

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

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

March 13, 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. Please note that the number of cases on appeal are a subset of the total open cases.

Conservation Easement Tax Credit Appeal Case Summary as of March 12, 2014

Region	Cases Filed	Cases on Appeal	Cases Closed	Total Open Cases
Region 1	41	1	31	10
Region 2	129	1	65	64
Region 3	24	0	19	5
Total	194	2	115	79

As of March 12, 2014, 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, 31 cases have been closed, and in Region 2, 65 cases have been closed. In Region 3, 19 cases have been closed. Therefore, there are a total of 79 open cases pending before all three regions. Among closed cases, 58 cases have been consolidated and are pending resolution while another 57 cases are fully resolved. Currently, 60 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 third phase of the case or filing stipulated motions to dismiss the case.

There are nine 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 eight cases are set for Phase 2 hearings to apportion the amount of taxes, interest, and penalties owed by parties in the case.

There are two conservation easement tax credit appeals pending before the Colorado Court of Appeals. The first appeal is from Region 2, *Markus v. Brohl*, case number 2013CA1656, which is brought by the Department of Revenue and it disputes the Otero County District Court’s decision in favor of the taxpayer on summary judgment in case number 2011CV142. The issues before the Court of Appeals are (1) whether the Department timely disallowed the conservation easement tax credits initially claimed and used in Plaintiffs’ 2004 returns; and (2) whether the Department was precluded under C.R.S. §§ 39-21-107(2) and 39-22-522(7)(i) from disallowing plaintiffs’ and transferees’ use of the credits carried forward and used in the tax returns filed in subsequent tax years. Another Region 2 case, *Thompson v. Brohl*, 2013CA458, recently has been dismissed by the Court of Appeals. This appeal was from a threshold phase hearing ruling that determined a tax credit invalid in case number 2011CV95 of the Otero County District Court.

The second appeal is from Region 1, *Atherton v. Brohl*, 2014CA104, and it disputes the trial court’s ruling from a threshold hearing holding the taxpayer’s credits invalid in Jefferson County District Court case number 2011CV4124. The issues before the Court of Appeals are: (1) whether the Department should be prevented from requiring the taxpayer to file a Federal form 8283; (2) whether the taxpayer’s appraisals satisfied the “qualified appraisal” requirement of Treas. Reg. 1.170A-13(c)(3); (3) whether the taxpayer failed to satisfy the contemporaneous written acknowledgement requirement; and (4) whether the taxpayer’s baseline reports were sufficient to meet the requirements of the treasury regulations.

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

<b>Type</b>	<b>Amount</b>
Personal Services	\$415,329
Operating	\$6,281
Total	\$421,610

**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 \$332,369.97 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.