Shea, SR/WA	(303) 424.1616 (303) 424.0319 (fax) sheakd@comcast.net	Shea Appraisal Company, LLC 707 Parfet St. Arvada, CO 80004
Mark Weston	(720) 961.9090 mark@hw ltd.net	Mark S. Weston, Ltd. 312 Wilcox Street, Suite 201 Castle Rock, CO 80104

## BASELINES

Cary Aloia	(719) 850.2562 Cary_Aloia@msn.com	Wetland Dynamics 3393 E CR 9 S Monte Vista, CO 81144
Steve Boyle	(970) 240.4374 sboyle@bio-geo.com www.bio-geo.com	BIO-Logic, Inc. 125 Colorado Avenue, Suite B Montrose, CO 81401
Andy Cole	(303) 830.1188 acole@eroresources.com	ERO Resources 1842 Clarkson St. Denver, CO 80218
Mike D'Errico	(719) 580.1602 MichaelDerrico2@msn.com	Wetland Ecological Services Team, LLC 607 1st St. Alamosa, CO 81101
Sue Komarek	(719) 657.9086 skkomarek@amigo.net	7075 W. Cnty Rd 9N Del Norte, CO 81132
Jonathan Lowsky	(970) 927.4549 (970) 818.4740 (cell) info@colroadowildlifescience.com	Colorado Wildlife Science, LLC 0100 Elk Run Drive, Suite 128 Basalt, CO 81621
Dawn Reeder	(970) 527.8445 (970) 361.0470 (cell) dawn@rareearthscience.com	Rare Earth Science P.O. Box 1245 Paonia, CO 81428
Barry Rhea	(970) 533.7347 rhea@frontier.net	Rhea Environmental Consulting P.O. Box 1264 Mancos, CO 81328

## GEOLOGISTS (Mineral Remoteness Assessment)

Mike Allen	(719) 395.3626	PO Box 3063 Buena Vista, CO 81211
James Armstrong	(970) 241.1762 jim@rareearthscience.com	Rare Earth Science P.O. Box 4523 Grand Junction, CO 81502
Don Graham	(970) 641.1709 cracker@pcrs.net	107 Shavano Dr., #A4 Gunnison, CO 81230
Bob Kirkham	(719) 587.0139 rmk@amigo.net	5253 CR 1 South Alamosa, CO 81101

## SURVEYORS

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Dave Maley	(719) 589.3004	Davis Engineering Service, Inc. P.O. Box 1840 Alamosa, CO 81101
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## Resource Providers List

### ACCOUNTANTS

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### TAX CREDIT BROKERS

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Ariel Steele	(303) 827.5851 www.taxcreditconnection.com	Tax Credit Connection, LLC P.O. Box 6618 Longmont, CO 80501
Mike Strugar	(303) 544.1044 (303) 544.1043 (fax) www.taxcreditexchange.com	Conservation Resource Center 1881 9th Street, Suite 120 Boulder, CO 80303
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## More Information

### **Rio Grande Headwaters Land Trust**

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### **Colorado Coalition of Land Trusts**

1245 East Colfax Avenue, Suite 203  
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(303) 271.1577 www.cclt.org

### **Land Trust Alliance**

www.landtrustalliance.org