

## Ducks & Dynasty

For centuries throughout the southern United States, land ownership has been a point of pride, has represented success, and continues to be a goal for many.

The purpose of this paper is to provide landowners (and aspiring landowners) with helpful tips and suggestions to consider when owning land with a focus on a land stewardship and legacy planning as told through Louisiana native (and Argent employee) Lucius McGehee and his family's farm. The intention is to give a broad overview of some of the considerations that may need to be given at one point or another during a landowner's lifetime.

## LAND STEWARDSHIP – MANAGING, CONSERVING, AND PRESERVING

Metaphorically speaking, property ownership equates to owning a bundle of sticks. In other words, many rights (or “sticks” in a bundle if you will) come with owning land, including the rights to manage resources, change use, subdivide and develop. These rights increase if the landowner owns not only the surface but any of the minerals below the surface.

On October 31, 1959, L. D. McGehee (Lucius’s father) and a group of men purchased approximately 3,000 acres close to the Mississippi River, an area known as Spring Bayou. Spring Bayou was teeming with wildlife and was to be a venue for many memories for the McGehee family in the years to come. This region of Louisiana is known for its deer and duck populations and President Teddy Roosevelt’s famous encounter with a black bear. From dove, duck and deer hunts to great memories at the dinner table, Spring Bayou was a paradise for any that experienced it.

Certain techniques can be and often are employed not only for wildlife management purposes but also for land or habitat preservation. As a wildlife paradise, Spring Bayou was utilized in many wildlife management and conservation efforts. In addition, with one third of Spring Bayou in agricultural production and the remainder in hardwood timber production, the property would generate sufficient income to support hunting operations. Conservation easements were considered but never employed.

**Wildlife Management.** Land can sometimes be, or over time become, overpopulated with wildlife, which if allowed to go undeterred, can be detrimental to the land and surrounding ecosystems. In extreme cases, extraction and relocation of wildlife for the benefit of the surrounding habitat or another neighboring ecosystem becomes necessary. For instance, before Lucius’ father’s group purchased Spring Bayou, local wildlife officials would capture deer and release them in other parts of the state. Later, the National Wild Turkey Foundation would capture wild turkeys to repopulate other regions with these birds. Finally, the state wildlife agency conducted some of the first trapping and tagging of certain endangered Louisiana Black Bears found on Spring Bayou.

*General location of Spring Bayou*

These arrangements are usually between a private landowner and a conservation organization or a state wildlife agency. In general, the arrangement calls for a specific, conservation-related activity to occur on the land typically, without any remuneration in exchange (anything from studying and designing a plan to preserve habitats and natural resources to relocating wildlife). Once the desired activity is performed, the arrangement is complete unless ongoing monitoring is requested or warranted.

Hunting, when used appropriately, is another form of wildlife management, conservation, and preservation. In fact, hunting serves as a primary means in the United States for funding conservation via the Federal Aid in Wildlife Restoration Act, the Federal Duck Stamp Program, and state licensing fees.<sup>1</sup> Without these funds, state wildlife and conservation programs would have a difficult time existing.

**Leasing Certain Property Rights.** Rather than allowing land to sit idle, it may make economic or financial sense to put the land to work. For example, through

<sup>1</sup> See Miller, Darren, *Hunting as a Wildlife Management Tool*, op. ed., *The Wildlife Professional*, Fall 2010.

the years, some of the original owners of Spring Bayou choose to sell their interests; the remaining owners purchased those interests and used the timber and agricultural income for debt service.

Incorporating hunting leases, livestock grazing leases, mineral leases such as for oil and gas exploration and development, telecommunication leases (for cell phone towers) and timber and other agricultural-type leases are excellent ways to generate income to help pay maintenance expenses, local and state property taxes, and liability insurance. Hunting, grazing, and agricultural-type leases can also provide a natural benefit to the surrounding habitat if done so properly.

**Conservation Easements.** The ultimate tool in the proverbial tool shed for land stewardship is the use of a structure commonly referred to as a “conservation easement.” Although granting a conservation easement was never employed by the various owners of Spring Bayou, government programs such as the Wetland Reserve Program (WRP) and the Conservation Reserve Program (CRP) were considered.



*Lucius de Yampert McGehee I, II and III are hunting turkey together*

In general, a conservation easement is a voluntary, legal agreement between a landowner and a nonprofit organization or a government agency<sup>2</sup> that restricts certain development on the land covered by the easement, usually in exchange for certain tax or other benefits. From a legacy standpoint, it is a way for the landowner to ensure that the property will be maintained according to the landowner's wishes in perpetuity in most cases. A conservation easement generally runs with the land or is tied to the land so that it binds all present and future owners.

Because all landowners and properties are different, a conservation easement or agreement can be designed to meet specific or unique landowner needs and desires. However, to be eligible for a federal income tax deduction, the conservation easement must be perpetual.

A landowner typically donates a conservation easement to a qualified organization. However, there are many agencies or programs at the federal, state, and local levels that will purchase conservation easements from landowners. In most cases, the amount available to purchase the conservation easement does not cover the full value, resulting in a tax benefit to the landowner.

**Other Considerations.** Conducting hunting operations, negotiating lease agreements, or conveying a conservation agreement can be complicated and should involve local professional assistance. We recommend engaging competent advisors to assist with such matters. Appropriate liability insurance and cov-

erage should be in place and reviewed on an annual basis. In addition to land stewardship considerations, there are also legacy planning considerations that all landowners should contemplate or run the risk of losing control of their land, exposing themselves and their other assets to liability, and/or possibly subjecting themselves or their estates to excessive taxes – just to name a few.

## LEGACY PLANNING

For many landowners, their farm or ranchland is much more than a financial asset – it is their legacy. Legacy planning for landowners can range from the use of a very simple will or revocable living trust to more complex structures involving the use of certain business entities and trusts. In any event, the purpose of having a proper plan in place ensures the landowner's property is and will be protected while affording the owner control of any property disposition, and it ensures that the landowner's family is provided for in case of death or disability. Furthermore, having this plan in place minimizes taxes, professional fees, court costs, as well as much time and heartache.

It is important to bear in mind that legal title controls what happens to land upon disability, death, or lawsuit. Land is generally owned either directly or indirectly through the use of an entity such as a holding company or limited partnership. The remainder of this paper discusses how ownership of Spring Bayou evolved from direct ownership to more sophisticated ownership and how other structures may have been contemplated.

**Direct Ownership.** By the 1990's, Lucius' father and uncle were co-owners of Spring Bayou when a third party buyer approached the brothers about purchasing the property. A price was derived. However, Lucius's father offered to buy his brother out at that price and his brother agreed.

Lucius's father then held legal title in his name and owned Spring Bayou directly. Had Lucius's father died during this point in time or become disabled, the personal representative of his estate or agent would have assumed control of Spring Bayou provided there was a will, living trust, or power of attorney in place giving such individual authority to do so. Absent these documents, the family would have had to sort out control and disposition issues in court using the local legal system and courts. Depending on the size of the

*Louisiana Black Bear  
on the property*



estate, family dynamics, potential creditor exposure, and other extenuating circumstances, such proceedings can be very expensive, not to mention time consuming and burdensome.

A will, living trust, or financial power of attorney can alleviate many uncertainties related to control and disposition of land. Using a revocable living trust in combination with a financial power of attorney is an excellent way to own land located in another state, allowing the designated successor trustee to assume control of the property without court intervention.

Moreover, if the landowner's overall estate is large enough to be subject to federal estate taxes<sup>3</sup>, a well-drafted will or revocable living trust can address this issue in ways that minimize these taxes to the fullest extent possible. In some cases, the use of an irre-

<sup>3</sup> The federal transfer tax system, which encompasses gift, estate, and generation-skipping transfer taxes, imposes a tax on an individual's right to transfer property. The current unified federal gift, estate, and generation skipping transfer tax exemption amount is \$5,250,000, indexed for inflation. So, for married couples, the combined exemption amount is \$10,500,000, and any unused exemption of the first spouse to die can be used by the surviving spouse provided certain requirements are met.

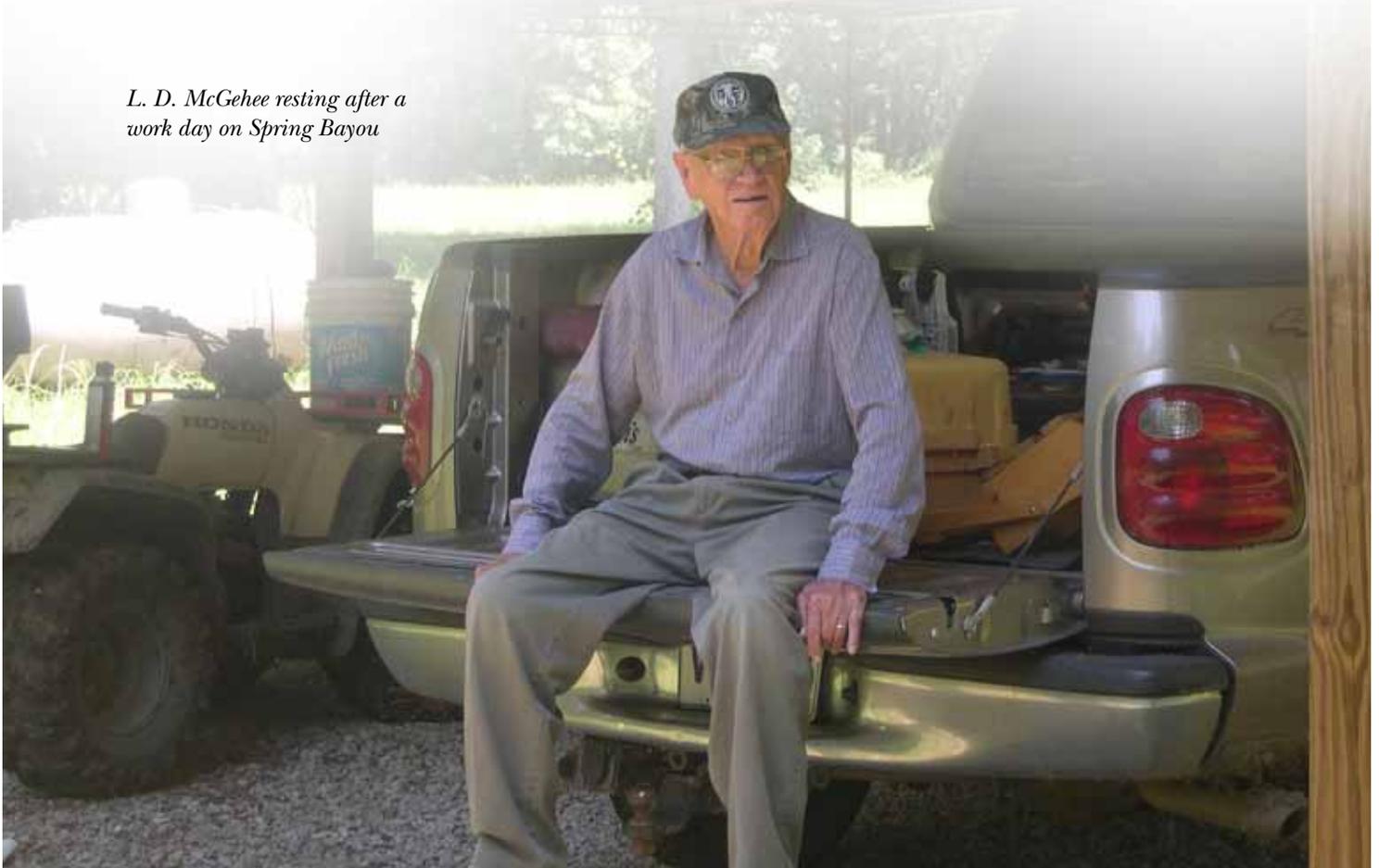
vocable life insurance trust can be implemented in a landowner's legacy plan as a way to provide heirs with a liquidity source for such taxes or other expenses associated with land management.

In short, having a simple will, living trust, and financial power attorney, or some combination thereof, is an extremely important consideration, especially for a landowner holding legal title in his or her name.

**Indirect Ownership.** Several years after Lucius's father acquired all of the interest in Spring Bayou, he created a family limited partnership and conveyed his interest to the partnership in exchange for partnership interests – a common example of indirect ownership and technique used for legacy planning purposes.

Lucius father's partnership interests were subsequently gifted to Lucius and his five siblings in an effort to reduce Lucius's father's gross estate for federal estate tax purposes. Thereafter, Lucius and two of his siblings purchased the other interests from the other siblings. They used income derived from Spring Bayou to service the debt used in the purchase.

*L. D. McGehee resting after a work day on Spring Bayou*



*Employing Business Structures to Own Land.* Land ownership invariably involves financial risk, especially if the land is leased or used for business operations. For risk management and estate planning reasons, a company or limited partnership is often formed to hold the property. Holding real estate in such a way limits an owner's liability and protects other assets from any claims related to the land.

A limited liability company (LLC) or limited partnership (LP) created under state law is often used over either an S corporation or a C corporation. From an income tax standpoint, when an owner of an S or C corporation dies, his or her estate only receives a step up in basis in the corporate stock owned at the time of death but no step up in the underlying assets. However, when an LLC or LP owner dies, the decedent's estate is not only eligible for a step up in basis for the particular business interest owned, but the underlying assets owned by the entity are also eligible for a step up in basis. This can have several tax benefits, including a reduced capital gains tax cost if the land is subsequently sold for a profit.

Whether a corporation, LLC or LP is used, the entity must be respected by the owners. In other

words, owners should maintain all business formalities to the fullest extent possible, including maintaining separate bookkeeping and filing tax returns. Owners must be careful not to commingle their personal assets with the business assets and affairs of the entity or run the risk of losing certain asset protections afforded by such entities.

*Transferring Indirect Ownership Interests.* Not only can holding land in an LLC or LP minimize liability exposure, but it can also serve as a way to efficiently transfer ownership of the land to a landowner's subsequent generations. Assets put in an LLC or LP are removed from the owner's estate and replaced with an LLC or LP interest. Once an LLC or LP holds the assets, the owner can make transfers of his respective interests (i.e., LLC interest or LP interest) to other individuals, such as a spouse, children, or grandchildren, directly or indirectly through a trust. In this way, a landowner would not fragment direct ownership of his land and could reduce the value of his or her estate, and consequently, the potential estate tax obligation arising from direct ownership of the land at his or her death.

Another benefit of using an LLC or LP to hold and transfer interest in land is that certain valuation



*Don McGehee and his sons after a successful alligator hunt*

discounts, such as for lack of marketability and lack of control, may apply. This can ultimately lead to the transfer of considerable amounts of wealth potentially minimizing transfer taxes. To ensure that entity-related discounts and transfers involving them are respected by the IRS, it is important that such transfers are disclosed on a gift tax return in accordance with applicable gift tax rules.

*Using Trusts as Receptacles for Conveying Property.*

As mentioned above, transfers of LLC or LP interests can be accomplished directly to individuals or indirectly to trusts for the benefit of those same individuals. Using trusts as a receptacle for LLC or LP interests provides several benefits, including: (1) control and centralized management (similar to holding land in an LLC or LP); (2) additional asset protection from potential creditors or divorced spouses; and (3) minimal exposure to the federal transfer tax system (this can be accomplished by structuring the trust to be a “dynastic trust” with generation-skipping transfer tax exemption thereby removing the property from children’s and grandchildren’s estates<sup>4</sup>). A fourth, albeit

<sup>4</sup> A dynastic trust is a trust that can exist for however long as the state allows; note that if a trust is structured this way that the correct amount of generation-skipping transfer exemption should be allocated.

indirect, benefit is that the trust value can grow faster if the trust is designed as a grantor trust for income tax purposes, meaning the settlor or grantor of the trust would report on his or her tax return all income, deductions, and credits attributable to the trust. This could create a substantial tax liability for the grantor, so it may not work in every case. However, in the cases where it does, payment of taxes by the grantor can permit the trust property to grow income tax free.

Of course, different circumstances call for different trusts. For instance, the use of a Crummey trust, where there are a large number of children and grandchildren and the land is of great value, grants the power to each beneficiary to withdraw a certain portion or pro rata share of any gift made to the trust, up to the current annual gift tax exclusion (in 2013 \$14,000 for a single individual or \$28,000 for married individuals). Whether direct ownership interests or indirect ownership interests are gifted to a Crummey trust, the value of the interests gifted may not exceed this amount without tax repercussions. For example, if there are a total of 10 descendants for a married couple, the total amount gifted would be \$280,000, thereby reducing the couple’s overall estate by such amount and allowing any future appreciation to adhere in trust for their beneficiaries.



*Timber management  
at Spring Bayou*

Other more advanced real estate transfer techniques involving trusts include grantor retained annuity trusts (GRATs) and sales to defective grantor trusts (SDGTs). If employed at the appropriate time, these estate freezing techniques can remove substantial appreciation and/or income from the individual/grantor's estate with minimal transfer tax consequences.

A GRAT structure permits an individual/grantor to transfer an asset (think income producing land or an entity holding such land) to an irrevocable trust while retaining a set annual payment or annuity from that trust for a certain amount of years.

Unlike GRATs, SDGTs involve a sales transaction. In such a transaction, an individual/grantor makes a gift to an irrevocable trust of a certain dollar amount. Later on, the individual/grantor sells an asset (again, think income producing land or an entity holding such land) to the trust in exchange for some cash and/or a promissory note. There may be ways to mitigate this risk, more detailed discussion of these topics falls outside the scope of this paper.

Obviously, there are benefits and drawbacks to both techniques that must be explored and weighed

in every situation. If used in the appropriate situation and structured correctly, both can be excellent tools to freezing estates and transferring wealth, in the form of land, to future generations.

## CONCLUSION

Today, Lucius and his brothers have built a new camp house and enjoy Spring Bayou with their children, family, and friends. To boot, they have engaged a timber management company to manage the timberland and lease the agriculture portion to a local farmer on a cash rent basis.

Although circumstances may differ from landowner to landowner, the issues surrounding land stewardship and legacy planning generally are often very similar. Whatever the case, landowners should know and understand their asset, identify goals, potential opportunities and risks associated therewith, and plan accordingly.

The brothers are also each now contemplating how to structure their respective legacy plans.

*Family Day in Spring Bayou in 2013*





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