

Conservation Easement Appeals in the Colorado Courts

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

September 13, 2013

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 quarterly report to the Joint Budget committee and the Finance Committees of the General Assembly. 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. Approximately 149 of the TMR entities are pass-through entities, which have separate individual taxpayers claiming the credits or selling the credits to transferee taxpayers.

Conservation Easement Tax Credit Appeal Taxpayer Summary

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

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 September 13, 2013, 194 conservation easement tax credit appeals had been filed in the district courts. Region 1 has 41 cases, Region 2 has 129 and Region 3 has 24 cases. In Region 1, 24 cases have been closed, and in Region 2, 51 cases have been closed. In Region 3, 13 cases have been closed. Therefore, there are a total of 106 open cases pending before all three regions. Approximately 58 of the cases closed have been consolidated and are pending resolution, while another 27 cases have been resolved. Currently, 73 cases have parties that have attained settlement agreements regarding value and validity of the tax credit and are in the process of proceeding to the apportionment of the case or filing stipulated motions to dismiss the case.

There are approximately 32 cases that are set for preliminary threshold hearings regarding the validity of the credit and the parties are in the process of conducting discovery. Another 55 cases have been set for Phase 2 hearings to apportion the amount of taxes, interest, and penalties owed by parties in the case.

Approximately 9 cases are currently in Phase 3 proceedings to address financial claims between the TMR, tax credit transferees, and other parties claiming a tax credit in connection with the conservation easement donation.

The first preliminary phase hearing was held in Otero County District Court on October 9, 2012. The Court issued its Order determining the conservation easement credit invalid as claimed on January 22, 2013. Plaintiffs appealed the case to the Colorado Court of Appeals in case number 13CA453, however, Plaintiff failed to file the appropriate bonds at the District Court level. The District Court has dismissed the appeal. The issue related to the appeal bond has been added to 13CA453, which is currently pending before the Court of Appeals.

Conservation Easement Tax Credit Appeal Case Summary as of June 10, 2013

Region	Cases Filed	Cases on Appeal	Cases Closed	Total Open Cases To Date
Region 1	41	0	24	17
Region 2	129	1	51	78
Region 3	24	0	13	11
Total	194	0	88	106

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

Type	Amount
Personal Services	\$330,146
Operating	\$5,804
Total	\$335,950

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 27 cases that SCAO reports as resolved, the courts closed on procedural, settlement or voluntary dismissal grounds.