

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

LANDOWNERS UNITED ADVOCACY FOUNDATION, INC.,

Plaintiff,

v.

Civil Action No. 1:16-cv-00603-PAB-CBS

STATE OF COLORADO, *et. al.*

Defendants.

**PLAINTIFF’S MOTION TO ALTER OR RECONSIDER JUDGMENT
PURSUANT TO FED. R. CIV. PRO., RULE 60 AS TO THE DISMISSAL OF
DEFENDANTS WATER, WESTON AND ERICSON ON THE BASIS OF MOOTNESS¹**

COMES NOW, Plaintiff Landowners United Advocacy Foundation, Inc., by and through its attorneys of record Western Agriculture, Resource and Business Advocates, LLP (A. Blair Dunn, Esq.), and respectfully move the Court to Reconsider its Order in the matter with regard to the Dismissal of Defendants on grounds of mootness.

I. INTRODUCTION - NEW DEVELOPMENT

A critical and central component to this litigation by Plaintiff is the allegation, for which the Plaintiff has sought declaratory relief, that the individual defendants Waters, Weston, and Ericson took actions under the color of law to deprive Plaintiff’s members of their property through inverse condemnation without providing just compensation. Such a declaration by this Court remains a very live controversy. Yet, in determining that the passage of H.B. 18-1291 renders the claims for declaratory

¹ Pursuant to LR-Civ. Rule 7.1, undersigned counsel sought the position of opposing counsel regarding this Motion. Counsel for Defendant Woods takes no position as the disclosed basis for this Motion does not implicate or effect the Decision and Judgment as to Defendant Woods. Counsel for Defendant NMRC Defendants declined to offer a position on this Motion, indicating insufficient time to consider such Motion before its filing. NMRC Defendants’ opposition is thus assumed.

relief against those defendants moot because such a decision would have some effect in the real world, *see* Order at 4, ECF No. 97, the Court's decision runs afoul of the new law just passed by the Colorado Legislature and signed by the Governor, H.B. 19-1264. *See* attached EXHIBIT 1. H.B. 19-1264 states in relevant part that a work group created by the legislation would examine and propose a solution to address the very issue of this lawsuit stating:

(14.5) (a) THE DIVISION SHALL CONVENE A WORKING GROUP IN CONJUNCTION WITH THE DEPARTMENT OF LAW AND THE DEPARTMENT OF REVENUE TO DEVELOP PROPOSED STATUTES AND REGULATIONS FOR THE FOLLOWING:

...

(i) A PROCESS TO PROVIDE RETROACTIVE TAX CREDITS, PAYMENTS, OR REFUNDS TO TAXPAYERS WHO CLAIMED CREDITS PURSUANT TO SECTION 39-22-522 BETWEEN JANUARY 1, 2000, AND DECEMBER 31, 2013, AND WHOSE TAX CREDITS WERE DENIED IN WHOLE OR IN PART, INCLUDING THE DEVELOPMENT OF ELIGIBILITY CRITERIA FOR RECEIVING SUCH RETROACTIVE TAX CREDITS, PAYMENTS, OR REFUNDS;

Thus, there is substantial grounds evidenced by the newly enacted law of the jurisdiction for this Court to reconsider the portion of its decision regarding the mootness of a declaratory judgement pursuant during the pendency of this federal litigation.

II. LAW REGARDING MOTIONS TO RECONSIDER UNDER RULE 60²

Under rule 60, [o]n motion and just terms, the court may relieve a party or its legal representatives from a final judgment, order, or proceeding for the following reasons:

(i) mistake, inadvertence, surprise, or excusable neglect;

² As announced by the Court in *Nationwide Mut. Ins. Co. v. C.R. Gurule, Inc.*, 2016 WL 164332, at *8 (D.N.M. Jan. 4, 2016)

- (ii) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (iii) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (iv) the judgment is void;
- (v) the judgment has been satisfied, released or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (vi) any other reason that justifies relief. Fed.

R. Civ. P. 60(b).

Neither a rule 59 nor a rule 60 motion for reconsideration

are appropriate vehicles to reargue an issue previously addressed by the court when the motion merely advances new arguments, or supporting facts which were available at the time of the original motion Grounds warranting a motion to reconsider include (1) an intervening change in the controlling law, (2) new evidence previously unavailable, and (3) the need to correct clear error or prevent manifest injustice.

Servants of the Paraclete v. Does, 204 F.3d 1005, 1012 (10th Cir. 2000). “[A] motion for reconsideration is appropriate where the court has misapprehended the facts, a party’s position, or the controlling law.” *Servants of the Paraclete v. Does*, 204 F.3d at 1012. A district court has considerable discretion in ruling on a motion to reconsider. *See Phelps v. Hamilton*, 122 F.3d at 1324.

Under normal circumstance after a final judgment had been entered a change in the law would not be grounds for a successful Rule 60 motion:

But we held in *Collins v. City of Wichita*, 254 F.2d 837 (10th Cir.1958), and reaffirmed in *Van Skiver*, that “[a] change in the law or in the judicial view of an established rule of law is not such an extraordinary circumstance which justifies such relief” where the post-judgment change came in an unrelated case. *Collins*, 254 F.2d at 839 (addressing situation where one year after judgment became final the Supreme Court held the relevant statute inadequate on due process grounds in a case between different parties); *Van Skiver*, 952 F.2d at 1245 (holding that relief under Rule 60(b)(6) is not justified “when the post-judgment change in the law did not arise in a related case”). Although we have held that these strictures apply only after final judgment has been entered, Mr.

Sindar's failure to appeal the dismissal of his complaint rendered his judgment final long before the Rule 60(b) motion was filed. *See Robinson v. Volkswagen of America, Inc.*, 803 F.2d 572, 574 (10th Cir.1986) (distinguishing *Collins* and *Pierce* on the ground that “[i]n those cases, final judgment had been reached, and the cases were no longer pending before the federal courts,” while in *Robinson* “final disposition had not been reached with respect to [defendant] and the federal courts retain jurisdiction”).

Sindar v. Garden, 284 F. App'x 591, 596 (10th Cir. 2008)

However, as this case remains pending in the federal courts, Rule 60 authorizes a district court to, “[o]n motion and just terms[,] . . . relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons,” including “any other reason that justifies relief.” Fed. R. Civ. P. 60(b).

ARGUMENT

The language reference above from H.B. 19-1264 demonstrates a clear acknowledgement by State of Colorado via her legislature that there is a live controversy concerning the subject matter of this lawsuit. It would be absurd for the Legislature to adopt legislation to find a solution to resolve an issue or problem that was not in existence. Pursuant to 42 U.S.C. §1983, this Court could assist in resolving that controversy by reviewing the actions taken by the State of Colorado through the individuals named in this case acting under the color of law to declare whether or not such actions violate the Fifth and Fourteenth Amendments to the United States Constitution and provisions of the Colorado Constitution.

H.B. 19-1264 demonstrates that though H.B. 18-1291 may have repealed the Division of Real Estate’s authority to administer the conservation easement program it did not resolved or ratify that the program was constitutionally administered in the past. Instead H.B 19-1264 demonstrates that the matter is not moot, though the request for injunctive relief may be premature and not ripe, as it appears that a process may be established to remedy individuals harmed by the bait and switch regarding the exchange of tax credits for conservation easements from January 1, 2000 to December 31, 2013. In effect the Legislature has signaled that the administration of the program under the color of law by the named

individual defendants may have been improper and the declaration that Plaintiff seeks that its members were deprived of their property without just compensation in violation of the Fifth Amendment to the United States Constitution, applicable to the several states by the Fourteenth Amendment, pursuant to legislation that violated the *Ex Post Facto* clause of the Colorado Constitution is not moot because pursuant to any legislation or regulations developed pursuant to H.B. 19-1264 for the Plaintiff's members such a declaration would have a very substantial and real effect in the real world to remedy the violation of those Constitutional rights.

Because the matter remains pending before the federal courts and because the newly enacted law makes it clear that this Court's decision with regard to mootness and to the applicability of a declaratory judgment is now especially ripe, this Court's decision should be revisited before the matter proceeds on appeal.

CONCLUSION

Based on the above discussion, Plaintiff respectfully requests that this Court reconsider its decision to Dismiss the section 1983 federal claims against Defendants Waters, Weston, and Ericson with regard to deprivation of property without just compensation and reinstate those claims accordingly.

Respectfully submitted this 10th day of June 2018.

/s/ A. Blair Dunn, Esq.

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CERTIFICATE OF SERVICE

I certify that I filed the foregoing June 10, 2019 using the CM/ECF System, which caused all counsel of record to be served.

/s/ A. Blair Dunn
A. Blair Dunn, Esq.

EXHIBIT 1



HOUSE BILL 19-1264

BY REPRESENTATIVE(S) Roberts and Wilson, Buentello, Arndt, Bird, Duran, Esgar, Hansen, Herod, Kennedy, McCluskie, Snyder, Sullivan, Valdez D., Will, Bockenfeld, Cutter, Gray, Hooton, Michaelson Jenet, Titone;
also SENATOR(S) Winter and Donovan, Bridges, Crowder, Danielson, Fenberg, Fields, Hill, Moreno, Pettersen, Sonnenberg, Story, Williams A., Garcia.

CONCERNING PROGRAMMATIC EFFICIENCY OF THE CONSERVATION EASEMENT TAX CREDIT PROGRAM, AND, IN CONNECTION THEREWITH, INCREASING THE TRANSPARENCY OF THE PROGRAM AND MAKING AN APPROPRIATION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 12-61-704, **repeal** (1)(k) as follows:

12-61-704. Powers and duties of the board - rules. (1) In addition to all other powers and duties imposed upon it by law, the board has the following powers and duties:

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

~~(k) To establish classroom education and experience requirements for an appraiser who prepares an appraisal for a conservation easement for which a tax credit is claimed pursuant to section 39-22-522. The requirements must ensure that appraisers have a sufficient amount of training and expertise to accurately prepare appraisals that comply with the uniform standards of professional appraisal practice and any other provision of law related to the appraisal of conservation easements for which a tax credit is claimed. A tax credit certificate for a conservation easement shall not be given in accordance with sections 12-61-1105 and 12-61-1106 unless the appraiser who prepared the appraisal of the easement met all requirements established in accordance with this subsection (1)(k) in effect at the time the appraisal certification is signed.~~

SECTION 2. In Colorado Revised Statutes, 12-61-1101, **amend** (1)(e)(II) and (1)(e)(III); and **add** (1)(e)(IV) as follows:

12-61-1101. Legislative declaration. (1) The general assembly finds, determines, and declares that:

(e) Establishing the division of conservation to administer the conservation easement tax credit program will:

(II) Allow the conservation easement oversight commission to advise the division of conservation and the department of revenue regarding conservation easements for which a tax credit is claimed and to review applications for conservation easement holder certification; ~~and~~

(III) Ensure that the division of conservation and the department of revenue are sharing relevant information concerning conservation easement appraisals in order to ensure compliance with accepted appraisal practices and other provisions of law; **AND**

(IV) **ENSURE THAT THE FEES PAID BY TAXPAYERS ARE ADEQUATE TO PAY FOR THE ADMINISTRATIVE COSTS OF THE DIVISION OF CONSERVATION AND THE CONSERVATION EASEMENT OVERSIGHT COMMISSION IN ADMINISTERING THE REQUIREMENTS OF THIS ARTICLE 61, BUT NOT SO HIGH AS TO ACT AS A DISINCENTIVE TO THE CREATION OF CONSERVATION EASEMENTS IN THE STATE.**

SECTION 3. In Colorado Revised Statutes, 12-61-1103, **amend** (8)

as follows:

12-61-1103. Conservation easement oversight commission - created - repeal. (8) This section is repealed, effective ~~July 1, 2019~~ JULY 1, 2026.

SECTION 4. In Colorado Revised Statutes, 12-61-1104, **amend** (7) and (13) as follows:

12-61-1104. Certification of conservation easement holders - rules - definition - repeal. (7) The division shall promulgate rules to effectuate the duties of the commission pursuant to article 4 of title 24. Such rules shall specifically address the following:

(a) Allowing for the expedited or automatic certification of an entity that is currently accredited by national land conservation organizations that are broadly accepted by the conservation industry; AND

(b) A streamlined and lower-cost process for conservation easement holders that do not intend to accept new donations of conservation easements for which tax credits would be claimed that focuses on the holder's stewardship capabilities.

~~(c) The fees charged pursuant to subsection (3) of this section or section 12-61-1106 (6), specifically ensuring that the fees are adequate to pay for administrative costs but not so high as to act as a disincentive to the creation of conservation easements in the state; and~~

~~(d) The adoption of best practices, processes, and procedures used by other entities that regularly review conservation easement transactions; including a practice, process, or procedure deeming qualified conservation easement appraisals approved by these entities based on their independent reviews as credible for purposes of the conservation easement tax credit;~~

(13) This section is repealed, effective ~~July 1, 2019~~ JULY 1, 2026.

SECTION 5. In Colorado Revised Statutes, 12-61-1106, **amend** (2)(a)(II), (3)(b)(II), (13)(c) introductory portion, and (15); **repeal** (3)(b)(IV); and **add** (14.5) as follows:

12-61-1106. Conservation easement tax credit certificate application process - definitions - rules. (2) (a) The division shall establish and administer a process by which a landowner seeking to claim an income tax credit for any conservation easement donation made on or after January 1, 2014, must apply for a tax credit certificate as required by section 39-22-522 (2.5) and (2.7). The purpose of the application process is to determine whether a conservation easement donation for which a tax credit will be claimed:

(II) Is substantiated with a qualified appraisal prepared by a qualified appraiser in accordance with the SUBSTANCE AND PRINCIPLES OF uniform standards of professional appraisal practice OR AN ALTERNATIVE METHOD ACCEPTABLE TO THE DIVISION OF CONSERVATION AND THE CONSERVATION EASEMENT OVERSIGHT COMMISSION; and

(3) For the purpose of reviewing applications and making determinations regarding the issuance of tax credit certificates, including the dollar amount of the tax credit certificate to be issued:

(b) The director has authority and responsibility to determine the credibility of the appraisal. In determining credibility, the director shall consider, at a minimum, compliance with the following requirements:

(II) The appraisal conforms with THE SUBSTANCE AND PRINCIPLES OF the uniform standards of professional appraisal practice promulgated by the appraisal standards board of the appraisal foundation and any other provision of law;

(IV) ~~The appraiser meets any education and experience requirements established by the board of real estate appraisers in accordance with section 12-61-704 (1)(k).~~

(13) (c) The director is authorized to share publicly available information regarding conservation easements with a third-party vendor for the purpose of developing and maintaining a registry of conservation easements in the state with a corresponding map displaying the boundaries of each easement in the state relative to county boundaries and other relevant mapping information. FOR PURPOSES OF THIS SUBSECTION (13)(c), "PUBLICLY AVAILABLE INFORMATION" MEANS ANY DOCUMENT SHOWING EVIDENCE OF ITS RECORDATION IN THE RECORDS OF A COUNTY CLERK AND

RECORDER OR OTHER INFORMATION READILY AVAILABLE TO THE GENERAL PUBLIC. Prior to sharing the information, the director shall consult with the commission regarding the appropriate types of information and the methods used for collecting the information. The department of regulatory agencies shall annually report on the information contained in the registry as a part of its presentation to its committee of reference at a hearing held pursuant to section 2-7-203 (2)(a) of the "State Measurement for Accountable, Responsive, and Transparent (SMART) Government Act". The information to be shared shall include the following:

(14.5) (a) THE DIVISION SHALL CONVENE A WORKING GROUP IN CONJUNCTION WITH THE DEPARTMENT OF LAW AND THE DEPARTMENT OF REVENUE TO DEVELOP PROPOSED STATUTES AND REGULATIONS FOR THE FOLLOWING:

(I) AN ALTERNATIVE METHOD TO THE APPRAISAL PROCESS SET FORTH IN SECTION 39-22-522 (3.3) TO ESTABLISH THE AMOUNT OF TAX CREDITS FOR WHICH A QUALIFIED CONSERVATION EASEMENT CONTRIBUTION WOULD BE ELIGIBLE;

(II) A PROCESS TO PROVIDE RETROACTIVE TAX CREDITS, PAYMENTS, OR REFUNDS TO TAXPAYERS WHO CLAIMED CREDITS PURSUANT TO SECTION 39-22-522 BETWEEN JANUARY 1, 2000, AND DECEMBER 31, 2013, AND WHOSE TAX CREDITS WERE DENIED IN WHOLE OR IN PART, INCLUDING THE DEVELOPMENT OF ELIGIBILITY CRITERIA FOR RECEIVING SUCH RETROACTIVE TAX CREDITS, PAYMENTS, OR REFUNDS; AND

(III) RECOMMENDATIONS FOR ADMINISTERING ORPHANED CONSERVATION EASEMENTS.

(b) THE WORKING GROUP SHALL CONSIST OF EIGHT MEMBERS. THE PRESIDENT OF THE SENATE, THE MINORITY LEADER OF THE SENATE, THE SPEAKER OF THE HOUSE, AND THE MINORITY LEADER OF THE HOUSE SHALL EACH APPOINT TWO MEMBERS TO THE WORKING GROUP PRIOR TO JUNE 1, 2019. IN MAKING APPOINTMENTS, CONSIDERATION SHOULD BE GIVEN TO APPOINTING INDIVIDUALS WHO ARE CERTIFIED EASEMENT HOLDERS, TAXPAYERS WHO HAVE CONSIDERED CONVEYING A CONSERVATION EASEMENT OR CONVEYED A CONSERVATION EASEMENT AND CLAIMED A TAX CREDIT, CONSERVATION EASEMENT APPRAISERS, AND CONSERVATION ATTORNEYS. THE WORKING GROUP SHALL CONVENE ITS FIRST MEETING IN A

HEARING ROOM AT THE STATE CAPITOL BUILDING AT 9:00 A.M. ON JUNE 25, 2019. THE WORKING GROUP SHALL SELECT A CHAIRPERSON AT THE FIRST MEETING. AT EACH MEETING OF THE WORKING GROUP, IT SHALL DESIGNATE THE DATE, PLACE, AND TIME OF ITS NEXT MEETING.

(c) THE WORKING GROUP SHALL SUBMIT A REPORT TO THE RURAL AFFAIRS AND AGRICULTURE COMMITTEE OF THE HOUSE OF REPRESENTATIVES AND THE AGRICULTURE AND NATURAL RESOURCES COMMITTEE OF THE SENATE BY NO LATER THAN DECEMBER 1, 2019. THE REPORT MUST INCLUDE ANY RECOMMENDATIONS FOR LEGISLATION OR RULE MAKING TO ADDRESS THE ISSUES ADDRESSED PURSUANT TO THIS SUBSECTION (14.5).

(15) The division may promulgate rules to effectuate the purpose, implementation, and administration of this section pursuant to article 4 of title 24. The authority to promulgate rules includes the authority to:

(a) Define further in rule the administrative processes and requirements, including application processing and review time frames, for obtaining and issuing an optional preliminary advisory opinion pursuant to subsection (14) of this section; AND

(b) ADOPT BEST PRACTICES, PROCESSES, AND PROCEDURES USED BY OTHER ENTITIES THAT REGULARLY REVIEW CONSERVATION EASEMENT TRANSACTIONS, INCLUDING A PRACTICE, PROCESS, OR PROCEDURE DEEMING QUALIFIED CONSERVATION EASEMENT APPRAISALS APPROVED BY THESE ENTITIES BASED ON THEIR INDEPENDENT REVIEWS AS CREDIBLE FOR PURPOSES OF THE CONSERVATION EASEMENT TAX CREDIT.

SECTION 6. In Colorado Revised Statutes, 38-30.5-103, **add** (6) as follows:

38-30.5-103. Creation of conservation easements in gross. (6) ON AND AFTER JANUARY 1, 2020, PRIOR TO CREATING A CONSERVATION EASEMENT IN GROSS, THE OWNER OF THE PROPERTY WHO IS GRANTING THE CONSERVATION EASEMENT SHALL EXECUTE A DISCLOSURE FORM THAT INCLUDES, BUT IS NOT LIMITED TO, AN ACKNOWLEDGMENT THAT THE CONSERVATION EASEMENT IS BEING GRANTED IN PERPETUITY. THE DIVISION OF CONSERVATION IN COOPERATION WITH THE CONSERVATION EASEMENT OVERSIGHT COMMISSION SHALL DEVELOP THE DISCLOSURE FORM AND PUBLISH THE APPROVED FORM ON ITS WEBSITE. THE SIGNED DISCLOSURE

FORM MUST BE SUBMITTED TO THE DIVISION OF CONSERVATION AS PART OF THE TAX CREDIT APPLICATION.

SECTION 7. In Colorado Revised Statutes, **amend** 38-30.5-107 as follows:

38-30.5-107. Release - termination. ~~Conservation easements in gross may, in whole or in part, be released, terminated, extinguished, or abandoned by merger with the underlying fee interest in the servient land or water rights or in any other manner in which easements may be lawfully terminated, released, extinguished, or abandoned.~~ IF IT IS DETERMINED THAT CONDITIONS ON OR SURROUNDING A PROPERTY ENCUMBERED BY A CONSERVATION EASEMENT IN GROSS CHANGE SO THAT IT BECOMES IMPOSSIBLE TO FULFILL ITS CONSERVATION PURPOSES THAT ARE DEFINED IN THE DEED OF CONSERVATION EASEMENT, A COURT WITH JURISDICTION MAY, AT THE JOINT REQUEST OF BOTH THE OWNER OF PROPERTY ENCUMBERED BY A CONSERVATION EASEMENT AND THE HOLDER OF THE EASEMENT, TERMINATE, RELEASE, EXTINGUISH, OR ABANDON THE CONSERVATION EASEMENT. IF CONDEMNATION BY A PUBLIC AUTHORITY OF A PART OF A PROPERTY OR OF THE ENTIRE PROPERTY ENCUMBERED BY A CONSERVATION EASEMENT IN GROSS RENDERS IT IMPOSSIBLE TO FULFILL ANY OF THE CONSERVATION PURPOSES OUTLINED IN THE DEED OF CONSERVATION EASEMENT, THE CONSERVATION EASEMENT MAY BE TERMINATED, RELEASED, EXTINGUISHED, OR ABANDONED THROUGH CONDEMNATION PROCEEDINGS. A CONSERVATION EASEMENT IN GROSS FOR WHICH A COLORADO STATE INCOME TAX CREDIT HAS BEEN ALLOWED MAY NOT IN WHOLE OR IN PART BE RELEASED, TERMINATED, EXTINGUISHED, OR ABANDONED BY MERGER WITH THE UNDERLYING FEE INTEREST IN THE SERVIENT LAND OR WATER RIGHTS. ANY RELEASE, TERMINATION, OR EXTINGUISHMENT OF A CONSERVATION EASEMENT UNDER THIS SECTION MUST BE RECORDED IN THE RECORDS OF THE OFFICE OF THE CLERK AND RECORDER IN THE COUNTY WHERE THE CONSERVATION EASEMENT IS LOCATED.

SECTION 8. In Colorado Revised Statutes, 39-22-522, **amend** (2.7), (3.3), and (4)(a)(II.5); and **repeal** (3.8) as follows:

39-22-522. Credit against tax - conservation easements.
(2.7) Notwithstanding any other provision, for income tax years commencing on or after January 1, 2014, no claim for a credit shall be allowed unless a tax credit certificate is issued by the DIVISION OF REAL

ESTATE PRIOR TO MAY 30, 2018, OR BY THE division of conservation ON OR AFTER MAY 30, 2018, in accordance with sections 12-61-1105 and 12-61-1106 and the taxpayer files the tax credit certificate with the income tax return filed with the department of revenue.

(3.3) The appraisal for a conservation easement in gross donated prior to January 1, 2014, and for which a credit is claimed shall be a qualified appraisal from a qualified appraiser, as those terms are defined in section 170 (f)(11) of the internal revenue code. The appraisal shall be in conformance with the uniform standards of professional appraisal practice promulgated by the appraisal standards board of the appraisal foundation and any other provision of law. The appraiser shall 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.~~ The appraiser shall also meet any education and experience requirements established by the board of real estate appraisers in accordance with section 12-61-704 (1)(k), ~~C.R.S.~~ If there is a final determination, other than by settlement of the taxpayer, that an appraisal submitted in connection with a claim for a credit pursuant to this section is a substantial or gross valuation misstatement as such misstatements are defined in section 1219 of the federal "Pension Protection Act of 2006", Pub.L. 109-280, the department shall submit a complaint regarding the misstatement to the board of real estate appraisers for disciplinary action in accordance with the provisions of part 7 of article 61 of title 12. ~~C.R.S.~~

~~(3.8) (a) The division of conservation shall convene a working group in conjunction with the department of law, the department of revenue, and the department of regulatory agencies to develop statutory and regulatory recommendations that do not conflict with federal law for the following:~~

~~(i) An alternate method to the appraisal process set forth in subsection (3.3) of this section to establish a baseline property value, using agreed upon publicly available datasets for rural and agricultural properties. The baseline valuation would then be subject to different levels of restriction including, but not limited to, a most restrictive, medium restrictive, and least restrictive easement to arrive at a final determination established through public policy from which the amount of a tax credit could be calculated pursuant to this section. The alternate method should work across the state of Colorado.~~

~~(II) A recommendation for a process to petition a court of competent jurisdiction consistent with federal laws and regulations to extinguish a conservation easement, including proposed definitions for the terms "impossible" and "impracticable" as they are applied for purposes of determining whether an easement may be extinguished under state and federal law;~~

~~(III) A process to provide retroactive tax credits to taxpayers who claimed tax credits pursuant to this section between January 1, 2000, and December 31, 2008, and whose tax credits were denied in whole or in part, including the development of eligibility criteria for such retroactive tax credits; and~~

~~(IV) The development of a written form to warn landowners who have conservation easements on their property of the legal and other consequences of terminating an easement on their property.~~

~~(b) The working group shall submit a report to the transportation and energy committee of the house of representatives, the agriculture, livestock, and natural resources committee of the house of representatives, the agriculture, natural resources, and energy committee of the senate, and the transportation committee of the senate no later than December 1, 2018. The report must include any recommendations for legislation or rulemaking to address the issues addressed pursuant to this subsection (3.8).~~

(4)(a)(II.5) For a conservation easement in gross created in accordance with article 30.5 of title 38 ~~C.R.S.~~, that is donated on or after January 1, 2015, to a governmental entity or a charitable organization described in section 38-30.5-104 (2), ~~C.R.S.~~, the credit provided for in subsection (2) of this section shall be an amount equal to seventy-five percent of the first one hundred thousand dollars of the fair market value of the donated portion of such conservation easement in gross when created, and fifty percent of all amounts of the donation in excess of one hundred thousand dollars; except that in no case shall the credit exceed ~~one million five hundred thousand~~ FIVE MILLION dollars per donation. CREDITS SHALL BE ISSUED IN INCREMENTS OF NO MORE THAN ONE MILLION FIVE HUNDRED THOUSAND DOLLARS PER YEAR. CREDITS FOR EASEMENTS DONATED IN A PRIOR YEAR SHALL BE ELIGIBLE FOR TAX CREDIT CERTIFICATES IN SUBSEQUENT YEARS IN ORDER OF APPLICATION AND BEFORE NEW APPLICATIONS AND THOSE CREDIT APPLICATIONS, IF ANY, ON THE WAIT LIST.

SECTION 9. In Colorado Revised Statutes, 23-3.3-103, **add** (8) as follows:

23-3.3-103. Annual appropriations - repeal. (8) THE PROVISIONS OF SUBSECTION (1) OF THIS SECTION CONCERNING APPROPRIATIONS FOR STUDENT FINANCIAL ASSISTANCE UNDER THIS ARTICLE 3.3 SHALL NOT APPLY TO APPROPRIATIONS MADE FOR THE PURPOSE OF PROVIDING A FEE-FOR-SERVICE CONTRACT TO PROVIDE PUBLIC ACCESS TO THE COLORADO OWNERSHIP, MANAGEMENT, AND PROTECTION (COMAP) SERVICE PURSUANT TO SECTION 23-18-308 (1)(d). THIS SUBSECTION (4) IS REPEALED, EFFECTIVE JULY 1, 2020.

SECTION 10. In Colorado Revised Statutes, 23-18-308, **amend** (1)(b) and (1)(c); and **add** (1)(g) as follows:

23-18-308. Fee-for-service contracts - limited purpose - repeal. (1) Subject to available appropriations, the department shall enter into fee-for-service contracts for the following purposes:

(b) The inclusive higher education pilot program pursuant to section 23-75-104; **and**

(c) Cybersecurity and distributed ledger technologies, such as blockchains, as set forth in sections 24-33.5-1904 and 24-33.5-1905; **AND**

(g) THE PROVISION OF PUBLIC ACCESS TO THE COLORADO OWNERSHIP, MANAGEMENT, AND PROTECTION (COMAP) SERVICE THAT IS MANAGED BY THE COLORADO NATURAL HERITAGE PROGRAM AND THE GEOSPATIAL CENTROID AT COLORADO STATE UNIVERSITY. THIS SUBSECTION (1)(g) IS REPEALED, EFFECTIVE JUNE 30, 2020.

SECTION 11. In Colorado Revised Statutes, 12-10-604, **repeal as relocated by HB 19-1172** (1)(k) as follows:

12-10-604. Powers and duties of the board - rules. (1) In addition to all other powers and duties imposed upon it by law, the board has the following powers and duties:

(k) ~~To establish classroom education and experience requirements for an appraiser who prepares an appraisal for a conservation easement for~~

~~which a tax credit is claimed pursuant to section 39-22-522. The requirements must ensure that appraisers have a sufficient amount of training and expertise to accurately prepare appraisals that comply with the uniform standards of professional appraisal practice and any other provision of law related to the appraisal of conservation easements for which a tax credit is claimed. A tax credit certificate for a conservation easement shall not be given in accordance with sections 12-61-1105 and 12-61-1106 unless the appraiser who prepared the appraisal of the easement met all requirements established in accordance with this subsection (1)(k) in effect at the time the appraisal certification is signed.~~

SECTION 12. In Colorado Revised Statutes, 12-15-101, **amend as relocated by HB 19-1172 (1)(e)(II) and (1)(e)(III); and add as relocated by HB 19-1172 (1)(e)(IV)** as follows:

12-15-101. Legislative declaration. (1) The general assembly finds, determines, and declares that:

(e) Establishing the division of conservation to administer the conservation easement tax credit program will:

(II) Allow the conservation easement oversight commission to advise the division of conservation and the department of revenue regarding conservation easements for which a tax credit is claimed and to review applications for conservation easement holder certification; ~~and~~

(III) Ensure that the division of conservation and the department of revenue are sharing relevant information concerning conservation easement appraisals in order to ensure compliance with accepted appraisal practices and other provisions of law; AND

(IV) ENSURE THAT THE FEES PAID BY TAXPAYERS ARE ADEQUATE TO PAY FOR THE ADMINISTRATIVE COSTS OF THE DIVISION OF CONSERVATION AND THE CONSERVATION EASEMENT OVERSIGHT COMMISSION IN ADMINISTERING THE REQUIREMENTS OF THIS ARTICLE 15, BUT NOT SO HIGH AS TO ACT AS A DISINCENTIVE TO THE CREATION OF CONSERVATION EASEMENTS IN THE STATE.

SECTION 13. In Colorado Revised Statutes, 12-15-103, **amend as relocated by HB 19-1172 (8)** as follows:

12-15-103. Conservation easement oversight commission - created - repeal. (8) This section is repealed, effective ~~July 1, 2019~~ JULY 1, 2026.

SECTION 14. In Colorado Revised Statutes, 12-15-104, **amend as relocated by HB 19-1172 (7) and (13)** as follows:

12-15-104. Certification of conservation easement holders - rules - definition - repeal. (7) The division shall promulgate rules to effectuate the duties of the commission pursuant to article 4 of title 24. Such rules shall specifically address the following:

(a) Allowing for the expedited or automatic certification of an entity that is currently accredited by national land conservation organizations that are broadly accepted by the conservation industry; AND

(b) A streamlined and lower-cost process for conservation easement holders that do not intend to accept new donations of conservation easements for which tax credits would be claimed that focuses on the holder's stewardship capabilities.

~~(c) The fees charged pursuant to subsection (3) of this section or section 12-61-1106 (6), specifically ensuring that the fees are adequate to pay for administrative costs but not so high as to act as a disincentive to the creation of conservation easements in the state, and~~

~~(d) The adoption of best practices, processes, and procedures used by other entities that regularly review conservation easement transactions, including a practice, process, or procedure deeming qualified conservation easement appraisals approved by these entities based on their independent reviews as credible for purposes of the conservation easement tax credit.~~

(13) This section is repealed, effective ~~July 1, 2019~~ JULY 1, 2026.

SECTION 15. In Colorado Revised Statutes, 12-15-106, **amend as relocated by HB 19-1172 (2)(a)(II), (3)(b)(II), (13)(c) introductory portion, and (15); repeal as relocated by HB 19-1172 (3)(b)(IV); and add as relocated by HB 19-1172 (14.5)** as follows:

12-15-106. Conservation easement tax credit certificate

application process - definitions - rules. (2) (a) The division shall establish and administer a process by which a landowner seeking to claim an income tax credit for any conservation easement donation made on or after January 1, 2014, must apply for a tax credit certificate as required by section 39-22-522 (2.5) and (2.7). The purpose of the application process is to determine whether a conservation easement donation for which a tax credit will be claimed:

(II) Is substantiated with a qualified appraisal prepared by a qualified appraiser in accordance with the SUBSTANCE AND PRINCIPLES OF uniform standards of professional appraisal practice OR AN ALTERNATIVE METHOD ACCEPTABLE TO THE DIVISION OF CONSERVATION AND THE CONSERVATION EASEMENT OVERSIGHT COMMISSION; and

(3) For the purpose of reviewing applications and making determinations regarding the issuance of tax credit certificates, including the dollar amount of the tax credit certificate to be issued:

(b) The director has authority and responsibility to determine the credibility of the appraisal. In determining credibility, the director shall consider, at a minimum, compliance with the following requirements:

(II) The appraisal conforms with THE SUBSTANCE AND PRINCIPLES OF the uniform standards of professional appraisal practice promulgated by the appraisal standards board of the appraisal foundation and any other provision of law;

(IV) ~~The appraiser meets any education and experience requirements established by the board of real estate appraisers in accordance with section 12-61-704 (1)(k).~~

(13) (c) The director is authorized to share publicly available information regarding conservation easements with a third-party vendor for the purpose of developing and maintaining a registry of conservation easements in the state with a corresponding map displaying the boundaries of each easement in the state relative to county boundaries and other relevant mapping information. FOR PURPOSES OF THIS SUBSECTION (13)(c), "PUBLICLY AVAILABLE INFORMATION" MEANS ANY DOCUMENT SHOWING EVIDENCE OF ITS RECORDATION IN THE RECORDS OF A COUNTY CLERK AND RECORDER OR OTHER INFORMATION READILY AVAILABLE TO THE GENERAL

PUBLIC. Prior to sharing the information, the director shall consult with the commission regarding the appropriate types of information and the methods used for collecting the information. The department of regulatory agencies shall annually report on the information contained in the registry as a part of its presentation to its committee of reference at a hearing held pursuant to section 2-7-203 (2)(a) of the "State Measurement for Accountable, Responsive, and Transparent (SMART) Government Act". The information to be shared shall include the following:

(14.5) (a) THE DIVISION SHALL CONVENE A WORKING GROUP IN CONJUNCTION WITH THE DEPARTMENT OF LAW AND THE DEPARTMENT OF REVENUE TO DEVELOP PROPOSED STATUTES AND REGULATIONS FOR THE FOLLOWING:

(I) AN ALTERNATIVE METHOD TO THE APPRAISAL PROCESS SET FORTH IN SECTION 39-22-522 (3.3) TO ESTABLISH THE AMOUNT OF TAX CREDITS FOR WHICH A QUALIFIED CONSERVATION EASEMENT CONTRIBUTION WOULD BE ELIGIBLE;

(II) A PROCESS TO PROVIDE RETROACTIVE TAX CREDITS, PAYMENTS, OR REFUNDS TO TAXPAYERS WHO CLAIMED CREDITS PURSUANT TO SECTION 39-22-522 BETWEEN JANUARY 1, 2000, AND DECEMBER 31, 2013, AND WHOSE TAX CREDITS WERE DENIED IN WHOLE OR IN PART, INCLUDING THE DEVELOPMENT OF ELIGIBILITY CRITERIA FOR RECEIVING SUCH RETROACTIVE TAX CREDITS, PAYMENTS, OR REFUNDS; AND

(III) RECOMMENDATIONS FOR ADMINISTERING ORPHANED CONSERVATION EASEMENTS.

(b) THE WORKING GROUP SHALL CONSIST OF EIGHT MEMBERS. THE PRESIDENT OF THE SENATE, THE MINORITY LEADER OF THE SENATE, THE SPEAKER OF THE HOUSE, AND THE MINORITY LEADER OF THE HOUSE SHALL EACH APPOINT TWO MEMBERS TO THE WORKING GROUP PRIOR TO JUNE 1, 2019. IN MAKING APPOINTMENTS, CONSIDERATION SHOULD BE GIVEN TO APPOINTING INDIVIDUALS WHO ARE CERTIFIED EASEMENT HOLDERS, TAXPAYERS WHO HAVE CONSIDERED CONVEYING A CONSERVATION EASEMENT OR CONVEYED A CONSERVATION EASEMENT AND CLAIMED A TAX CREDIT, CONSERVATION EASEMENT APPRAISERS, AND CONSERVATION ATTORNEYS. THE WORKING GROUP SHALL CONVENE ITS FIRST MEETING IN A HEARING ROOM AT THE STATE CAPITOL BUILDING AT 9:00 A.M. ON JUNE 25,

2019. THE WORKING GROUP SHALL SELECT A CHAIRPERSON AT THE FIRST MEETING. AT EACH MEETING OF THE WORKING GROUP, IT SHALL DESIGNATE THE DATE, PLACE, AND TIME OF ITS NEXT MEETING.

(c) THE WORKING GROUP SHALL SUBMIT A REPORT TO THE RURAL AFFAIRS AND AGRICULTURE COMMITTEE OF THE HOUSE OF REPRESENTATIVES AND THE AGRICULTURE AND NATURAL RESOURCES COMMITTEE OF THE SENATE BY NO LATER THAN DECEMBER 1, 2019. THE REPORT MUST INCLUDE ANY RECOMMENDATIONS FOR LEGISLATION OR RULE MAKING TO ADDRESS THE ISSUES ADDRESSED PURSUANT TO THIS SUBSECTION (14.5).

(15) The division may promulgate rules to effectuate the purpose, implementation, and administration of this section pursuant to article 4 of title 24. The authority to promulgate rules includes the authority to:

(a) Define further in rule the administrative processes and requirements, including application processing and review time frames, for obtaining and issuing an optional preliminary advisory opinion pursuant to subsection (14) of this section; AND

(b) ADOPT BEST PRACTICES, PROCESSES, AND PROCEDURES USED BY OTHER ENTITIES THAT REGULARLY REVIEW CONSERVATION EASEMENT TRANSACTIONS, INCLUDING A PRACTICE, PROCESS, OR PROCEDURE DEEMING QUALIFIED CONSERVATION EASEMENT APPRAISALS APPROVED BY THESE ENTITIES BASED ON THEIR INDEPENDENT REVIEWS AS CREDIBLE FOR PURPOSES OF THE CONSERVATION EASEMENT TAX CREDIT.

SECTION 16. Appropriation. (1) For the 2019-20 state fiscal year, \$250,000 is appropriated to the department of higher education. This appropriation is from the general fund. To implement this act, the department may use this appropriation for the college opportunity fund program to be used for limited purpose fee-for-service contracts with state institutions.

(2) For the 2019-20 state fiscal year, \$250,000 is appropriated to the department of higher education. This appropriation is from reappropriated funds received from the limited purpose fee-for-service contracts with state institutions under subsection (1) of this section. To implement this act, the department may use this appropriation for the board of governors of the Colorado state university system for allocation to the Colorado natural

heritage program and the geospatial centroid to facilitate the provision of public access to the Colorado ownership, management, and protection (COMaP) service.

(3) For the 2019-20 state fiscal year, \$500,000 is appropriated to the department of regulatory agencies for use by the division of conservation. This appropriation is from the conservation cash fund created in section 12-61-1107 (1), C.R.S. To implement this act, the division may use this appropriation as follows:

(a) \$464,926 for conservation easement program costs, which amount is based on an assumption that the division will require an additional 3.8 FTE; and

(b) \$35,074 for indirect cost assessment.

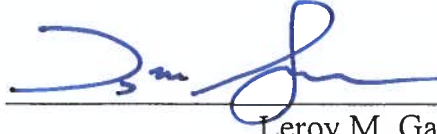
SECTION 17. Effective date. This act takes effect June 30, 2019; except that sections 11 to 15 of this act take effect only if House Bill 19-1172 becomes law, in which case sections 11 to 15 take effect on October 1, 2019.

SECTION 18. Safety clause. The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.



KC Becker
SPEAKER OF THE HOUSE
OF REPRESENTATIVES



Leroy M. Garcia
PRESIDENT OF
THE SENATE

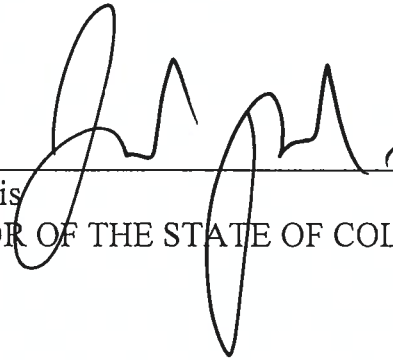


Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES



Cindi L. Markwell
SECRETARY OF
THE SENATE

APPROVED Jun 3, 2019 at 11:38 A.M.
(Date and Time)



Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO