

# RLI COLORADO *Newsletter*

SPRING 2010



## PRESIDENT'S Paddock

By: Kirk Goble



Hello again my fellow Colorado RLI members!

Winter is upon us once again, but that only means that Spring is that much closer! Here's wishing you all a cozy warm winter and a strong spring runoff!

Colorado RLI members and leaders continue to amaze and impress me with your dedication, interest, and willingness to contribute to the operation and betterment of the professional organization that benefits us all. No single person or small group can make this happen - it takes everyone; members, leaders, staff, and volunteers. I thank each and every one of you for completing the RLI circle! We had another awesome chapter meeting in Denver in January - thanks to all who attended and

contributed! We had over 60 in attendance, including some new members who I think were genuinely impressed at the way we "Land People" go about things. The marketing session was brisk and filled with good packages that were well presented. Members are getting more and more attuned to using the buyer board to promote buyers and utilizing yet another RLI tool to help you do business. Our education session on Friday was excellent and well-received with great info on rural property law, forestry, and pine beetle issues. A big thanks to Dave Banzhaf for helping organize our education offering. Your Board of Directors is continually working on issues and programs to continue and

CONTINUE ON NEXT PAGE

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enhance the RLI benefits that make this such a worthwhile organization. Dave is your President-Elect and will step into the top spot to replace me in September. I'm proud to report that Dave is already looking ahead to programs, classes, and the development of future leaders for CO RLI. Please give serious consideration to helping our chapter in a leadership role if you are asked or if you wish to volunteer to contribute. There are great rewards to leadership and you will be surrounded with experienced, capable people whose goal is to keep a good thing going and make it better. Very few state RLI chapters have the comprehensive, inclusive operation that provides the benefits that we enjoy in Colorado. Please let any officer know if you have interest in helping out on the CO RLI Board of Directors, committees, and other activities - we need you!

George Harvey is serving as the President of the Colorado Association of REALTORS®. It is great to have one of our own in such a position of leadership and influence and I can assure you that George has us land people in heart and mind with

everything he does at CAR. We have never been better connected or well known and regarded in the REALTOR community than we have been with the leadership shown by George Harvey and Michael Landreth before him. Thanks, guys!

I have been in touch with the National RLI organization and we are trying to put together RLI education opportunities in Colorado, and Denver specifically, that would bring some core RLI Land University courses to our own backyard. This is the best opportunity for Colorado RLI members to get some of the education requirements met to obtain the Accredited Land Consultant (ALC) designation. I encourage you all to pursue completion of the ALC - it is one of the best things you can do for your professional knowledge and expertise in land brokerage, not to mention the networking and marketing opportunities it can provide. Watch for more info coming soon!

See you in May at the Grand Junction meetings!

## Coming your way – SOON

by: *Dave Banzhaf*

As we work to continually improve Colorado RLI, we would like to ask you to take some time to fill out a Member Survey. It should be well worth your time. If the enhanced programs we put in place as a result of your feedback help you close one transaction, life will be good.

In the March timeframe, we'll send out a Survey that will let you creatively respond to our programs. We want to know what you think of our Continuing Education classes, website

and meeting structure. How could we improve the Marketing Sessions and Buyer Board? Is there a better way for us to communicate amongst ourselves. How can we share information such as comps, spreadsheets and other creative tools that we can incorporate into our Land practice?

Are there any other Member Benefits that you would like to see us pursue? Fill out the survey and let's keep building on the solid foundation we benefit from at Colorado RLI.



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## Agricultural Foreign Investment Disclosure Act (AFIDA) of 1978

The Agricultural Foreign Investment Act became effective February 2, 1979. It requires any foreign person who:

- a. Acquires or transfers any interest other than a security interest in agricultural land to submit a completed form FSA-153 to the Secretary of Agriculture not later than 90 days after the date of acquisition or transfer, or.
- b. Holds any interest, other than a security interest, in agricultural land on February 1, 1979, should have submitted a report to the Secretary by August 1, 1979.

The information required by the Secretary should be reported on form FSA-153. A copy of this form is can be obtained from the local FSA office or can be downloaded from: [http://forms.sc.egov.usda.gov/efcommon/eFileServices/Forms/FSA0153\\_010524V02.pdf](http://forms.sc.egov.usda.gov/efcommon/eFileServices/Forms/FSA0153_010524V02.pdf)

We encourage you to give a copy of this form to clients who are foreign persons owning, acquiring or transferring agricultural land in the United States or its territories or possessions. Please instruct them to return completed forms to the local county FSA office.

FSA-153 forms shall be analyzed by the United States Department of Agriculture agency staff to develop reports for the Secretary of Agriculture for issue to Congress and the agriculture department in each State. Completed FSA-153 forms and the analysis shall be available for public inspection at the Department of Agriculture, located in Washington D.C.

We appreciate your cooperation and any help you can provide to affected individuals pertaining to this important matter.

If you have any questions concerning the foreign persons Act and the FSA-153 form, CRP contracts or FSA inventory farms, please contact the local FSA offices, which are located in USDA Service Centers throughout the state. Contact information for local FSA offices is also available on the web at: <http://offices.sc.egov.usda.gov/locator/app?state=us&agency=fsa>.

## Marketing Corner

by: Steve Fleming



Coming up is an opportunity to take advantage of education, networking and marketing on a National Level! Starting April 6th RLI is offering a two day ALC class – Practical Navigation for Land Professionals. Beginning April 8th there are two days of exceptional sessions on numerous subjects followed by a National Reverse Marketing Session! It all takes place in Fort Worth at the OMNI Fort Worth Hotel. If you haven't attended one of these meetings, believe me it's worth the time to attend. The education sessions are as good as I've ever attended and the marketing session is an exciting opportunity to see who the cash buyers are and what they are buying. Most im-

portant it's an opportunity to network with the best land professionals in the Nation. Hope to see you there.

Don't forget our May 6&7 meeting in Grand Junction. We have a great class on What's Happening in the Oil and Gas Industry (how timely). Bring your listings (on package forms) and your buyers and let's do some deals!

## 2010 CALENDAR OF EVENTS

### CHAPTER:

May 6 & 7 – Spring Meeting, Courtyard by Marriott, Grand Junction

**July 15 & 16** – Summer Meeting, Doubletree Hotel, Denver  
(Please note these dates are different than what was published previously.)

September 16 & 17 – Fall Meeting, Courtyard by Marriott, Grand Junction

September 20 & 21 – Land 101 class, Aspen

### NATIONAL RLI: ([www.riland.com](http://www.riland.com))

April 8 & 9 – Land Conference, Omni Hotel, Fort Worth, TX

May 10-15 – Midyear Legislative Meetings & Trade Expo, Washington DC

November 3-8 – Governance Meetings & REALTORS Conference & Expo, New Orleans, LA

### CAR:

October 17 – 21 – CAR State Convention & Business Meetings, Broadmoor Hotel, Colorado Springs

### MISCELLANEOUS:

April 13 – REALTOR® Rally – Colorado Convention Center, Denver

June 18 – Ranch Land Tour (Location to be announced early April.)

# Upcoming Events

## Ranch Land Tour

The deadline for submittal of properties for the annual Ranch Land Tour has been extended to Wednesday, March 31st. Information about the process and the application can be found on the chapter website under Resources/Forms.

## May Meetings

### HOTEL Reservations

The deadline to make your hotel reservation at the Courtyard Marriott and get the RLI negotiated rate of \$109.00 is April 16th. The reservation link directly to the hotel can be found on the chapter website at [www.coloradorli.com](http://www.coloradorli.com) on the Events & Meetings page. Don't delay, make your reservation today.

### May Education Session

The education for the May meeting will be presented by Sherry Long, EnCana Oil & Gas (USA) Inc. Come and hear first hand information that you won't hear anywhere else.

## On a Personal Note, -from Maggie Thomas

Relay Rodeo, "Give Cancer the Boot" is the theme for the 2010 American Cancer Society's Relay for Life of Highlands Ranch/Lone Tree. I am looking for loaned and/or donated items that could be used for decorations to give the venue a real west-

ern flair. If you have items that could be easily transported to the July 15 & 16 meeting in Denver, I can get them from you at that time, as the Relay is on July 30 & 31st. If you have any questions, please don't hesitate to contact me and thank you in advance.

## The RLI National Land Conference

The RLI National Land Conference offers superior education on the trends and issues facing today's land professionals, with plenty of time for networking and building the types of relationships that build business.

It's the must-attend event for the leading professionals in land.

The 2010 RLI National Land Conference will be held April 8-9, 2010, at the Omni Fort Worth in Fort Worth, TX. Conveniently located in the heart of Fort Worth's exciting downtown, the Omni Fort Worth hotel is within walking distance from the city's burgeoning cultural centers, restaurants and nightlife. DISCOUNTED conference room rate: ONLY \$159 Call for reservations 800-843-6664 and indicate that you are a member of the REALTORS® Land Institute to receive the special conference rate.

## Does Your Listing Have CRP Lands?

A Conservation Reserve Program (CRP) is a contractual agreement with USDA that continues for a period of 10 to 15 years. The program involves annual periodic payments to the landowner for idling highly erodible lands and seeding and maintaining native vegetation to limit erosion during the contract period. It is the responsibility of the participant to ensure that the land continues in the CRP program for the length of the contract.

If the land is sold and the new owner does not succeed to the contract, the previous owner will be required to refund all annual rental payments with interest from the date of disbursement, cost-share payments with interest from the date of disbursement, and also will be charged liquidated damages which equal 25% of the annual rent payment on the acres involved. This can add up quickly and be very expensive!

### What should you do?

Check with the landowner to be aware of any CRP contract and appendix or extension on the land so you can make prospective buyers aware.

Ensure that sellers with CRP contracts consider the financial consequences of land sales who may not continue the CRP contracts.

Ensure that the buyer understands that if they succeed to the contract, it will be as originally approved, including all cover maintenance requirements. The buyer should also understand that if they cause the contract to be terminated after they succeed to it (they step into the seller's shoes), they will be responsible for repaying all earlier CRP payments, plus interest and liquidated damages, including payments received prior to the sale. If the buyer intends to build or develop a portion of the land, they should understand the process

and costs involved with removing portions of the property from the CRP contract. Your local Farm Service Agency (FSA) Office is the source of information, forms, and procedures. Check [www.uds.gov/agencies](http://www.uds.gov/agencies) and offices for the location and contact information for your local office.

Upon completion of the sale IMMEDIATELY notify your local Farm Service Agency (FSA) office of the new owner's name and address so they can be contacted regarding the existing CRP contracts.

*(Source: Weld County Farm Service Agency staff) Reprinted with permission.*

# Note From Your Chairman

by: George R. Harvey, Jr.



At the January meeting I said that "if real estate is your profession then politics is your business". If you don't get involved in politics personally or by donating to the political process, government is going to do things you don't want to happen. I ask every member of Colorado RLI to put in their annual budget \$25 a year as a minimum contribution help protect the land brokerage business and the business of our clients. I would like to personally thank Dan & Michael Murphy for their \$250 donation they gave at that meeting. The Colorado Association of REALTORS® and REALTORS® Land Institute greatly appreciate their commitment to defending our industry and the property rights of our clients.

There are two bills that the Colorado Association of REALTORS® oppose which affect the land business, one has been defeated and the other has passed the House and is on to the Senate.. The first proposed "wind" as a separate property ownership that can be severed from the property like mineral and water rights. While on the surface it might seem OK, there were lots of problems with this concept. Wind generating devices might violate existing deed restrictions, zoning ordinances or conservation easements. Additionally if a wind

right is retained it might interfere with severed mineral rights. As some of you know anytime you develop a section of land that mineral rights are severed you have to notify the mineral rights owner before you can proceed with any development. This would almost surely apply to wind right usage as well. Wind mill towers are not small by any means and have tremendous visual impact as well as significant surface platform construction impact. There also could be a potential for a wind right owner suing the owner of land for any structures they build that could interfere with the natural wind currents on that property. The Colorado Association of REALTORS® thought that too many unanswered questions regarding legal problems and potential lawsuits remain and took a position against this bill. We successfully defeated this bill, but the practice of severing wind rights from the land is already taking place in some areas of Colorado and this issue will be revisited during future legislative sessions. (See page 6-7 from United Title Co. Reprinted with permission)

The second bill, HB-1188, is a proposal to give the right for commercial rafting operations on waterways in Colorado the ability to "incidentally" trespass onto an owner's land as a part of their

operation. This of course is very

controversial to most property owners in the state of Colorado that have public or private water flowing through their property. If a rafter's life is threatened in any way, no District Attorney in the state of Colorado would prosecute a rafter for having to seek safety on private property.. As I mentioned to Kirk Goble, recently most bills that pass benefit somebody and hurt somebody else. Generally speaking, your REALTOR® organization is going to take a position that protects private property rights but with an open mind to try to understand the needs of all industries in the state. There always has to be compromise in the big picture if our economy is to move forward. The Colorado Association of Realtors feels that existing laws for public water use are adequate to address the rafting and private ownership, and that the changes proposed in this bill do not adequately protect private property rights. .

If you have any questions about these two bills please contact me. I will try to keep you in touch with legislation that might affect you or your clients.

# Greetings from the Sagebrush Sanctuary

by: Otis Lyons

The time I have spent on this planet has been very interesting. I have had the privilege of living from the end of the Horse and Buggy days through the mechanical age and into the age where communication comes from computers, I phones, and other contraptions which rely on some piece of pig iron floating above us. I consider this to be the best period of history the United States has known or ever will know.

In the 60's I had the opportunity to belong to the Colorado Cattleman's Association, at the time when the fence law was passed. This was a very talented

group of people, with Mr. Dave Rice as Executive Vice President, and a very capable lobbyist.

I also was a member of the only group to graduate from Officer Candidate School held by the Colorado National Guard. We all graduated "Magna Cum Get it Over".

This brings me to my point, that for the last several years I have been with a group of individuals known as the Colorado RLI Chapter. These ladies and gentlemen have been the most interesting in that the camaraderie, willingness to share information, and help

each other with issues and questions which we occasionally have, along with the education available to each of us, is without a doubt the best one anyone could belong to.

Anyone who knows of an individual, who is serious about dealing in Farm and Ranch land, or other dirt, should really see to it that they become a member, and take advantage of the opportunities available.

In regard to the first paragraph, I had an individual ask me if I have lived here all of my life. The best answer I could think of was, "I sure hope not".



FEBRUARY 2010  
NEWSLETTER



# Wind Energy– a separate estate in real property ?

Written By Ron Childs

In Colorado, our early settlers and miners made claims on water just as they made claims on the land, on mining lodes and placer claims as well as making claims on surface water. The appropriation of *surface water flow was forever severed* from the ownership of land. These miners, placer-men, squatters and homesteaders recognized the value of water for themselves and their farms and ranches--even sluice boxes and stamp mills in the mining process required water. The cry for water is evidenced in the lyrics of the song “Cool Water” recorded by the Sons of the Pioneers, Frankie Laine, Hank Williams and Marty Robbins:

**“All day I face the barren waste without the taste of water, cool water  
Old Dan and I with throats burned dry and souls that cry for water, cool water”**

In Colorado as in many western states, once *minerals were reserved and severed* from the land, a separate chain of title existed for the severed minerals. Tennessee Ernie Ford recorded “Sixteen Tons” and echoed the hardship of miners in the lyrics:

**“You load sixteen tons, what do you get  
Another day older and deeper in debt  
Saint Peter don’t you call me ‘cause I can’t go  
I owe my soul to the company store”**

Gogi Grant in 1956 sang the popular hit “The Wayward Wind” with the lyrics:

**“Oh, the wayward wind, is a restless wind  
A restless wind that yearns to wander  
And I was born the next of kin  
The next of kin to the wayward wind”**

Now Americans are talking about *harnessing our restless winds* in the form of “*wind energy development*” and landowners can now consider how they will benefit from the wind energy industry. Many land owners when selling their land have begun to draft deed reservation clauses reserving certain rights relating to wind energy. A basic tenet of law states essentially that whoever owns the land also owns up to the sky and down to the earth’s core and everything in between...subject to earlier reservations in the past chain of title and rights of flyover.

Lisa Chavarria of Stahl, Bernal and Davies, LLP, Austin, Texas wrote in an article entitled “*The Severance of Wind Rights in Texas*”: **“the right to use the land to establish the necessary equipment to build a wind farm and the right to use the airspace appurtenant to land both reside with the surface owner. Accordingly, it must be concluded that the owner of the surface estate holds the right to develop (or not develop) the wind that flows across the property.”**

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In an article written for the publication, *Letter of the Law*, July 2002, John Fambrough contends a four tier system of property ownership could and is developing as follows:

- One person could own the surface
- One person could own the minerals
- One person could own the water
- One person could own the wind

In addition, Mr. Fambrough points out that wind-generating devices could violate existing deed restrictions, zoning ordinances or conservation easements. However, he also argues that general principals of private property rights may fail when confronted with *society's need for energy*.

Colorado State University Cooperative Extension's "*Wind Energy in Colorado*" report provides a practical guide for farmers and ranchers about producing energy from wind. The report points out that wind energy is nothing new reminding of the windmills of Europe and China and of course the windmills of rural America. In Colorado, Amendment 37 was passed by the people of Colorado giving a vote of confidence to wind and renewable resources. Colorado utilities are now required to purchase energy generated from renewable resources which creates new business opportunities in wind farms.

Eastern Colorado is the most likely region in the state to generate consistent energy but there are pockets of wind energy resources throughout the state that could also work as reported in C.S.U.'s *Wind Energy in Colorado*. The report also states that wind averaging 17 miles per hour are the most economically viable sites for generating wind power...still winds as low of 12 miles per hour have also produced affordable energy. Anemometers (wind measuring devices) can be installed on a prospective landowner's property for a test lasting one year...the Colorado Governor's Office of Management and Conservation (303 866 2309) has created an Anemometer Loan Program on an annual basis to help the people of Colorado learn and explore renewable options.

Landowners should contact a wind developer to initiate the development of a wind site. Usually a contract to erect or allow wind turbines is signed followed by the wind developer constructing the wind energy system. A developer may lease or rent the land for the life of the turbines (20 to 30 years). Land owner payments are typically \$3,000 to \$5,000 per year per wind turbine. A wind easement may be required from the landowner to the developer ensuring adequate exposure to wind in perpetuity. Further information can be obtained from the National Renewable Energy Lab, the Interwest Energy Alliance, the wind industry web site. The American Wind Energy Association (AWEA) is a national trade association that represents wind power plant developers, wind turbine manufacturers, utilities, consultants, financiers, and insurers.

From a title perspective, a wind transaction involves a lease and related easements, title, survey (s) and financing. An American Land Title Association owner's policy may be

endorsed to insure a leasehold estate. Contiguity endorsements are critical when the wind farm is composed of several parcels insuring against gaps, gores or strips which could disrupt wind flow. In addition, several other insuring endorsements may be required including mineral protection being provided to the parties if damage would occur by reason of mineral extraction via the surface.

The October, 2009 *Sunset* magazine issue reports that wind power is hotter than ever. TV host Jay Leno has his own wind turbine at his Los Angeles home...go to [jaylenosgarage.com/video](http://jaylenosgarage.com/video) and click on "green" to watch it spin. A home-size model will set you back about \$6,000 installed and can save you 50 to 90 percent of your electricity bill as long as the landowner is not violating zoning and covenants and other governmental restrictions.

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