

# TO SAVE THE STARS: *The McIvor Ranch Story*

BY DUSTI SCOVEL



photo courtesy the McIvor Family

The U-Up-U-Down Ranch in the Davis Mountains of West Texas



Julie McIvor was varnishing a door to one of the rooms of the old ranch house on the morning I called. She was expecting my call but because we've discussed this issue before, she thought she could keep painting while we talked.

"Okay, Julie," I said. "Let's say I know a rancher who is considering doing a deal with the Nature Conservancy for a conservation easement on his land because he really needs the cash or he really needs the tax break. And, well, what they're proposing sounds pretty perfect. He'll get some cash up front, his taxes will be easier to swallow and his land will be protected from predator developers. In fact, it sounds pretty perfect. How would you tell him to approach the issue?"

I hear rustling noises in the background as the lid snaps

sharply back onto the paint can, the varnishing brush goes down and Julie's discourse begins - with a flat but emphatic "don't do it!" Clearly, Julie is not going to be varnishing a door during this conversation.

Julie McIvor and her husband, Scott, have a lot to say about conservation easements and rightly so. For more than a decade, the McIvors have lived under the thumb of the Nature Conservancy (TNC), thanks to a conservation easement Scott's dad, Don, gave the behemoth non-profit in 1996. When Don McIvor died in 2005, he died knowing that the legacy he so longed to leave his children had been nothing more than a land deal, another major coup for TNC in their mission to take over and control private property.

"DON MCIVOR THOUGHT HE WAS DOING A GOOD THING WHEN HE GAVE THE NATURE CONSERVANCY A CONSERVATION EASEMENT ON HIS WEST TEXAS RANCH. BY THE TIME HE REALIZED HE'D JUST GIVEN AWAY THE FAMILY HERITAGE, IT WAS TOO LATE."

### The History

Don McIvor thought he was doing a good thing – in fact, the right thing. When his mother, Violet McIvor, died in the early 90's, Don and his sisters inherited the family's 40,000 acre ranch situated in the lush high country of west Texas, the Davis Mountains. The ranch, known as the U Up and U Down, had been in the McIvor family for well over a century. Like most cattle operations, no one was getting rich on the U Up and U Down, but it was a decent living and the quality of life was worth it.

Prior to Violet's death, property values for ranches in the Davis Mountains had skyrocketed. Because no family trust had been set up, Don and his sisters found themselves holding an enormous estate tax bill. The sisters, who lived elsewhere, were ready to sell out. But Don, who lived on the ranch wanted to keep what he could of the ranch to pass on to his son.

The McIvors have a long history in this predominately ranching community. Their cattle ranch had been around for over a century and in 1932, Violet McIvor donated land to the University of Texas for the world renowned McDonald Observatory, a project the McIvors continue to take great pride and interest in although very few people are aware of the McIvor's gift.

The Observatory became a major attraction for the Davis Mountains and brought thousands of visitors to the unique "sky islands." The dense forests, spectacular canyons and sweeping mountain views soon became the new place to live for claustrophobic city dwellers and Don worried that if development continued at the current pace, the "dark skies" required for the Observatory would be lost.

He would sell a major chunk of land to get the money to pay the taxes and keep what he could for Scott and his family. But the stars would be saved.



photo courtesy the McIvor Family

Don and Violet Locke McIvor and their son Scott

### Selling the Ranch - The Nature Conservancy

Don knew a little about The Nature Conservancy but undoubtedly, he didn't know enough. In the 70's and 80's he had received several awards for his conservation efforts but times had changed and TNC was no longer the "*two man office out of Austin*" as Don would say.

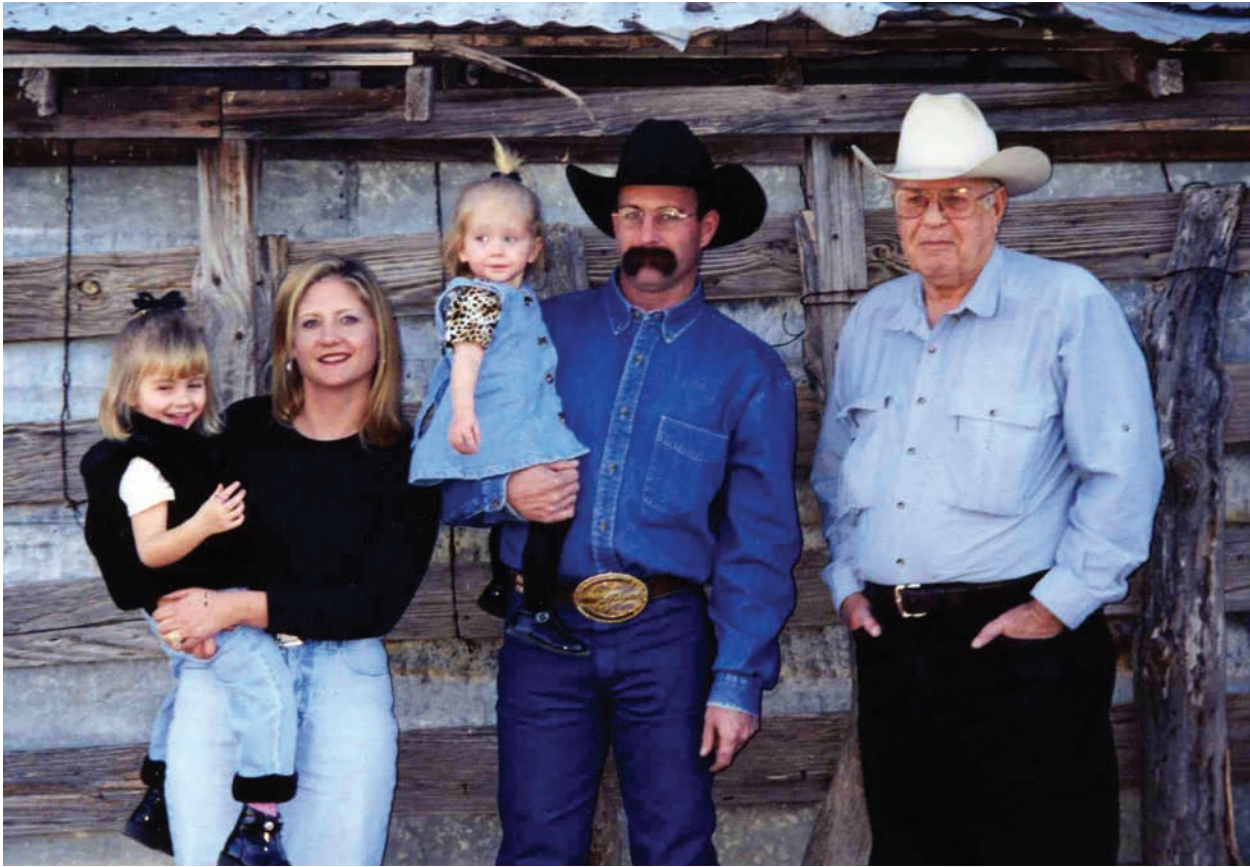
Today, The Nature Conservancy is a multi-billion dollar organization with tentacles that stretch around the globe, casing out and taking control of vast pieces of land, either through arranged purchases or conservation easements. That land is then "held in trust for the public," which makes the property vulnerable to a whole host of

Spring Works at the U-Up-U-Down ranch early 1900's



photo courtesy the McIvor Family





(Left to right) Julie McIvor holding daughter Locke Ann, Scott McIvor holding daughter Mae and Don McIvor, Christmas 2000 on the ranch.

adverse possibilities down the road including eminent domain and mitigation.

Don did not want to sell the land to developers looking to build sprawling subdivisions or resorts nor would he sell to a government agency wanting to turn the ranch into a public park and he knew TNC was interested in land like his so that was his first call.

He was put through to James King, the Conservancy's state director of land acquisitions at the time. Don was encouraged to learn that King was just as interested in preserving the rambling vistas of the Davis Mountains as he was. Before long, the two had become fast friends.

*"What Don didn't know," says Julie, "is the whole friendship deal is a lot more than what it seems. The Conservancy does major research in each area where they have an interest, listing all the major organizations and individuals, called Stakeholders, who might have an influence, good or bad, on their 'project' there. The list is extensive and includes all ranges of community groups, public and private, political and religious. They keep a tally sheet where they*

*document everything they know and what they don't know about these Stakeholders. It's all very well orchestrated to help them gain the trust and confidence of the landowners they're negotiating with or hoping to negotiate with. They want to be your friend."*

Don McIvor was easy prey. He needed the cash from the sale of his land and King was putting a deal together to buy it. Plus, according to King, Don was going to be a hero of sorts, leaving a legacy of astounding proportions to future generations. Why, he would be known as the "Father of Conservation."

As Julie says, *"who would hear that and not want it?"* And Don did want it. His family had been ranching in these mountains for over a hundred years and they loved this land and the community.

Eventually, King presented a plan to purchase 32,000 acres of the McIvor Ranch. Nearly 18,000 acres of the ranch would become a nature preserve and to pay for the deal, the other 14,000 acres would be sold to six private buyers. Interestingly, one of the buyers was a distant cousin to King and another was a major TNC donor. Each parcel

was sold with a conservation easement already in place, reassurance to Don that a hefty portion of his ranch would forever remain in its natural state.

That's not exactly what happened. Each of the new landowner's Conservation Easements were custom designed to suit the owners. All the parcels now have custom built homes on them and one in particular has a home, a barn, a workshop and an 18,000 sq. ft. indoor riding arena. The parcel purchased by one of TNC's major donors has all sorts of potential. It allows for the building of a main house, a manager's house, an artist's cottage, tennis courts, a swimming pool and a barn. Ironically, when Don decided to build a home on his land, he was met with staunch resistance from TNC and had to get special permission to proceed – but more on that later.

Once the sale was complete, Don was left with the ranch headquarters and 6,500 acres. All was good. By selling the land, he had made enough money to pay the estate taxes, preserved the dark skies for the Observatory and kept a decent sized place to hand down to Scott and Julie and their two girls.

However, TNC wasn't done yet. James King had another idea. If Don would donate a Conservation Easement on his remaining 6,500 acres back to the Conservancy, it would soften the capital gains tax burden from the sale of the larger part of the ranch. It was only a one time tax break but it sounded good to Don – and he trusted King. Surely he wouldn't advise him to do anything that would adversely encumber his remaining home place. After all, King had said the McIvors could continue to live and work the ranch just like they had been. What did he have to lose?

### The Awakening

Don's first clue came a little over a year later when he decided to build a home at the base of Blue Mountain, a local landmark that was part of Don's remaining 6,500 acres. Soon after construction began, Don heard from his old friend, James King, now in a new position as program director for The Nature Conservancy in Fort Davis. It seems Don's Conservation Easement didn't allow for any additional buildings on this part of his property.

Don was confused. Had giving the easement to TNC transferred total control of the land to them as well? Don soon realized it had. In fact, the easement made him merely a tenant with TNC as a landlord. Though eventually the Conservancy granted Don an amendment to the easement and allowed his house to go up, the bitter taste of reality was there to stay.

### The Fine Print

In the ten years since his dad unknowingly handed over control of his ranch to The Nature Conservancy through a conservation easement, Scott and his wife Julie have spent many sleepless nights worrying about the future of their ranch. While Don did have legal counsel when he signed the easement, the long term ramifications were never clearly explained. By the time the family got a clear understanding of what the documents meant, it was too late to do anything about it.

"What people don't realize," Julie says, "is that these easements and their restrictions are in perpetuity – that means forever. We really need to plant wheat in one of our fields but because the field was being rested and not in use

when the easement was signed, we can never use it for anything. That's hard. Knowing we could improve our production significantly if we were able to use our land. But we can't. If the restrictions and control had been made clear, the easement would never have been signed.

"People have to consider what they're leaving their future generations. Don't leave them with restrictions and constraints that you didn't have to live with. No one can predict what will happen in a year, ten years or fifty years. The market changes, business models change, everything changes and just like you had to roll with the punches and make it work, they will need the freedom to do the same."



photo courtesy the McIvor Family

Scott McIvor in the round pen starting a colt



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photo courtesy the McIvor Family

Locke Ann McIvor, left, and her sister Mac, photographed on the family ranch, September 2007

### **The McIvor's advice to anyone considering signing a conservation easement:**

1. Get good legal advice from a property rights attorney. Do the research and find an attorney (preferably talk to several), who understands Conservation Easements and their long term effects. Call your state bar association for listings of attorneys who specialize in private property rights. If you belong to a property rights organization, ask them for recommendations or contact and join a property rights group. They can provide a wealth of information about these kinds of issues.
2. Talk to other people in similar situations (if you're a cattle rancher, try to find other cattle ranchers) who have done a Conservation Easement and are living with it. The more you can talk to, the clearer you'll be about what to expect. Don't rely strictly on contacts provided by the Land Trust you're working with. Ask around and find some landowners on your own so you will have more objective input.
3. Consider the implications of perpetuity. Whatever constraints the Conservation Easement places on your property remains in place for all of time. Really think about the long term effects of those constraints and the impact they will have on you and your heirs.
4. Consider this. When you give an easement on your property, it becomes public land held in trust by the Land Trust you grant the easement to. While it doesn't immediately give the public access to your land, it has become a public land. And it will remain on a list of public lands forever.



*Dusti Scovel writes from her home ranch in Texas. She has written about ranching and rangeland issues for Range magazine and Stewards of the West. To learn more visit her website at [www.dustiscovel.com](http://www.dustiscovel.com)*