

Conservation Easement Appeals in the Colorado Courts

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

January 8, 2014

Prepared by the Colorado State Court Administrator's Office



Colorado law requires the State Court Administrator to compile a report on conservation easement appeals in the trial courts. This report is due quarterly to the Joint Budget Committee and the Finance Committees of the General Assembly [see C.R.S. § 39-22-522.5(13)]. 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)

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

The table below contains a summary of the number of cases filed, cases on appeal before other courts, cases closed, and cases pending.

Conservation Easement Tax Credit Appeal Case Summary as of December 15, 2013

Region	Cases Filed	Cases on Appeal	Cases Closed	Total Open Cases To Date
Region 1	41	0	24	17
Region 2	129	2	56	73
Region 3	24	0	16	8
Total	194	2	96	98

As of December 15, 2013, 194 conservation easement tax credit appeals had been filed in the district courts. Region 1 had 41 cases filed, Region 2 had 129 cases, and Region 3 had 24 cases. In Region 1, 24 cases have been closed, and in Region 2, 56 cases have been closed. In Region 3, another 16 cases have been closed. Therefore, there are a total of 98 open cases pending before all three regions. Among closed cases, 58 cases have been consolidated and are pending resolution while another 38 cases are fully resolved. Currently, 65 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 phase of the case or filing stipulated motions to dismiss the case.

There are 18 cases set for preliminary threshold hearings regarding the validity of the credit and the parties are in the process of conducting discovery. Another 6 cases are set for Phase 2 hearings to apportion the amount of taxes, interest, and penalties owed by parties in the case.

Two conservation easement tax credit appeal cases are currently pending before the Colorado Court of Appeals. The first appeal is *Thompson v. Brohl*, 2013CA458. This appeal stems from a ruling that determined a tax credit invalid in case number 2011CV95 of the Otero County District Court (Region 2). The second appeal is *Markus v. Brohl*, 2013CA1656. This second appeal, brought by the Department of Revenue, disputes the Otero County District Court’s decision in favor of the taxpayer on summary judgment in case 2011CV142.

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

Type	Amount
Personal Services	\$371,483
Operating	\$6,281
Total	\$377,764

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

To date, the Court has entered \$60,190 in judgments for tax, interest and penalties in favor of the Department of Revenue. In cases resolved through settlement where parties have not sought a judgment, the Court retains jurisdiction to enforce the settlement agreements and enter judgment in event of a party’s failure to comply.