

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>WASON RANCH CORPORATION,</p> <p>v.</p> <p>Respondent:</p> <p>MINERAL COUNTY BOARD OF COMMISSIONERS.</p>	<p>Docket Nos.: 58201 and 57831</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on April 19, 2012, James R. Meurer and MaryKay Kelley presiding. Petitioner was represented by Charles C. Powers, Esq. Respondent was represented by George Rosenberg, Esq. Petitioner is requesting an abatement/refund of taxes for tax year 2010 (Docket 58201) and protesting the 2011 actual value (Docket 57831) of the subject property. Classification is at issue for both.

Dockets 58201 and 57831 have been consolidated for purposes of the hearing. Subject property is described as follows:

**19082 Highway 149, Creede, Colorado.
Mineral County Schedule No. 4843094300002-R**

Wason Ranch is an approximate 1,620.71 acre parcel lying southeast of Creede in the San Luis Valley. It is bisected by State Highway 149, Denver and Rio Grande Western railroad tracks, and four miles of the Rio Grande River and its tributaries, from which the Ranch has both senior and junior water rights. Terrain is generally flat meadow with grasses and low shrubs, historic use being grazing and haying. The parcel also includes mountainous elk habitat and small non-productive areas.

Wason Ranch was founded around 1871 by Major M. V. B. Wason. Wason Ranch Corporation, comprised of 23 shareholders, purchased the Ranch in 1963. Improvements include the original homestead, owner cottages, and cabins (in disrepair), all with river frontage. Refer to Exhibit AA, a map of the Ranch outlined in yellow.

<u>Purple area</u>	250 acres	No improvements
<u>Pink area</u>	10 acres	Homestead residence Ranch office/apartment and metal storage 19 vintage cabins
<u>Blue area</u>	10 acres 77.16 acres	9 owner cottages 1 owner cottage

The parties have stipulated to agricultural classification for the purple area, which has been leased to Tom Payne, rancher and outfitter, since 2002 for grazing (cattle and draft horses) and haying. Petitioner is requesting agricultural classification for the entire acreage. Respondent assigned commercial classification to the pink area, residential classification to the blue areas, and vacant land classification to the remainder, on which neither grazing nor haying was observed during the statutorily-required years (2008/2009 for tax year 2010 and 2009/2010 for tax year 2011).

“A parcel of land shall be ‘in the process of being restored through conservation practices’ if: The land has been placed in a conservation reserve program established by the natural resources conservation service pursuant to 7 U.S.C. secs. 1 to 5506; or a conservation plan approved by the appropriate conservation district has been implemented for the land for up to a period of ten crop years as if the land has been placed in such a conservation reserve program.” Section 39-1-102(1.6)(a)(I), C.R.S.

Petitioner’s witness, Sam Leak, Vice President of the Wason Ranch Corporation, described the Ranch’s participation in the National Resources Conservation Service (NRCS) with the goal of restoring the degraded riparian area along the Rio Grande River. Participation in NRCS dated from 2005 through 2011 and included installation of fencing along the river and suspension of grazing; throughout this period, management was consistent with NRCS district policies.

Mr. Leak also discussed the Ranch’s written agreement with the U.S. Fish and Wildlife Service (FWS) dated May 2, 2005 and extending well beyond the assessment dates to enhance riparian areas and improve habitat for waterfowl. The agreement addressed Pastures A (roughly south of Hwy 149 and north of the Rio Grande River) and B (roughly the southeastern portion of Section 9 known as the wet meadow). The agreement permitted haying in the northern half of Pasture A but not in the southern half (known as the fish ponds), and grazing was prohibited throughout Pasture A. Grazing and haying were permitted on alternating halves of Pasture B.

Mr. Leak described the Ranch as a contiguous parcel of land on which grazing and haying were historic uses for the purpose of a monetary profit. Grazing and haying were suspended throughout most of the Ranch during the 2010 and 2011 tax years and each of the two prior years based on conservation practices.

Petitioner presented grazing and hay leases with Tom Payne from May 1, 2002 through April 30, 2011. Leases dated May 1, 2003 through April 30, 2011 prohibited access to the river and limited the number of grazing animals to 25 cows and 10 horses. Although the entire acreage was available for grazing per the lease, it gave the Ranch the authority to limit grazing to designated pastures and hay meadows in order to achieve restoration of the stream, riparian areas, and un-irrigated dry meadows. Mr. Payne, in accordance with the agreement, testified that he confined grazing from 2008 through 2011 to the 250-acre purple area.

Petitioner's witness, Edd Gillespie, Certified General Appraiser, argued agricultural classification for the entire Ranch, stating that the property is contiguous, has historically operated as a unit, and should not be subject to parceling for tax assessment.

Respondent's witness, Libby Lundock, Mineral County Assessor, defined classification as follows: agricultural for the purple area based on confirmed grazing; residential for the blue areas based on the existence of the owner cottages; commercial for the pink area based on the presence of service buildings and a website advertising the historic homestead and cabins for rent; and vacant land for the remainder, on which no grazing or haying was observed during tax years 2008, 2009 or 2010.

Respondent's witness, Les Cahill, Mineral County Administrator, saw cattle within the purple area from 2008 into 2011 as he drove Hwy 149 to and from Creede. He also noted that cattle had been reintroduced in Section 9, confirming the 2011 lease with Jason Vineyard. Additionally, Mr. Leak observed haying in the pink area behind the management buildings and owner cabins in 2010, and one of Petitioner's photos showed grazing and haying reportedly in the same area.

Respondent's witness, Kyle Hooper, Division of Property Tax Specialist, discussed conservation programs; qualification requires intent to restore the land to use as a farm or ranch.

Petitioner presented sufficient probative evidence and testimony to prove that classification for tax years 2010 and 2011 was incorrect.

Colorado statutes define the term parcel as: "a contiguous land area except for intervening easements and rights of way with a continuous boundary ..." *Douglas County Board of Equal. v. Clarke*, 921 P.2d 717, 722 (Colo. 1996). The Board finds that the Ranch is a contiguous parcel functioning as a single, integral unit and should not be subject to parceling. Other than what was temporarily installed for restoration of the riparian area, fencing is non-existent.

Section 39-1-102(1.6)(a)(I), C.R.S. defines agricultural land as "a parcel of land ... that was used the previous two years and presently is used as a farm or ranch ... or that is in the process of being restored through conservation practices".

Section 39-1-102(13.5) C.R.S. defines "ranch" as a "parcel of land which is used for grazing livestock for the primary purpose of obtaining a monetary profit".

According to *Clarke*, statute requires the taxpayer to prove the land was actually grazed unless (1) the reason the land was not grazed related to a conservation practice; or (2) the land is part of a larger functional agricultural unit on which grazing or conservation practices have been occurring. *Clarke*, 921 P.2d at 718.

The Board is not convinced that parceling should apply to any portion of the subject property. All areas lie within the contiguous boundary, including mountainous terrain and wasteland not conducive to farming or ranching. The subject property adheres to the aforementioned definitions and requirements. Historic use was farming and ranching. A conservation plan was in place throughout the years in question, which authorized the Ranch to limit grazing and haying while the lease with Tom Payne was honored. A second lease with neighbor Jason Vineyard in 2011 shows intent to re-introduce grazing to other areas of the Ranch.

The Board concludes that the 2010 and 2011 classification of the subject property should be agricultural.

ORDER:

Respondent is ordered to cause an abatement/refund to Petitioner based on agricultural classification for the 2010 tax year.

Respondent is ordered to reduce the 2011 actual value of the subject property based on agricultural classification.

The Mineral County Assessor is directed to change his/her records accordingly.

APPEAL:

If the decision of the Board is against Petitioner, Petitioner may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

If the decision of the Board is against Respondent, Respondent, upon the recommendation of the Board that it either is a matter of statewide concern or has resulted in a significant decrease in the total valuation for assessment of the county wherein the property is located, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provision of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law when Respondent alleges procedural errors or errors of law by the Board.

If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation for assessment of the county in which the property is located, Respondent may petition the Court of Appeals for judicial review of such questions.

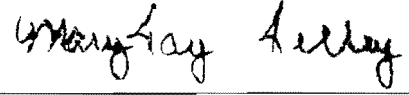
Section 39-10-114.5(2), C.R.S.

DATED and MAILED this 14th day of June, 2012.

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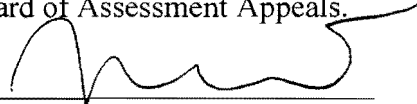


James R. Meurer



MaryKay Kelley

I hereby certify that this is a true and correct copy of the decision of the Board of Assessment Appeals.



Milla Crichton

