

Conservation Easement Appeals in the Colorado Courts

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

March 10, 2016

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 March 10, 2016

Region	Cases Filed	Cases Closed	Total Open Cases To Date	Cases on Appeal
Region 1	41	39	2	1
Region 2	129	126	3	0
Region 3	24	24	0	0
Total	194	189	5	0

As of March 10, 2016, 194 conservation easement tax credit appeals had been filed in the district courts. Only four cases remain open. Two appeals have been filed since the last quarterly report, but only one of the appeals is still pending before the Colorado Court of Appeals. There was an appeal from the District Court’s order in Jefferson County case number 2011CV4124 which the Court of Appeals dismissed on December 3, 2015 for late filing of the notice of appeal in Court of Appeals case number 2015CA1876. A notice of appeal has been filed in Jackson County case 2011CV14, Court of Appeals case number 2015CA1514. The issues before the Court include: (1) whether C.R.S. § 39-22-522(7) as it existed before the 2007 Amendment, subjected transferees to the same statute of limitations under C.R.S. § 39-21-107(2) as applied to the donor of the conservation easement, also known as the “tax matters representative”; (2) whether the 2007 Amendment to C.R.S. § 39-22-522(7)(i) merely clarified existing law and did not change existing law; (3) whether retroactive application of the 2007 Amendment to C.R.S. § 39-22-522(7)(i) to donations occurring before the Amendment is constitutional. The appeal is in the process of being briefed.

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

Type	Amount
Personal Services	\$580,477
Operating	\$6,322
Total	\$586,799

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

There has been no change in the amount of judgements entered by the court since the last quarterly report submitted in December of 2015. The Court has entered \$1,122,675.30 in judgments for tax, interest and penalties in favor of the Department of Revenue in twenty cases. The Court has also entered approximately \$2,639,226.17 in judgments in favor of Tax Matters Transferees and third party intervenors, resulting in a total of \$3,761,901.47 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 event of a party’s failure to comply.