

# **Conservation Easement Appeals in the Colorado Courts**

Quarterly Report Prepared Pursuant to C.R.S. § 39-22-522.5(13)

December 13, 2012

Prepared by the Colorado State Court Administrator's Office



C.R.S. § 39-22-522.5(13) requires the State Court Administrator to provide a report to the Joint Budget committee and the Finance Committees of the General Assembly on or before December 15, 2012. This report will describe (a) the number of taxpayers electing to appeal pursuant to C.R.S. § 39-22-522.5(2); (b) the number of cases pending before the district courts or on appeal before other courts; (c) the number of cases finally resolved; (d) the amount of moneys estimated to have been expended by the courts in administering the appeals; and (e) the amount of deficient taxes, interest, and penalties determined to be owed or waived in connection with the appeals.

**A. The number of taxpayers electing to appeal pursuant to C.R.S. § 39-22-522.5(2)**

SCAO determines that there are approximately 420 named Tax Matters Representatives (“TMR”) and 450 conservation easements involved in the appeals filed before the district courts. Currently, this is the most accurate number that SCAO can provide which reflects the taxpayers electing to appeal. This number is based on the TMRs named and the facts set forth in the Plaintiffs’ Notices of Appeal. The Tax Matters Representatives represents and binds all transferees with respect to all issues regarding the credit claim.

There are 235 entities named as Tax Matters Representatives and approximately 149 of the TMR entities are pass-through entities. 137 individuals and 4 entities represent the Named TMR entities. 113 of the Representatives of TMR Entities are not also named as an individual TMR in a separate case.

Conservation Easement Tax Credit Appeal Taxpayer Summary

	Number of Named Tax Matters Representatives	Representatives of TMR Entities
Individuals	185	137
Pass-Through Entities	149	0
Other Business Entities, Trusts and Estates	86	4
Total	420	141

**B. The number of cases pending before the district courts or on appeal before other courts and the number of cases finally resolved**

As of December 7, 2012, approximately 193 conservation easement tax credit appeals had been filed in the district courts. No new cases have been filed with the courts since September of 2012. Region 1 has 41 cases, Region 2 has 129 and Region 3 has 23 cases. In Region 1, 19 cases have been closed, and in Region 2, 46 cases have been closed. In Region 3, 7 cases have been closed. Therefore, there are a total of 121 open cases pending before all three regions. Approximately 55 of the cases closed have been consolidated and are pending resolution. 17 cases are resolved. Currently, 5 cases have parties that have attained settlement agreements and are in the process of filing stipulated motions to dismiss the case.

The first validity hearing was held in Otero County District Court on October 9, 2012. The case is currently pending the Court’s decision on the validity of the conservation easement tax credit as claimed. There are approximately 19 cases set for validity hearings in the spring of 2013 and the parties are in the process of conducting discovery.

Conservation Easement Tax Credit Appeal Case Summary as of December 7, 2012

Region	Cases Filed	Cases on Appeal	Cases Closed	Total Open Cases To Date
Region 1	41	0	19	22
Region 2	129	0	46	83
Region 3	23	0	7	16
Total	193	0	72	121

**C. The amount of moneys estimated to have been expended by the courts in administering the appeals**

Type	Amount
Personal Services	\$198,816
Operating	\$4,549
Total	\$203,365

**D. The amount of deficient taxes, interest, and penalties determined to be owed or waived in connection with the appeals**

No judgments have been entered in any conservation easement cases to date. The 17 cases that SCAO reports as resolved, the courts closed on procedural, settlement or voluntary dismissal grounds.