District Court: County of Prowers, State of Colorado Court Address: 301 South Main Street, Suite 3000 Lamar, CO 81052 (719) 336-7416	DATE FILED: October 23, 2020 4:14 PM FILING ID: 4EC19C57AEA7D CASE NUMBER: 2020CV30020
Plaintiff(s): DAVID EMICK **v.** **Defendant(s): STATE OF COLORADO, DEBORAH VAN WYKE, JANE DOES 1-4.**	▲ **COURT USE ONLY** ▲
Attorney for Plaintiff Andrew J. Gibbs, Esq. Tueller & Gibbs, LLP 1601 Blake Street, Suite 300 Denver, CO 80202 (303) 854-9121 Attorney Reg. #	Case Number: Division: Courtroom:
COMPLAINT	

Plaintiff David Emick, on behalf of himself and on behalf of others that are similarly situated ("Plaintiff"), hereby bring this action pursuant to Article II, Section 15 of the Colorado Constitution provides, in relevant part: "Private property shall not be taken or damaged for public or private use, without just compensation."

PARTIES AND JURISDICTION

1. Venue is proper under C.R.C.P 98 as the events giving rise to the Plaintiff's claim arose in the County of this Court and "[a]ll actions affecting real property, franchises, or utilities shall be tried in the county in which the subject of the action, or a substantial part thereof, is situated." *Rule 98 - Place of Trial*, Colo. R. Civ. P. 98

2. The jurisdiction of this Court arises under the Colorado Constitution, the Uniform Declaratory Judgments Law, Colo. Rev. Stat. §§ 13-51-101, *et seq.*, and Colorado Rules of Civil Procedure 57, and 106(a)(2).

3. The Court may declare the legal rights and obligations of the parties in this action pursuant to C.R.C.P 57 because this action presents an actual controversy within the Court's jurisdiction.

PARTIES

4. Plaintiff Dave Emick is a landowner who participated in Colorado's conservation easement program whose land was essentially taken without just compensation which the state obtained through measures of fraud and extortion by the threats of fines and jailing.

5. Defendant State of Colorado is the political subdivision responsible for the actions giving rise to a taking of property without just compensation.

6. Defendant Deborah Van Wyke is a tax conferee for the Colorado Department of Revenue and is a person know to be responsible for the fraudulent extortion of monies previously provided to the Plaintiff as tax credits and clawed back under threat of fines and jailing for non-payment of taxes. *See* EXHIBITS 1 and 2

7. Defendants Jane Does 1-4 are employees that played an affirmative role in the deprivation of the rights of the Plaintiff and other similarly situated that are secured by the Colorado Constitution.

BACKGROUND AND FACTS GIVING RISE TO COMPLAINT

8. This lawsuit arises out of a bait-and-switch scheme carried out by the State of Colorado, the Colorado Department of Revenue ("DOR") thru at least Deborah Van Wyke, if not others employed by DOR, and various identified and unidentified state officials against hundreds

of Colorado landowners like the Plaintiff 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.

9. 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.

10. 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.

11. 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. *See* EXHIBIT 1. 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.

12. 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 order 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.

13. Substantial and irreparable harm will continue to accrue to Plaintiff and others similarly situated, as well as 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.

14. Defendants' actions, as set forth below, violate landowner's rights to due process and equal protection under the State 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. *See also* EXHIBIT 2.

15. 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 others similar situated statutory and state constitutional rights, and to protect the interests of the many landowners who have faced the illegal, arbitrary actions of Defendants.

CLASS ACTION ALLEGATIONS

A. GENERAL CLASS ACTION ALLEGATIONS

16. Plaintiff brings this action, on behalf of himself and all others similarly situated with land that was put into the Colorado Conservation Program.

17. A class action is a superior means, and the only practicable means, by which Plaintiff and unknown class members can challenge the Colorado's actions in the fraudulent taking of their property.

18. This action is brought and may properly be maintained as a class action pursuant to 23(a), and 23(b)(2) of the Colorado Rules of Civil Procedure.

19. This action satisfies the numerosity, commonality, typicality, and adequacy requirements of C.R.C.P 23(a), as well as the predominance and superiority requirements of

C.R.C.P 23(b)(2), where applicable.

B. C.R.C.P. 23(A)(1): NUMEROSITY

20. The class is so numerous that joinder is impracticable.

21. The individuals are landowners in Colorado that put their property into the Colorado Conservation Program induced by fraud.

22. The total numbers of individuals who are affected by the Colorado Conservation Program is likely in the hundreds.

C. C.R.C.P 23(A)(2): COMMONALITY

23. Common question of law or fact exist as to all members of the classes.

24. All class members seek relief on the common legal question whether their participation in the Colorado Conservation Program induced by fraud was essentially a taking without compensation as required by the Colorado Constitution.

D. C.R.C.P 23(A)(3): TYPICALITY

25. Plaintiff's claims are typical of the claims of other respective members of the classes.

26. Like all members of the class, Plaintiff claims that the actions of Colorado are depriving landowners of complete use of and enjoyment of their property.

E. C.R.C.P 23(A)(4): ADEQUACY

27. Plaintiff is an adequate representative of the class because his interest in the vindication of his constitutional and statutory rights is entirely aligned with the interests of the other class members, each of whom has the same constitutional claims.

28. Class counsel has developed and continues to develop relationships with Plaintiff and others similarly situated. The interests of the members of the class will be fairly and adequately represented by Plaintiff and his attorneys.

F. C.R.C.P 23(B)(3): DAMAGES CLASS

29. All class members have been subjected to similar unreasonable taking of property through fraud, extorting the previously recognized and allowed just compensation of tax credits as landowners within the State of Colorado.

GENERAL ALLEGATIONS

A. Colorado Conservation Easements

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

31. 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.

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

33. 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).

34. 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."

35. 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.

36. 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.

37. 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.

38. 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.

39. 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).

40. 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).

41. 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.

42. 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.

43. 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.

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

45. 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

46. Colorado's conservation easement tax credit is administered by the Department of Revenue, the Division of Real Estate, and the Conservation Easement Oversight Commission. 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.

47. 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 Department of Revenue acting through Defendant Van Wyke, 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.

48. With respect to conveyance language, the Department of Revenue, acting through its employees, 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 employees of DOR 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.

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

50. 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, and Defendants. Nevertheless, committed to denying lawful tax credits, the Department of Revenue, Department of Real Estate, and Conservation Easement Oversight Commission directed their employees such Defendant Van Wyke and Defendants Does to reject 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.

51. In some instances, Defendants pursued the licenses of appraisers, obtained revocation of their licenses through the Board or 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.

52. 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.

53. 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).

54. 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).

55. 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.

56. 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: DEPRIVATION OF EQUAL PROTECTION UNDER THE LAW IN VIOLATION OF COLORADO CONSTITUTION ART. II, §25.

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

58. The Colorado Constitution mandates "[t]ha no person shall be deprived of life, liberty, or property without due process of law. Art. II, § 25. Article II, § 25 of the Colorado Constitution is a guarantee of equal protection of the laws. The right to equal protection of the laws guarantees that all parties who are similarly situated receive like treatment by the law. *J.T. v. O'Rourke In & For the Tenth Judicial Dist.*, 651 P.2d 407, 413 (Colo. 1982).

59. 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 DOR apply standards to evaluate their tax credits which are not legally supported and which are not applied to other taxpayers. *See* EXHIBIT 1.

60. 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.

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

62. Defendants' actions, all done under color of state law, have directly and proximally harmed and continue to harm Plaintiff and others who are similarly situated, 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.

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

WHEREFORE, Plaintiff seeks judgment against Defendants and for prospective injunctive relief, including: (i) an order forever enjoining the them 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 Defendants to treat all taxpayers according to the same standards; (iii) an order forever enjoining Defendants 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 Defendants 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 – VIOLATION OF DUE PROCESS UNDER COLORADO CONSTITUTION ART. II, §25

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

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

66. Defendants are charged with directly administering the conservation easement program in Colorado.

67. The Department of Revenue had procedures in place to permit fair adjudication of state tax issues, including those related to conservation easements. Defendants are charged with carrying out those procedures fairly and in a manner that meets constitutional requirements.

68. The Department of Revenue and more specifically its employees like Defendant Van Wyke 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.

69. 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.

70. Defendant Van Wyke and Defendants Does, individually and in their official capacities have deprived taxpayers of valuable property interests and has denied those taxpayers a fair, non-biased process to litigate appeals before an impartial officer. Defendants Does are also responsible for administering programs that directly or indirectly impact the Colorado conservation easement program and have acted arbitrarily and in violation of fundamental rights of Plaintiff and others similarly situated.

WHEREFORE, Plaintiff seeks judgment against Defendants for injunctive prospective injunctive relief, including: (i) an order forever enjoining the Defendants 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 forever enjoining the Defendant from retroactively throwing out appraisals that were obtained pursuant to lawful methods from appraisers who were licensed at the time the appraisal was conducted; (iii) an order requiring Defendant to apply the pre-2011 procedures including recognizing any allowed IRS credit amounts to an subsequent challenges of tax credits which were claimed before the enactment of the 2011 laws; and (iv) an order requiring Defendant to pay Plaintiff's costs and attorneys' fees for bringing this action.

COUNT III – UNLAWFUL TAKING UNDER THE COLORADO CONSTITUTION

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

72. The Colorado Constitution 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.

73. 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.

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

75. 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.

76. The Defendants have effectively taken Plaintiff's property by arbitrarily and capriciously devaluing the donated property after the just compensation had been realized by the Plaintiff, attributing $0 value to the property in order to claw back the just compensation, 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 Colorado Constitution Art. II, Section 15, causing such damages that are a natural, necessary, and reasonable result of the unlawful taking.

77. 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.

78. 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

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

80. 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.

81. 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.

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

83. 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.

84. The retrospective application of laws and the arbitrary actions of the Defendants in impairing third-party contracts proximally caused Plaintiff and others similarly situated 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 requests 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 – MALICIOUS PROSECUTION

85. Defendants misused law to knowingly take property by valuing conservation easements at zero (*see* Exhibits 1 and 2) and engaged in tax administrative prosecutions under threat of fines and jailing in order to extort settlements from the Plaintiff and others similarly situated.

86. The State of Colorado knowingly misrepresented and offered zero value for disputed conservation easements even when they knew that was not the case in order to coerce a settlement beyond what the State of Colorado knew they were entitled to receive even under the laws as passed.

87. The State of Colorado used fraudulent misrepresentation for the purposes of coercing a settlement to steal the money that was the owing just compensation from citizens.

WHEREFORE, The State of Colorado threatened Plaintiff and knowingly abused laws to coerce settlement thereby imposing malicious prosecution in tax administrative prosecutions.

COUNT VI – DECLARATORY RELIEF

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

89. 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.

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

91. 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/ Andrew J. Gibbs
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