Saving the West?

One ranch at a time—on your dime.

Words by Dave Skinner. Photos courtesy Sun Ranch.

What makes the "real" West special? Some say the land. Others, the people. But *RANGE* readers know it's both…and that "saving the West" means keeping both. Trouble is, even the toughest "Red Meat Survivors" have to go sometime and their heirs often need to sell or split off the family property to pay for inheritance taxes, even if the kids want to stay.

American ag producers are aging. It is expected that about half of all private agricultural ground in America will change hands in one way or another in the next decade. Into whose hands should these lands go? A new generation? Or to developers and trophy buyers?

For the cash-poor, land-rich facing a huge death-tax hit on overvalued land and Congress's unwillingness to adjust inheritance law, there's only one way to keep things in the family—selling or donating a conservation easement.

Up by Glasgow in northeastern Montana, well-known rancher Lynn Cornwell's family has reached an agreement to sell the state of Montana development rights on 24,000 acres along 50 miles of the Milk River under a sportsman-friendly conservation easement. Cornwell told reporters his family wanted to leave "a legacy for Montana" against newcomers "coming in to purchase ranches. The first thing they do is lock them up."

Yep, Mr. Cornwell, they sure do that. And they're gonna do more.

At the end of 2007, a flurry of major conservation-easement agreements were signed across the West, and the flurry looks like it will continue. In 2006, Sen. Max Baucus (D-Mont.) had inserted a temporary change to conservation-easement law in the Pensions Protection Act of 2006: Section 1206 covering "provisions relating to exempt organizations." Since 1980, 26 USC (United States Code) Section 170(h) has allowed conservation easement donors to use the value of the easement for shielding up to 30 percent of their adjusted gross income from income tax for up to five years. Land trusts (primarily The Nature Conservancy, still the largest) realized they could never save enough land if they actually bought it. The trusts therefore lobbied Congress not only to allow the sale of conservation easements, but to grant "charitable" tax breaks for donated easements.

Yet, that wasn't enough. Section 1206 massively expanded upon existing law, boosting the shelter percentage to 50 percent of income, the payback period to 15 years, and exempting CE donations from the 50 percent income limit for "nonconservation" charitable deductions.

Further, if one's income is more than half from agricultural operations, *all* income is eligible for sheltering for 15 years. The theoretical bottom line, according to *Ag Weekly*, a million-dollar easement donation with income of $50,000 a year would allow $400,000 in deductions; $800,000, if one meets the ag-income requirement. That is, *if* you have the ag income.

Some cash-strapped ranchers took the Section 1206 deal. For one 2,600-acre ranch in Wisdom, Mont., The Nature Conservancy (TNC) bought a quarter of the development

rights while the family donated the rest (what the *Billings Gazette* called "a big break on his income taxes" on what little they make ranching). TNC representative Tana Kappel told the *Gazette* that "the fact that the law is expiring was motivation for [the family] to complete the easement." Under the old law, 30 percent of nothing for five years is, well, nothing.

Other real ranchers signed the dotted line. In central Montana, former state senator (and Baucus cousin) Chase Hibbard's family donated an easement on 40,064 acres to the Montana Land Reliance. Others availing themselves of the write-off, while not ranchers, come from that background. For example, in Flathead County, Mont., a retired psychiatrist who'd spent his working life in Utah put the old family place under easement. He'd picked rocks there as a kid, wanted to keep it in the family, but inheritance taxes would force his children to let it go.

However, others who probably neither need nor deserve help keeping the ranch used the 1206 shelter. One example: TNC signed an easement on 8,900 acres near Twin Bridges—owned by a Rockefeller heiress.

Section 1206 was a bonanza for land trusts, so when it expired at the end of 2007, they lobbied hard to have it reincarnated, this time in the 2008 Farm Bill as Title XV Section 15302. The Land Trust Alliance was happy to report: "Congress recently renewed the easement incentive through the end of 2009 and made it retroactive to include all of 2008!"—with an exclamation point.

While the land trusts were all atwitter, this "incentive" has never gotten floor debate or a roll-call vote, instead being inserted in conference committee in both instances by Baucus with assistance from Sen. Charles Grassley (R-Iowa).

The next step? Well, here's where things get interesting. On Aug. 1, 2008, Associated Press announced that the Sun Ranch, near Ennis, Mont., on the Madison River, had finalized an 11,000-acre easement, paid for with $4.43 million in Land and Water Conservation Fund money specifically set aside by Montana's congressional delegation in the 9,000-plus-earmarks 2008 Omnibus Appropriations bill. This particular transaction, first announced in July 2006, was also supported by $1 million from Wal-Mart's "Acres for America" program. The fair market value (FMV) of the land involved is claimed to be $23 million. The easement was "bought" from the Sun Ranch by the Trust for Public Land (TPL), which held the easement until the federal and Wal-Mart funds were released to the U.S. Forest Service, which in turn will monitor the easement.

Sun Ranch's owner is Roger Lang, a California software multimillionaire, who bought the 18,700-acre Sun Ranch from fading action-star Steven Seagal in 1998, and had already put 6,800 acres under easement to The Nature Conservancy in 2003. Therefore, almost all of the ranch is now under easement.

End of story? No, this may just be a beginning. In mid-August, a press release was sent out by the Sun Ranch to the media, including *RANGE*, announcing that Mr. Lang had made a "private donation" of $3.9 million to TPL, to "establish the Sun Ranch Fund" for the "acquisition of lands and interests" in Montana's Madison River country. The release quotes Lang declaring the donation "another step toward our goal at the Sun Ranch Group of conserving one million acres of important land in 10 years."

When she forwarded the press release to me, editor C.J. Hadley asked, "I wonder how much will remain REAL RANCHING?"

Well, for starters, the Sun Ranch can't pencil out as a real ranch. On its Web site, the Sun Ranch Group (SRG) claims to "holistically" run between 1,200 and 2,400 head on Sun Ranch. On the TPL donation alone, 11,000 of 19,000 acres, the FMV is claimed to be $23 million. Interest only at six percent with no principal would run $1.38 million per year, while the income from 1,200 pairs would be, assuming that a cow-calf will net $575 this year, $690,000. That's only half the interest, forget the principal. That might explain why, as writer Jane Koerner notes in *Utah State Magazine's* Winter '07 issue: "Lang doesn't own any of the herds."

Adam DeFanti, vice president of marketing for SRG, was kind enough to explain in an e-mail what Lang does own: "Sun Ranch as well as the easement and Sun Ranch Fund are

***Above:** There are plenty of trails to ride, even "follow the leader." **Opposite:** This Sun Ranch promotional photo is called, "A walk to the activities' center."*

***Above:* Exterior facade of "The Lodge at Sun Ranch." *Below right:* Sun Ranch Lodge's great room. *Below left:* Mr. and Mrs. Roger Lang. There is no doubt, this is a beautiful and expensive place to stay and play.**

Roger Lang's personal assets. Items outside of the Cameron property, such as our Bitterroot property or business entities based from our Bozeman headquarters, are of the Sun Ranch Group."

Lang's other business interests include TransAria/Cutthroat Communications, a specialized high-bandwidth secure Internet service for data-heavy businesses; and Lang Studios, LLC, an entertainment entity variously based in Cameron, Mont., as well as Redwood City or Woodside, Calif., that shares its phone number with SRG.

Sun Ranch Group "is a blended value enterprise of integrated businesses committed to sustaining profitability, important landscapes and the communities within them." The Agriculture wing manages the cattle. The Hospitality wing operates "The Lodge at Sun Ranch." Luxist.com explains packages for those "hankering for luxury, a western [and] eco-friendly experience" start at $900 per person, double occupancy for three nights. Flyfishing will run you $2,495 a day. Hunting packages, however, are not currently offered on the Lodge Web site, although a 2004 *Stanford Magazine* article quotes ranch manager Todd Graham saying, "we make money off the elk from hunting and wildlife viewing," and points out that hunters paid upwards of $3,500 each for food, lodging and guides.

But SRG's real income flows from its Settlements real-estate operation and its Construction adjunct, what SRG touts as a "market-driven model" of "conservation enterprise." The Sun Ranch Settlements Web page explains the program. Buyers of a "Settlement" package (listed February 2008 in *Town and Country* as "from $5 million") are pitched as follows:

"In much of Montana, you would be hard pressed to find a 10,000-acre ranch for $5-$8 million. In fact, most sporting properties in this price range are less than 2,000 acres." So the buyer gets deeded access and a "reciprocal recreational-use easement" to 19,000 acres of "stress-free ranch ownership." Even better, "profits from each settlement sale are rolled forward into new conservation ranch purchases, thereby ensuring that your purchase maintains Montana's precious open space."

How does it "roll forward?" In December 2007, Lang purchased the 7,000-acre Schroeder Ranch (what Mr. DeFanti calls the Bitterroot property) south of Missoula for $26 million. According to *New West,* this place had been platted for 215 homesites. *The Missoulian* reported Lang will put much of the land under conservation easement while developing an "eco-lodge" plus "a dozen or so homesites on the ranch."

Today, SRG is marketing "Schroeder Settlement," which is expected to have "fewer than 20 strategically located homesites on 7,000 pristine acres." Lucky buyers will be put "in touch with the real Montana," and their "[s]erenity is ensured through a conservation easement that protects over 95 percent of the land." Sites are priced at $2.25 to $3.5 million.

You can download the Schroeder brochure from http://www.fayranches.com/ranches-for-sale/media-download/117; and check facts on the original Sun Ranch "settlement": http://www.fayranches.com/ranches-for-sale/listing/?PROP_ID=179.

Clearly, Lang has tapped into a successful business model with a bright future. While the general real-estate market has cooled in the wake of the housing and oil blowups, amenity property is still hot.

In January of 2008, the real-estate appraisal firm of Norman C. Wheeler and Associates in Bozeman released a report on rural land valuations. Montana's luxury land market is not slowing a bit (up 47 percent in 2006 alone), while the small-place market has bombed. Speculative, bare-ground rural subdivisions saw a loss in value, but premium property with streams, forest access, or as Clark Wheeler told the *Bozeman Chronicle,* "extensive buildings" were still selling well—as Wheeler clarified, trophy ranches rather than operational ranches.

***Above:* Many trout streams can be found on the Sun Ranch. *Below:* Golden Eagle master suite.**

When I asked Mr. DeFanti what sort of tax breaks SRG and/or Mr. Lang realized from the TPL transaction, he answered, "We are a privately held company and do not distribute the specific financials of any of the Sun Ranch Group members." Fair enough, but publicly available data gives a hint at SRG financials: For the Schroeder ranch, a "dozen or so" times $2.25 million is $27 million, darn close to the $26 million paid for the Schroeder ranch. The Sun Ranch Settlement prospectus lists "10 strategically placed settlement sites" of 20 to 160 acres, priced between $5 and $8 million, a minimum of $50 million just for the building pads as well as "exclusive access" to the deeded 19,000 acres, locked up from public use precisely as Lynn Cornwell noted above.

In short, the sale prices of the pads alone are well above the price paid already.

Furthermore, while buyers of the Settlement pads can choose their architect, "contracting services must be coordinated through Sun Ranch Construction," in order to "manage impact." Subcontractors must show "commitment to certain behavior and cleanliness standards." In other words, SRG gets, at minimum, a general-contractor cut of the proceeds. And nobody who blows five mil on a lot is going to drag in a modular home from nearby Bozeman. No sir.

Lang knows what he's doing with his "market-driven" model—and that's dang well. But with government support, he's doing even better. Mr. Lang's cash flow is such that after taking the $5.5 million in Wal-Mart and LCWF money as personal cash income, he was able to flip $3.9 million of it right back to Trust for Public Land and retain his right to shelter future earnings. As for the $17.5 million "donations," given Mr. DeFanti's explanation, Lang can shelter half his income from his "contribution base" for the next 15 years.

And as for Sun Ranch Group and the Schroeder property, it is possible that a privately held entity such as SRG is also entitled to the 50 percent/15-year income shelter. In any case, corporations are allowed to make charitable contributions up to 30 percent of their net income and carry it over for five years.

Specifics aside, by pocketing the substantial tax savings made available by the Baucus incentives, however temporarily, Mr. Lang both individually—or as a principal of Sun Ranch Group—enjoys an enormous competitive and cash-flow advantage over other developers who, either philosophically or fiscally, won't enjoy such incentives.

Further, Lang's savings, and those realized in every one of these multimillion-dollar deals, will have to be made up by every other taxpayer in America…or their grandchildren. In short, Mr. Lang's "market-driven model," of ultraexclusive gated trophy properties, is enjoying a subsidy, one so lucrative that he feels confident that he'll be able to leverage "one million acres of important land in 10 years."

Now, nobody should mind rich people keeping their money. But paying more taxes to make up for breaks that make them even richer? Naw. What about subsidizing the trophy ranch model that is killing the culture of the West? Nuts, right?

So why are our Congresscritters doing precisely that? Don't ask me…ask them. ■

Dave Skinner lives in Whitfish, Mont. His head is still spinning.