

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

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

June 10, 2015

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.

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 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 June 10, 2015

Region	Cases Filed	Cases Closed	Open Cases as of June 10, 2015	Cases on Appeal
Region 1	41	38	3	0
Region 2	129	117	12	0
Region 3	24	23	1	0
Total	194	178	16	0

As of June 10, 2015, 194 conservation easement tax credit appeals had been filed in the district courts. Over ninety percent of the original case filings, or 178 cases, have been closed. 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.

Currently, there are no appeals pending before the Colorado Court of Appeals. An opinion issued on May 7, 2015 in *Atherton v. Brohl*, 2014CA104, where Plaintiffs appealed from a threshold hearing holding the taxpayer’s credits invalid in Jefferson County District Court case 2011CV4124. The Court of Appeals dismissed the appeal determining that the district court’s judgment was not final because tax, interest and penalties had not yet been determined by the district court. The Court of Appeals found that §39-22-522.5(2)(m)(II), C.R.S. clearly creates an exception to the finality rule, where it states that “[t]he conservation easement tax credit action shall be final at the conclusion of the second phase as to the department of revenue...” However, the Court decided that paragraph (2)(p) does not create an exception to the finality rule when providing that “[t]he court shall indicate in any order whether the judgment of the court is a final judgment subject to appeal as to any party”.

**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	\$542,762
Operating	\$6,322
Total	\$549,084

**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 \$1,060,567.13 in judgments for tax, interest and penalties in favor of the Department of Revenue in twenty cases. The Court has also entered approximately \$2,613,846.17 in judgments in favor of Tax Matters Transferees and third party intervenors, resulting in a total of \$3,674,413.30 of judgments entered by the Court in twenty-four 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 the event of a party’s failure to comply.