

Conservation Easement Appeals in the Colorado Courts

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

December 10, 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 that were filed before the district courts.

This number is based on the TMRs named and the facts set forth in the Plaintiffs’ Notices of Appeal. The Tax Matters Representative 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 closed, cases pending, and cases on appeal. Please note that the number of cases on appeal is a subset of the total open cases.

Conservation Easement Tax Credit Appeal Case Summary as of December 10, 2014

Region	Cases Filed	Cases Closed	Open Cases as of December 10, 2014	Cases on Appeal
Region 1	41	38	3	1
Region 2	129	119	10	1
Region 3	24	21	3	0
Total	194	178	16	2

As of December 10, 2014, 194 conservation easement tax credit appeals had been filed in the district courts. The number of closed cases increased again this quarter. Over ninety percent of the original case filings, or 178 cases, have been closed. A total of sixteen open cases remain pending in the three regions. Most of the remaining open cases have parties that have attained settlement agreements regarding the 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 two conservation easement tax credit appeals pending before the Colorado Court of Appeals. The first appeal is from Region 2, *Markus v. Brohl*, 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 2011CV142. The issues before the Court of Appeals are (1) whether the Department timely disallowed the CE 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. An opinion was issued in this case on October 23, 2014 and a mandate is set to issue closing the case within the month of December.

The second appeal is from Region 1, *Atherton v. Brohl*, 2014CA104, and it disputes the court’s ruling from a threshold hearing holding the taxpayer’s credits invalid in Jefferson County District Court case 2011CV4124. The issues before the Court of Appeals are: (1) whether the Department should be estopped 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. Briefing has been completed in this case and it has yet to be set for review.

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

Type	Amount
Personal Services	\$509,735
Operating	\$6,322
Total	\$516,057

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 \$2,132,749.98 in judgments for tax, interest and penalties in favor of the Department of Revenue in 18 cases. 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.