

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

LANDOWNERS UNITED
ADVOCACY FOUNDATION,
INC.,

Plaintiff,

vs.

No. _____

STATE OF COLORADO;
BARBARA BROHL, individually and in her
official capacity as EXECUTIVE DIRECTOR OF THE
COLORADO DEPARTMENT OF
REVENUE; MARCIA WATERS, individually
and in her official capacity as DIRECTOR OF THE
COLORADO DEPARTMENT OF REAL ESTATE;
MARK WESTON, individually and in his official capacity
as COMMISSIONER (appraiser) of the
COLORADO CONSERVATION EASEMENT OVERSIGHT COMMISSION;
COLORADO DEPARTMENT OF REVENUE;
DIVISION OF REAL ESTATE of the
COLORADO DEPARTMENT OF REGULATORY AGENCIES; BOARD OF
REAL ESTATE APPRAISERS, COLORADO DEPARTMENT OF
REGULATORY AGENCIES; and the
COLORADO CONSERVATION EASEMENT OVERSIGHT COMMISSION of
the COLORADO DEPARTMENT OF REGULATORY AGENCIES,

Defendants.

COMPLAINT FOR INJUNCTIVE RELIEF, DECLARATORY RELIEF FOR
VIOLATIONS OF CIVIL RIGHTS AND STATE CONSTITUTIONAL RIGHTS

Plaintiff the Landowner's United Advocacy Foundation, Inc., by and through its
counsel, Western Agriculture Resources and Business Advocates, LLP., brings this
Complaint under 42 U.S.C. § 1983, the United States Constitution, and the Colorado
Constitution for injunctive relief and declaratory relief, resulting from injuries inflicted
upon its members by Defendants the State of Colorado; Barbara Brohl, Executive
Director, Colorado Department of Revenue; Marcia Waters, Director of the Colorado

Department of Real Estate; Mark Weston, Commissioner with the Conservation Easement Oversight Commission. Plaintiff alleges as follows:

INTRODUCTION

1. This lawsuit arises out of a bait-and-switch scheme carried out by the State of Colorado, the Colorado Department of Revenue, and various identified and unidentified state officials against hundreds of Colorado landowners who were induced in good faith to participate in Colorado's conservation easement program. Many landowners participated because the program presented the only viable way to preserve their farming and ranching activities during trying economic times.

2. The fundamental idea behind the conservation easement program is that landowners will forever give up significant rights to use and develop their land and will convey valuable conservation easements to Colorado or to qualifying entities in exchange for tax credits. The State and its citizens benefit greatly from these conveyances because, in exchange for the tax credits, the State and the citizens of Colorado are able to maintain large tracts of land in pristine, open-space condition, in keeping with the character and long-standing traditions of Colorado. Habitats and historically significant land areas and structures are preserved. Additionally, the general public benefits from having scenic and educational access to Colorado's wilderness. Much of Colorado's tourism industry is dependent on the existence and preservation of large amounts of natural, open space.

3. Nevertheless, with respect to hundreds of grantors, Defendants sought to reap and to retain the benefits of tens of millions of dollars of conservation easements while bullying and scheming to deprive grantors of lawful tax credits – usually several years after the credits had been claimed and, in many cases, transferred to third parties pursuant to state law. Defendants' actions have devastated many hardworking farmers

and ranchers, with many families losing their homes, lands, and livelihoods. Moreover, Defendants have undermined the equitable administration of the conservation easement program – a program that benefits all of the citizens of Colorado and is essential to the state in preserving its resources, habitats, open spaces, and general character and beauty.

4. Before 2011, during a time period in which hundreds of owners conveyed conservation easement donations under the program, the Colorado General Assembly had specific procedures in place to effectuate the donations, and to address the resolution of challenges to donations by the DOR. After 2011, well after these owners had made their donations, Defendants began arbitrarily targeting conservation easement donors and using unlawful bases to retroactively deny tax credits. Moreover, in 2011, the General Assembly enacted a new, and radically different, procedure to resolve disputes over DOR challenges to conservation easement donations. In 2014, when the DOR finally commenced its challenge to various conservation easement donations, the procedures set forth in the new legislation were applied arbitrarily, unlawfully, and retrospectively to the DOR's challenge of the conservation easement donations.

5. As a result, the State, through the 2011 legislation and Defendants' overreaching application of the legislation and oversight under the program, improperly rejected many valid conservation easement tax credits, incorrectly holding them procedurally invalid and rejected valid appraisals claiming the value of the land is *de minimis*. Defendants, in turn, forced donors to engage in protracted and expensive procedures under the new legislation in to protect their rights, many years after the date the donations were made and the tax credits issued. The retrospective application of the 2011 legislation, in addition to the conservation easement program, as implemented by

the DOR, is not only arbitrary, unfair, and oppressive, but it has also harmed and will continue to harm landowners, and the Colorado public.

6. Substantial and irreparable harm will continue to accrue to Plaintiff, its members (nearly all of whom are affected donors of conservation easements) and the Colorado public if Defendants' illegal and oppressive actions, including the ex post facto application of legislation designed to undermine the procedural rights of donors, is not corrected and the conservation easement program is implemented consistent with the underlying intent of the program and the statutes and rules that were in place at the time the affected landowners donated their property.

7. Defendants' actions, as set forth below, violate landowner's rights to due process and equal protection under both the State and Federal Constitutions. Moreover, Defendants' actions amount to the illegal, ex post facto application of laws and the impairment of third-party contracts, in violation of Article II, Section 11 of the Colorado Constitution.

8. Because of the ongoing violations committed by Defendants with respect to the conservation easement program, and the unjust and onerous results of Defendants' administration of the program, Plaintiff now brings this lawsuit to seek redress for the illegal and arbitrary actions of Defendants, including their violations of Plaintiff's and Plaintiff's members' statutory and state and federal constitutional rights, and to protect the interests of the many landowners who have faced the illegal, arbitrary actions of Defendants.

JURISDICTION AND VENUE

9. Jurisdiction and Venue are proper in the United States District Court for the District of Colorado pursuant to 42 U.S.C. §§ 1983, 1988, 28 U.S.C. § 2201, and 28

U.S.C. § 1343. This suit is brought against Colorado, Colorado political subdivisions and agencies, and against state officials acting in their official capacities under color of state law.

PARTIES

10. Plaintiff, a 501(c)(4) organization, was organized in the State of Colorado, among other things, to:

A) Protect landowners' rights, the public interests, and sound conservation policies in Colorado through advocacy, legal and technical assistance, exchange of information, training and development of professional standards;

B) Research and publicize the positions of elected officials concerning these issues; and

C) Advocate for legislation, regulations and government programs to improve the environment, protect natural resources, stimulate the economy.

11. The members of Plaintiff Landowners United Advocacy Foundation are all landowners who have been faced with unlawful and arbitrary actions with respect to their participation in Colorado's conservation easement program and who have been directly harmed by those actions. Among its purposes and missions, Plaintiff Landowners United Advocacy Foundation works to protect landowners who are seeking to lawfully participate in the conservation easement program and advocates for legal reforms to create fairness and transparency in the program's administration so that conservation easements will continue to benefit all citizens of Colorado.

12. Defendant Barbara Brohl was at all times relevant to this Complaint employed by the State of Colorado, as the Executive Director of the Colorado Department of Revenue. At all times material to this Complaint, Defendant Brohl was acting in the

course and scope of her employment and under color of state law. Defendant Brohl is sued in her individual capacity while acting under color of state law.

13. Defendant Marcia Waters was at all times relevant to this Complaint employed by the State of Colorado as the Director of the Department of Real Estate. At all times relevant to this Complaint, Defendant Waters was acting in the course and scope of her employment and under color of state law. Defendant Waters is sued in her individual capacity while acting under color of state law.

14. Defendant Mark Weston was at all times relevant to this Complaint employed by the State of Colorado as a Commissioner on the Conservation Easement Oversight Committee. At all times relevant to this Complaint, Defendant Weston was acting in the course and scope of his employment and under color of state law. Defendant Weston is sued in his individual capacity while acting under color of state law.

15. Defendant the Division of Real Estate of the Colorado Department of Regulatory Agencies is an agency of the State of Colorado and is subject to suit for prospective injunctive relief under federal law, including under 42 U.S.C. § 1983, and is a government entity subject to suit under Colorado state law.

16. Defendant the Conservation Easement Oversight Commission is a commission attached to the Colorado Department of Regulatory Agencies, Division of Real Estate and is subject to suit for prospective injunctive relief under federal law, including under 42 U.S.C. § 1983, and is a government entity subject to suit under Colorado law.

17. Defendant the Board of Real Estate Appraisers is a board attached to the Colorado Department of Regulatory Agencies, Division of Real Estate and is subject to

suit for prospective injunctive relief under federal law, including under 42 U.S.C. § 1983, and is a government entity subject to suit under Colorado law.

18. Defendant the Department of Revenue is an agency of the State of Colorado and is subject to suit for prospective injunctive relief under federal law, including under 42 U.S.C. § 1983, and is a government entity subject to suit under Colorado state law.

GENERAL ALLEGATIONS

A. Colorado Conservation Easements

19. Colorado law permits landowners to take a state income tax credit for all or part of a donated conservation easement.

20. There are various requirements conservation easement donors must meet to receive the state income tax credits. First, the conservation easement must be perpetual in duration, with the deed assuring that the restrictions associated with the easement remain on the property forever. Second, the easement must be for a conservation purpose. Allowable conservation purposes include: (i) The preservation of land areas for outdoor recreation by, or education of, the general public; (ii) The protection of a relatively natural habitat or ecosystem; (iii) The preservation of open space where there is significant public benefit, and the preservation is for the scenic enjoyment of the public or pursuant to a clearly delineated federal, state, or local government conservation policy, or (iv) the preservation of a historically important land area or a certified historical structure. Third, the easement must be conveyed to a qualifying organization. Qualifying organizations are government entities and approved 501(c)(3) organizations. *See* Section 30-30.5-104(2), C.R.S. Fourth, the fair market value of the

conservation easement must be established by a qualified appraisal completed by a qualified appraiser.

21. In articulating the technical requirements to convey a qualifying conservation easement, Colorado law references the Internal Revenue Code of the United States.

22. The Internal Revenue Code provides for a charitable contribution deduction against gross income for a conservation easement made during a taxable year. 26 U.S.C. § 170(h). Similarly, Colorado law permits a taxpayer to claim a Colorado conservation easement tax credit. C.R.S. § 39-22-522, et seq. To claim a tax credit under Colorado law, the taxpayer must satisfy the requirements for a qualified contribution under Section 170(h) of the Internal Revenue Code and associated federal regulations. C.R.S. § 39-22-522(2). Specifically, Section 170(h)(5)(A) provides that a “contribution shall not be treated as exclusively for conservation purposes unless the conservation purpose is protected in perpetuity.” Treasury Regulation § 1.170-14(g) elaborates on this perpetuity requirement stating that the “interest in the property retained by the donor must be subject to legally enforceable restrictions . . . that will prevent uses of the retained interest inconsistent with the conservation purposes of the donation.” 26 C.F.R. § 1.170A-14(g)(1).

23. Further, § 1.170A-14(g)(6), consistent with its title (“Extinguishment”), addresses at clause (i) the requirements for situations in which a donor and donee choose to include provisions in their conservation easements that allow for extinguishment of the conservation easement in certain circumstances. In this regard, clause (i) states that if it becomes impracticable or impossible because of the extinguishment provisions to continue the conservation purpose of the property, then “the conservation purpose can

nonetheless be treated as protected in perpetuity if the restrictions are extinguished by judicial proceeding and all of the donee's proceeds . . . from a subsequent sale or exchange of the property are used by the donee organization in a manner consistent with the conservation purposes of the original contribution."

24. Clause (ii) of Treas. Reg. § 1.170A-14(g)(6), entitled "Proceeds," provides in relevant part

[F]or a deduction to be allowed under this section, at the time of the gift the donor must agree that the donation of the perpetual conservation restriction gives rise to a property right, immediately vested in the donee organization, with a fair market value that is at least equal to the proportionate value that the perpetual conservation restriction at the time of the gift bears to the value of the property as a whole at that time. * * * For purposes of this paragraph (g)(6)(ii), that proportionate value of the donee's property rights shall remain constant. Accordingly, when a change in conditions gives rise to the extinguishment of a perpetual conservation restriction under paragraph (g)(6)(i) of this section, the donee organization, on a subsequent sale, exchange, or involuntary conversion of the subject property, must be entitled to a portion of the proceeds at least equal to that proportionate value of the perpetual conservation restriction.

25. On their face, the treasury regulations generally require conveyances of conservation easements to be perpetual. If a conservation easement conveyance contains language contrary perpetuity, then the regulations require additional protections by way of "proceeds" and "extinguishment" language set forth above. Those protections, however, are not necessary where the conveyances are perpetual.

26. Colorado law also references the Internal Revenue Code with respect to the requirements of appraisals to value the conservation easements and their accompanying tax credits.

27. Generally, the appraiser who prepares the appraisal must hold a valid license as a certified general appraiser in accordance with the provisions of part 7 of article 61 of title 12, C.R.S. Furthermore, the appraiser who prepares the appraisal must also

meet all applicable education and experience requirements established by the Board of Real Estate Appraisers in accordance with Section 12-61-719(7) C.R.S.

28. A qualified appraisal for computing the gross conservation easement credit must meet requirements for claiming a federal charitable deduction for the donation of the easement. *See* 26 C.F.R. § 1.170A-13(c), *and* 26 C.F.R. § 1.170A-14(h)(3)(i).

29. The Department of Revenue may require the taxpayer to provide a second appraisal at the taxpayer's expense if the executive director: (i) reasonably believes that the appraisal represents a gross valuation misstatement, (ii) receives notice of such a valuation misstatement from the Division of Real Estate, or (iii) receives notice from the Division of Real Estate that an enforcement action has been taken by the Board of Real Estate Appraisers against the appraiser. *See* C.R.S. § 39-22-522(3.5).

30. In light of the regulations associated with conservation easements, the restrictions that landowners accept on the use of their land when they grant the easements decrease the value of their land permanently. Moreover, the conservation easements are valuable to the grantees and to the general public.

31. The credits available for conservation easements serve as a dollar-for-dollar reduction in state income tax liability. Taxpayers claiming conservation easement tax credits may take all or part of the credit the tax year in which they claim the credit. If their tax liability is such that they cannot use the entire credit in the first year, they may carry the remaining value of the credit forward up to an additional twenty years.

32. Under Colorado law, conservation easement tax credits are transferable. Many landowners, particularly agricultural owners such as farmers and ranchers, whose incomes (and therefore income tax liabilities) are not high enough to take advantage of the full amount of a conservation easement tax credit, often sell all or part of their tax

credits at discounted rates to third parties. Many farmers and ranchers in Colorado who were hurt by drought and other adverse conditions availed themselves of the right to sell their credits in order to subsist in their farming and ranching operations. These landowners received discounted lump sum payments in exchanged for the full value of their tax credits over time.

33. These transfers of the tax credits occurred pursuant to lawful, binding contracts between the donors and third parties who purchased the credits.

34. The transferability of conservation easement tax credits was encouraged by Colorado lawmakers and enshrined in statute because transferability made the credits available and useful for a broader range of taxpayers, rather than just the wealthy. Without the ability to transfer the credits, lower income landowners would never realize the full value of the credits to which they would be entitled, and the Colorado public would lose the benefit of many conservation easements because lower-income owners would not be able to afford to grant them, given the substantial value in the use of their land that donors must give up to make the conservation easements effective.

B. Unlawful Administration of the Program

35. Colorado's conservation easement tax credit is administered by Defendant the Department of Revenue, Defendant the Division of Real Estate, and Defendant the Conservation Easement Oversight Commission. Defendant the Board of Real Estate Appraisers has an indirect role in the program because it regulates and licenses the individuals who conduct the appraisals required for the tax credits.

36. In approximately 2008, the Department of Revenue began to target certain groups of taxpayers – mainly those involved in agriculture – to rescind tax credits that had previously been lawfully obtained. The Defendants Department of Revenue, Brohl,

Waters, and Weston in concert with the other Defendants, focused their efforts on three main tactics for retroactively denying the tax credits: (i) they asserted, with no basis in law or fact, defects in the conveyance language that purportedly destroyed the validity of the credits; (ii) they arbitrarily threw out appraisals that had been conducted by licensed appraisers according to all standards required by state and federal law and brought in alternative appraisals conducted by appraisers with inside connections with the Department of Revenue to value conservation easements at \$0 or “de minimis” amounts; and (iii) they unlawfully applied a 2011 law in retrospective fashion to deprive landowners challenging their actions of important procedural and substantive rights.

37. With respect to conveyance language, the Department of Revenue began arbitrarily asserting with respect to some taxpayers that their credits were invalid because the easements did not contain “extinguishment” or “proceeds” language pursuant to Treasury Regulations Treas. Reg. § 1.170A-14(g)(6). The Department and Brohls, Waters and/or Weston had no reasonable legal or factual basis to take such a position because the donors in question had granted perpetual easements with no language to defeat perpetuity or allow for extinguishment, and Colorado state law presumes that conservation easement grants are perpetual unless language in the conveyance states otherwise. C.R.S. § 38-30.5-103.

38. Defendants also attacked the appraisals that supported the tax credits of hundreds of donors without a sound legal or factual basis.

39. In many instances, taxpayers obtained second and third appraisals from licensed appraisers who conducted the appraisals in accordance with Uniform Standards of Professional Appraisal Practices (USPAP). These subsequent appraisals were carried out at the request of the Department of Revenue, Department of Real Estate, the

Conservation Easement Oversight Commission, Brohls, Waters, Weston and potentially other state actors. Nevertheless, committed to denying lawful tax credits, the Department of Revenue, Department of Real Estate, and Conservation Easement Oversight Commission in conjunction with the named individual Defendants, rejected these appraisals and instead sought alternative appraisals conducted by individuals who would give the predetermined values Defendants were seeking. The appraisals done at the behest of Defendants resulted often in a valuation of \$0.00 – a figure which is nonsensical in light of the lands and the easements at issue.

40. In some instances, Defendants pursued the licenses of appraisers, obtained revocation of their licenses through Defendant, the Board of Real Estate Appraisers, and then sought to substantiate the denial of tax credits on the grounds that the de-licensure of an appraiser made that appraiser's work retroactively invalid.

41. In addition to attacking appraisals, Defendants have made use of retrospective application of a 2011 law to destroy procedural and substantive rights of taxpayers and to impair their contracts with third parties.

42. Before 2011, and during the time period in which hundreds of landowners made their donations, the procedures in place for resolving disputes between donors and the Department of Revenue stated:

Formal Hearing. - Unless rejected under (3.5), the request for hearing will be calendared for formal hearing. At that hearing the taxpayer must present his entire case in support of his position. The Department of Revenue will be represented for hearing by an attorney from the Colorado Department of Law, Office of the Attorney General. The hearing officer may require the parties to file hearing data certificates or other materials.

See 1 CCR 201-1, Reg. 39-21-103 (promulgated pursuant to C.R.S. § 39-21-103).

43. In 2011, the General Assembly enacted a dramatic change to the procedure for tax appeals referred to as the Phased Approach. The Phased Approach provides:

- b) The Executive Director may resolve the issues raised by the parties in phases:
 - i) the first phase will address issues regarding the validity of the credit and any other claims or defenses touching the regulatory of the proceedings;
 - ii) the second phase will address the value of the easement; and
 - iii) the third phase will address determinations of the tax, interest, and penalties due and apportionment of such tax liability among persons who claimed a tax credit in relation to the TMR's conservation easement donation.

See 1 CCR 201-1, Reg. 39-22-522(11)(b) (promulgated under C.R.S. § 39-22-522.5 (entire section enacted 2011, pursuant to HB 11-1300).

44. Many taxpayers have attempted to avail themselves of the administrative process provided to be heard and receive relief from the Department of Revenue's arbitrary actions. The administrative process itself violated standards of due process, however. The Department of Revenue's hearing officers have forced taxpayers to adhere to the new "Phased Approach" even though they made conservation easement donations, were subject to initial letters of disallowance, and, in many instances, requested administrative hearings, before the 2011 law was enacted.

45. All of the actions of Defendants were done in violation of clearly established law and with the intent unlawfully and arbitrarily to deprive taxpayers of lawful tax credits, years after they were earned and after Defendants and the public received the benefit of the conservation easements in question.

COUNT I -- 42 U.S.C. § 1983 CONSTITUTIONAL DEPRIVATIONS OF EQUAL PROTECTION AGAINST DEFENDANTS THE STATE OF COLORADO, THE DEPARTMENT OF REVENUE, THE DIVISION OF REAL ESTATE, THE CONSERVATION EASEMENT OVERSIGHT COMMISSION, THE BOARD OF REAL ESTATE APPRAISERS, BROHLS, WATERS AND WESTON

46. Plaintiff incorporates the preceding paragraphs as though fully set forth herein.

47. The United States Constitution provides:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction *the equal protection of the laws*.

U.S. Const. Am. XIV.

48. Upon information and believe, the Department of Revenue and the other Defendants have applied a different set of rules to some taxpayers than they have to others.

49. Hundreds of farmers and ranchers, and generally non-wealthy taxpayers, have been faced with onerous requirements to obtain second and third appraisals, have seen those appraisals rejected without basis, have been denied proper hearing procedures, have been forced to spend years rebutting meritless allegations by Defendants, and have seen the Department apply standards to evaluate their tax credits which are not legally supported and which are not applied to other taxpayers.

50. Upon information and belief, Defendants have conspired to undermine and destroy the licenses and reputation of appraisers with the purpose of relying on those actions to rescind tax credits supported by those appraisers' appraisals.

51. Defendants have no rational or lawful basis for the manner in which they have burdened some taxpayers and not others.

52. Defendants' actions, all done under color of state law, have directly and proximally harmed and continue to harm the members of Landowners United Advocacy Foundation, who are the victims of arbitrary government action that has resulted in lost livelihoods, lost property, and other damages. Defendants' actions have also undermined a valuable program that benefits the public and preserves open space for Colorado and its citizens and visitors.

53. Prospective injunctive relief is therefore necessary to avoid continuing and irreparable harm.

WHEREFORE, Plaintiff seeks judgment against Defendants the State of Colorado, the Department of Revenue, the Division of Real Estate, The Conservation Easement Oversight Commission, the Board of Revenue Appraisers, Brohls, Waters and West and for prospective injunctive relief, including: (i) an order forever enjoining the State or any of its subdivisions from retroactively challenging the conservation easement tax credits of the hundreds of taxpayers represented by Plaintiff on the basis of the lack of "extinguishment" and "proceeds" language in the conveyances; (ii) an order requiring the Department of Revenue to treat all taxpayers according to the same standards; (iii) an order forever enjoining the Department of Revenue from retroactively throwing out appraisals that were obtained pursuant to lawful methods from appraisers who were licensed at the time the appraisal was conducted; (iv) an order requiring the Department of Revenue to apply the pre-2011 procedures to any subsequent challenges of tax credits which were claimed before the enactment of the 2011 laws; and (v) an order requiring Defendants to pay Plaintiff's costs and attorneys' fees for bringing this action.

**COUNT II – 42 U.S.C. § 1983 VIOLATION OF DUE PROCESS AGAINST THE
DEFENDANTS THE STATE OF COLORADO, THE DEPARTMENT OF
REVENUE, BROHLS, WATERS AND WESTON**

54. Plaintiff incorporates the preceding paragraphs as though fully set forth herein.

55. Under the Federal Constitution, the state and its actors may not deprive citizens of life, liberty, or property without due process of law.

56. The Due Process clauses of the United States Constitution protect against state action which is arbitrary and capricious. Due process additionally protects against state action that violates fundamental rights, or that shocks the Court's conscience.

57. Defendant the Department of Revenue and its officers are charged with directly administering the conservation easement program in Colorado.

58. Defendant the Department of Revenue had procedures in place to permit fair adjudication of state tax issues, including those related to conservation easements.

59. Defendant the Department of Revenue and its officers have not adhered to those procedures, have attempted to retrospectively apply new statutes and regulations, and have ignored clearly established law in arbitrarily denying tax credits to conservation easement donors.

60. Defendant the Department of Revenue and its hearing officers have engaged in various procedural irregularities, such as using the "Phase Approach" in an ex post facto fashion, requiring second and third appraisals (apparently fishing for a predetermined result that would reduce or eliminate tax credits), and preventing taxpayers from presenting various legal and factual issues in administrative proceedings concerning the denial of conservation easement tax credits.

61. Defendant the Department of Revenue has deprived taxpayers of valuable property interests and has denied those taxpayers a fair, non-biased process to litigate appeals before an impartial officer.

WHEREFORE, Plaintiff seeks judgment against Defendants the State of Colorado and the Department of Revenue for injunctive prospective injunctive relief, including: (i) an order forever enjoining the State or any of its subdivisions from retroactively challenging the conservation easement tax credits of the hundreds of taxpayers represented by Plaintiff on the basis of the lack of “extinguishment” and “proceeds” language in the conveyances; (ii) an order requiring the Department of Revenue to afford tax payers a full and fair opportunity to be heard by an impartial hearing officer; (iii) an order forever enjoining the Department of Revenue from retroactively throwing out appraisals that were obtained pursuant to lawful methods from appraisers who were licensed at the time the appraisal was conducted; (iv) an order requiring the Department of Revenue to apply the pre-2011 procedures to an subsequent challenges of tax credits which were claimed before the enactment of the 2011 laws; and (v) an order requiring Defendants to pay Plaintiff’s costs and attorneys’ fees for bringing this action.

**COUNT III – UNLAWFUL TAKING UNDER THE UNITED STATES AND
COLORADO CONSTITUTIONS**

62. Plaintiff incorporates the preceding paragraphs as though fully set forth herein.

63. The United States Constitution prohibits the taking of private property for public use without just compensation. U.S. Const. Am. V. The Colorado Constitution similarly protects citizens against unlawful takings without just compensation, providing

that private property shall not be taken or damaged, for public use, without just compensation. Colo. Const. Art. II, Section 15.

64. The conservation easement program established by the Colorado Legislature and set forth in C.R.S. §§ 38-30.5-101, et seq. and 39-22-522, et seq. was designed to incentivize private property owners to convey private property to governmental entities or charitable organizations for the specifically articulated public purpose and use of conserving and preserving land within the state in a predominantly natural, scenic, or open condition, with the compensation for such donation of private property to be tax credits for the donor, as specified in C.R.S. § 39-22-522.

65. The State created, advertised and promoted the conservations easement program, seeking to entice landowners to convey property for conservations purposes.

66. Landowners conveyed their property to various qualified donees, including various political subdivisions of the state pursuant to this legislation, with the expectation that they would receive tax credits in exchange and as compensation for the conservation easement they created for the benefit of the state and the public use of the donated property that is defined in the legislation.

67. The Defendants have effectively taken Plaintiffs' members' property by arbitrarily and capriciously devaluing the donated property, attributing \$0 value to the property, and accordingly depriving the donors of the tax credits contemplated under the conservation easement program and the just compensation they are entitled to receive for their donation of their private property, in violation of the United States Constitution and Article II, Section 15 of the Colorado Constitution, causing such damages that are a natural, necessary, and reasonable result of the unlawful taking.

68. Various political subdivisions of the state have retained the conservation easements while the Defendants unlawfully deny the tax credits that induced the landowners to convey those perpetual easements.

69. The landowners' property has been greatly devalued because of the perpetual restrictions placed on it pursuant to the conservation easement requirements.

WHEREFORE, Plaintiff seeks a declaration from this Court that Defendants have unlawfully and unconstitutionally taken property for public use without just compensation. Plaintiff also requests an order awarding attorneys' fees and costs.

COUNT IV – VIOLATIONS OF STATE CONSTITUTIONAL PROTECTIONS AGAINST EX POST FACTO LAWS AND THE IMPAIRMENT OF THIRD-PARTY CONTRACTS AGAINST DEFENDANTS

70. Plaintiff incorporates the preceding paragraphs as though fully set forth herein.

71. The Colorado Constitution states: "No ex post facto law, nor law impairing the obligation of contracts, or retrospective in its operation, or making any irrevocable grant of special privileges, franchises or immunities, shall be passed by the general assembly." Colo. Const. Art. II, Section 11.

72. In numerous administrative proceedings before the Department of Revenue regarding challenged conservation easement credits, Hearing Officers have retrospectively applied the 2011-enacted "Phased Approach," even though the tax credits were claimed and, in many cases, the Department of Revenue's challenge to the credits began before 2011.

73. The "Phased Approach" has had an adverse, onerous and arbitrary effect on the donors whose credits the Department of Revenue is challenging.

74. Defendants actions in retrospectively applying the 2011 legislation and in otherwise arbitrarily administering the conservation easement program have impaired contracts that donors have with third parties who purchased tax credits and with the other parties involved in effectuating the transactions resulting in the transfers.

75. The retrospective application of laws and the arbitrary actions of the Defendants in impairing third-party contracts proximately caused Plaintiff and its members to incur damages and costs.

WHEREFORE, Plaintiff requests a declaration that the third-party contracts between conservation easement donors are valid and enforceable and that the retrospective application of the 2011 Phased Approach legislation constitutes an illegal ex post facto and retrospective impairment of contracts. Plaintiff further request an order enjoining Defendants from making retrospective application of the 2011 legislation to undermine existing and future contracts between donors and purchasers of their tax credits. Plaintiff further requests an order awarding attorney's fees and costs.

COUNT V – DECLARATORY RELIEF

76. Plaintiff incorporates the preceding paragraphs as though fully set forth herein.

77. Defendants have acted outside of their authority and unlawfully in denying conservation easement tax credits based on a willfully erroneous interpretation of Colorado state law and Treasury Regulations.

78. Defendants have improperly disregarded, in retroactive fashion, valid appraisals obtained in accordance with federal and state law.

79. Defendants have retrospectively applied legislation to the detriment of taxpayers involved in administrative proceedings concerning challenged conservation easement tax credits.

WHEREFORE, Plaintiff seeks a declaration that: (i) conveyances of conservation easements that are perpetual in nature and that do not contain perpetuity-defeating language do not need "Extinguishment" and "Proceeds" clauses in order to be held valid for purposes of Colorado conservation easement tax credits; (ii) appraisals supporting conservation easement tax credits may not be retroactively invalidated on the basis that an appraiser subsequently has his or her license revoked for conduct unrelated to the appraisal supporting the easement; and (iii) the "Phased Approach" for Department of Revenue proceedings applies only where a donation was made and tax credit claimed after the law setting forth the "Phased Approach" was enacted.

JURY TRIAL DEMAND

Plaintiff hereby demands a trial by jury on all counts.

Respectfully Submitted,

s/ Dori E. Richards, Esq.

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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Landowners United Advocacy Foundation, Inc.

(b) County of Residence of First Listed Plaintiff Prowers
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Western Agriculture Resource and Business Advocates, LLP
1005 Marquette Ave. NW
Albuquerque, NM 87102 505-750-3060

DEFENDANTS

State of Colorado, Barbara Brohl, Marcia Waters, Mark Weston, Div. of Real Estate, Conservation Easement Oversight Commission, Board of Real Estate Appraisers, Dept. of Revenue

County of Residence of First Listed Defendant Denver
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	IMMIGRATION		
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input checked="" type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions		

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 U.S.C 1983

Brief description of cause:
Decl Relief for Violations of Civil Rights and State Const. AP Docket

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____ CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE: 03/14/2016 SIGNATURE OF ATTORNEY OF RECORD: s/ Dori E. Richards, Esq.

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____