BEFORE THE STATE BOARD OF EQUALIZATION

FOR THE STATE OF WYOMING

IN THE MATTER OF THE APPEAL OF **EXXON MOBIL CORPORATION** FROM A NOTICE OF VALUATION FOR TAXATION PURPOSES FROM THE MINERAL TAX DIVISION OF THE DEPARTMENT OF REVENUE (2005 Production Year)	)	Docket No. **2006-69**
IN THE MATTER OF THE APPEAL OF **EXXON MOBIL CORPORATION** FROM A NOTICE OF VALUATION CHANGE BY THE MINERAL TAX DIVISION OF THE DEPARTMENT OF REVENUE (NOVC 2006-0481)	)	Docket No. **2006-116**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER ON REMAND

APPEARANCES

Lawrence J. Wolfe and Patrick R. Day of Holland & Hart, LLP; Brent R. Kunz of Hathaway & Kunz, P. C., for Exxon Mobil Corporation (Exxon Mobil).

Martin L. Hardsocg of the Wyoming Attorney General's Office for the Wyoming Department of Revenue (Department).

JURISDICTION

The Wyoming State Board of Equalization (Board) shall review final decisions of the Department on application of any interested person adversely affected, including boards of county commissioners. *Wyo. Stat. Ann. § 39-11-102.1(c)*. Taxpayers are specifically authorized to appeal final decisions of the Department. *Wyo. Stat. Ann. § 39-14-209(b)*. The taxpayer's appeal must be filed with the Board within thirty days of the Department's final decision. *Wyo. Stat. Ann. § 39-14-209(b)*; *Rules, Wyoming State Board of Equalization, Chapter 2, § 5(a)*. By Notices of Appeal dated June 13, 2006, and October 31, 2006, Exxon Mobil timely appealed two final decisions of the Department. The Board accordingly has jurisdiction to hear these matters.

STATEMENT OF THE CASE

These appeals concerned the valuation of 2005 natural gas production from the LaBarge Field in Sublette County processed at the Shute Creek plant owned and operated by Exxon Mobil.

Exxon Mobil, in the spring of 2006, filed annual gross products returns with the Department reporting its 2005 natural gas production from the Fogarty Creek, Lake Ridge and Graphite Units in the LaBarge Field located in Sublette County (LaBarge production). Exxon Mobil owns and operates the Black Canyon Facility (Black Canyon) in Sublette County and the Shute Creek Gas Plant (Shute Creek) located in Lincoln County with a compressor facility in Sweetwater County. Exxon Mobil reported the taxable value of the 2005 LaBarge production using the proportionate profits methodology, as directed by the Department in letters sent to Exxon Mobil in 2004. This was a change in methodology from the previously employed Tax Settlement Agreement (TSA) valuation method, and represented the first time proportionate profits methodology had been employed for LaBarge production. See *Exxon Mobil Corp.*, Docket Nos. 2004-84, *et al.*, Dec. 1, 2005, 2005 WL 3347975 (hereinafter the *2004-84 Appeals*) at ¶¶ 2-3, 15-20; *see also Wyoming Dept. of Revenue v. Exxon Mobil Corp.*, 150 P.3d 1216 (Wyo. 2007) (describing operation of TSA methodology).

The Department declined to accept Exxon Mobil's reported values for the 2005 LaBarge production. Exxon Mobil's proportionate profits methodology calculation, among other things, did not include production taxes and royalties in the direct cost ratio; placed the point of valuation upstream of Black Canyon; and included post-plant transportation costs in the denominator of the direct cost ratio. Exxon Mobil also did not include the value of its federal helium sales in gross revenues. In its Notice of Valuation (NOV) issued May 16, 2006, the Department included taxes and royalties as direct costs of producing in the direct cost ratio; set the point of valuation at the outlet of Black Canyon; and deducted the respective post-plant transportation charges from gross revenues for each mineral rather than include them in the denominator of the direct cost ratio. Exxon Mobil challenged this Notice pursuant to Wyo. Stat. Ann. §§ 39-14-209(b), 39-13-102(n), and Rules, Wyoming State Board of Equalization, Chapter 2 § 5(a) by an appeal docketed June 13, 2006.

The Department subsequently issued a Notice of Valuation Change (NOVC) on October 5, 2006, increasing the value of Exxon Mobil's 2005 LaBarge production. The Department calculated the NOVC in the same manner as the NOV, with one exception: in the NOVC, the Department included the value of the LaBarge federal helium sales in the assessed value for severance and ad valorem taxes. Exxon Mobil challenged this increase in value by an appeal docketed October 31, 2006.

The two separate appeals of the NOV and NOVC were consolidated by Board Order dated November 13, 2006. Both appeals took exception to the point of valuation used by the Department; the assessment of federal helium; and the Department's valuation calculation

using the proportionate profits method. Argument and evidence on these issues had been presented to the Board but not addressed in the *2004-84 Appeals* since the Board decision in those appeals did not require the issues be resolved. In these consolidated appeals, in order to avoid duplication of extensive testimony and exhibits, the Board accepted as evidence a substantial portion of the record presented in the *2004-84 Appeals* in June, July, and September, 2005.

After Exxon Mobil filed these consolidated appeals, the issues with regard to production taxes and royalties within the calculation of the proportionate profits valuation methodology were resolved by the Wyoming Supreme Court. *RME Petroleum v. Wyoming Department of Revenue*, 2007 WY 16, 150 P.3d 673 (Wyo. 2007). The Court ruled the proportionate profits methodology should not include production taxes and royalties as direct costs in the direct cost ratio.

A hearing in these matters was held June 4 and June 5, 2007, before the Board, consisting at that time, of Alan B. Minier, Chairman, Thomas R. Satterfield, Vice Chairman, and Thomas D. Roberts, Board Member.

After conclusion of the hearing for the consolidated appeals in June, 2007, the issue of assessment of federal helium for both severance and ad valorem tax was addressed by the Wyoming Supreme Court. *Wyoming Department of Revenue v. Exxon Mobil Corporation*, 2007 WY 112, 162 P.3d 515 (Wyo. 2007). The Court stated the production by Exxon Mobil of federal helium may not be assessed either severance or ad valorem tax. The Department thus conceded its assessment of federal helium for Exxon Mobil's 2005 production was erroneous. [*Department of Revenue's Proposed Findings of Fact and Conclusions of Law*, p. 5 (Original Appeal)].

The Board issued its initial Findings of Fact, Conclusions of Law and Order on April 3, 2008. The Board Order affirmed the Notice of Valuation, and the Notice of Valuation Change issued by the Department subject to remand to the Department for the reasons noted in the Board decision to void the assessment of federal helium and to correct the proportionate profits methodology calculations which the Department had agreed were erroneous.

Exxon Mobil appealed the Board decision to the District Court of Fremont County, Wyoming, which certified the case directly to the Wyoming Supreme Court for review. The Wyoming Supreme Court issued its opinion on November 12, 2009. The Court reversed the decision of the Board. The Court, however, remanded the case to the Board "to determine the correct point of valuation in accordance with this opinion" in the context of whether certain meters were custody transfer or volume meters. *Exxon Mobil Corporation v. The State of Wyoming, Department of Revenue*, 2009 WY 139, ¶ 52, 219 P.3d 128, 143 (Wyo. 2009).

The Board held a status conference with Exxon Mobil and the Department on January 21, 2010. [January 7, 2010 State Board Status Conference Order]. As a result of the status conference, the Board, by Order dated January 22, 2010, remanded the two appeals to the Department for revaluation and assessment of 2005 production in accord with the Wyoming Supreme Court decision. The Remand Order also required the Department and Exxon Mobil to file, by March 29, 2010, either jointly or separately, a written status report on the revaluation and assessment of the 2005 production at issue. [*State Board Order of Remand*].

Exxon Mobil and the Department filed with the Board, on March 29, 2010, a Joint Status Report which requested the Board allow the parties until May 28, 2010, to continue negotiations and file a second Status Report. [*Joint Status Report*].

The Board, by Order dated March 31, 2010, scheduled the combined appeals for hearing on remand on June 9 and 10, 2010. The hearing date was subsequently changed first at the request of Exxon Mobil, and then at the request of the Department. [*Hearing Order; Order Resetting Hearing; Second Order Resetting Hearing*].

The Board, now comprised of Thomas D. Roberts, Chairman, Steven D. Olmstead, Vice-Chairman, and Deborah J. Smith, Board Member, held a hearing on remand on June 21 and 22, 2010.

We conclude, for the reasons noted herein, the meters at issue in the Fogarty Creek Unit are, for purposes of valuing the gas attributable to Howell and Yates and their successors in interest in that Unit, custody transfer meters, and thus the statutory point of valuation. The Fogarty Creek Unit meters, as well as the meters in the Lake Ridge Unit and Graphite Unit are not custody transfer meters for purposes of valuing the gas attributable to Exxon Mobil. The statutory point of valuation for the LaBarge Field gas production attributable to Exxon Mobil is, therefore, the inlet of the Black Canyon processing facility.

CONTENTIONS AND ISSUES

Exxon Mobil, in its Updated Summary of Contentions on Remand, urged that the Board, in conducting a hearing on remand, was limited to the narrow issue of identifying the proper point of valuation under Wyo. Stat. Ann. § 39-14-203(b)(iv). Exxon Mobil also stated its view the evidence necessary for the Board to make such a determination had already been presented to the Board in the context of the June 2007, hearing, as the result of which the Board had adopted extensive findings of fact which had not been challenged on appeal. Exxon Mobil thus asserted the Board should not admit additional evidence, but simply request Exxon Mobil and the Department to brief the point of valuation issue based on the evidence already admitted. [*Petitioner Exxon Mobil Corporation's Updated Summary of Contentions on Remand*, pp. 2, 8].

Exxon Mobil, in its updated Summary, also asserted the meters at issue were custody transfer meters, and therefore those meters defined the point of valuation. [*Petitioner Exxon Mobil Corporation's Updated Summary of Contentions on Remand*, pp. 2-9].

The Department, in a response to Exxon Mobil's assertion the Board should not accept additional evidence, argued the Board, in accord with the Wyoming Supreme Court remand and the law defining the scope of authority of a lower tribunal, may accept additional evidence, and has the discretion as it deems necessary to "determine the correct point of valuation." [*Wyoming Department of Revenue's Brief in Response to Exxon Mobil's Contention/Motion that the Scope of Board's Proceedings on Remand Be Limited,* p. 3].

Exxon Mobil, in a Reply to the Department's Response Brief, asserted:

I. A party attempting to introduce additional evidence before an administrative agency must do so through Wyoming Rule of Appellate Procedure 12.08;

II. When the Supreme Court finds that further evidence should be taken on remand, it specifically so instructs an agency in its remand instructions.

[*Petitioner Exxon Mobil Corporation's Reply in Support of its Updated Summary of Contentions on Remand*, pp. 2, 5].

Exxon Mobil also reiterated its position the Board should proceed on the record created as a result of the 2007 Board hearing without introduction of additional evidence, and instruct the parties to submit proposed findings based on the previously presented evidence. [*Petitioner Exxon Mobil Corporation's Reply in Support of its Updated Summary of Contentions on Remand*, pp. 8-9].

The Department, in a Response to Exxon Mobil's Reply, argued:

A. This appeal has been remanded to the State Board and is no longer before the district court or Wyoming Supreme Court; the Department has not moved to introduce additional evidence and, therefore, Wyo. R. App. P. 12.08 does not apply;
B. Exxon's reliance upon *Scott v. McTiernan* is unwarranted, and the Supreme Court's unambiguous directive on remand affords ample discretion to readdress the "custody transfer meter" issue as the Board deems appropriate.

[*Wyoming Department of Revenue's Brief in Response to Exxon Mobil's Reply in Support of Its Updated Summary of Contentions on Remand*, pp. 3-4].

The Department, in its Updated Summary of Contentions, in summary asserts:

A. The point of valuation is the inlet of Black Canyon in accord with Wyo. Stat. Ann. § 39-14-203(b)(iv); and

B. The meters located at each of the 18 LaBarge well sites are not "custody transfer meters" as defined by the Wyoming Supreme Court in *Amoco Prod. Co. v. Dep't of Revenue,* 2004 WY 89, 94 P.3d 430 (Wyo. 2004).

[*Wyoming Department of Revenue's Updated Summary of Contentions*, pp. 2-6].

Exxon Mobil's Updated Issues of Fact and Law sets out one contested issue of fact, and one contested issue of law:

1. **Contested Issue of Fact** (which may be a mixed question of fact and law).

   a. Are there custody transfer meters at the wells, as defined by the Wyoming Supreme Court in *Amoco Prod. Co. v. Dep't of Revenue,* 2004 WY 89, 94 P.3d 430 (Wyo. 2004)?

2. **Contested Issue of Law** (which may be a mixed question of fact and law).

   a. What is the correct point of valuation for Exxon Mobil's production under Wyo. Stat. § 39-14-203(b)(iv) in light of the Supreme Court's Order on Remand?

[*Petitioner Exxon Mobil Corporation's Updated Issue of Fact and Law and Exhibit Index for Proceedings on Remand*, p. 1].

The Department's Updated Issues of Fact and Law set out two issues of fact and three issues of law:

II. <u>Updated Issue of Fact</u>

1. Does any party other than Exxon maintain physical control, possession or custody of the LaBarge gas stream at the allocation meters located at each well site?

2. Is there a physical transfer of possession, control or custody of the LaBarge gas stream upstream of the inlet of the Black Canyon Facility?

III. <u>Updated Issue of Law</u>

1. Are the allocation meters located at each LaBarge well site "custody transfer meters" pursuant to Wyo. Stat. Ann. § 39-14-203(b)(iv)?

2. Does Exxon maintain legal possession, control and custody of the LaBarge gas stream from within the wellbores to the inlet of the Black Canyon dehydration facilities in accordance with the applicable unit agreements, unit operating agreements and processing agreements?

3. Is the point of valuation properly located at the inlet of the Black Canyon dehydration facility?

[*Wyoming Department of Revenue's Updated Issues of Fact and Law and Exhibit Index*, p. 2].

FINDINGS OF FACT

1. Exxon Mobil operates three federal natural gas units, Fogarty Creek, Lake Ridge and Graphite, which constitute the LaBarge Field in the Bridger-Teton National Forest in Sublette County, Wyoming. Mobil drilled the first well into the Madison Formation, the source of LaBarge gas, in 1963. Exxon drilled its first well in 1969. The existing well fields were perforated at a depth of 15,500 to 16,000 feet below the wellheads. [*Joint Stipulation of Facts*, ¶¶ 1, 2; Transcript Vol. III, pp. 94, 99-100; Exhibit 106 pp. 15895, 15908, 15914-15915; Exhibit 146, pp. 16408-16413; and Exhibits 175, 176, 177, 178, 179; Remand Transcript Vol. II, p. 213].

2. Exxon Mobil is the sole lessee of the federal leases in the Lake Ridge and Graphite Units. There are, however, other leaseholders in the Fogarty Creek Unit. Exxon Mobil is the operator of all three units. Exxon Mobil bore the costs of drilling in all three units with only original leaseholders Howell Petroleum Corporation [Howell] and Yates Petroleum Corporation [Yates] electing to share in the $300 million cost of drilling the Fogarty Creek Unit. All other Fogarty Creek interest owners were non-consent. They did not participate in the cost of drilling the wells, and by contract cannot receive any proceeds from the wells until Exxon Mobil, Howell, and Yates receive return of their investment in drilling costs, plus a penalty. The proportion at which Exxon Mobil, Howell, and Yates carry the non-consent interests' drilling costs varies from well to well. Howell and Yates or their successors in interest[1] own seven (7) percent of all unitized substances in the Fogarty Creek Unit. [Transcript Vol. VI, pp. 744-746; *Joint Stipulation of Facts* ¶ 22; Remand Transcript Vol. I, pp. 94-99; Vol. II, p.215].

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[1] We will, for purposes of simplicity and clarity, refer to "Howell and Yates and their successors" in the remainder of this opinion, as appropriate, as simply "Howell and Yates."

3. Exxon Mobil produces the LaBarge sour gas from 18 wells. [Transcript Vol. III, pp. 66, 97; Exhibit 106, pp. 15898-99, 15924]. Each well site has a "well building." Each building contains equipment to assist in production and movement of gas from the wellhead downstream. There are also meters to measure the gas volumes. [Transcript Vol. III, pp. 66-67, 110, 115; Exhibit 106, pp. 15924-15926, 15930-15931; Exhibit 161; Remand Transcript Vol. I, p. 144].

4. The unit agreement for each of the noted federal units defines the participating areas and oil and gas leases which will be included in the "unit" for drilling and production purposes. Exxon Mobil is now the designated operator for each unit as elected by the lease owners within the unit. [Remand Transcript Vol. I, pp. 92-96; Vol. II, pp. 245, 249].

5. Each unit is also covered by a unit operating agreement which identifies the "operator" for all production within the unit, and defines how the unit will be developed. The unit operating agreements basically designate the rights and responsibilities of the unit operator and working interest owners. The agreements control well operations once there is production. The operator designated in the unit operating agreement operates the wells in the unit pursuant to the guidelines set out in the agreement which has limits on the discretion of the operator to act based on a dollar limit as well as certain types of work for which the operator must get approval by all owners of production within the unit. [Exhibits 175, 177, 179; Remand Transcript Vol. I, pp. 92-96; Vol. II, pp. 209-212, 245, 249].

6. The unit operating agreement for the Fogarty Creek Unit requires Howell and Yates to either take their gas in kind or separately dispose of it. The Fogarty Creek Unit Operating Agreement also states that should Howell and Yates not take their gas in kind or separately dispose of it, their gas will be "banked," i.e., their respective shares of gas are left in the ground, and 100 percent of production is attributed to Exxon Mobil until Howell and Yates take their gas in kind or separately dispose of it through a processing agreement or otherwise. [Exhibit 175; Confidential Remand Transcript Vol. I, pp. 105-108, 125-128; Remand Transcript Vol. I, pp. 122-123, 147, 163-164].

7. Howell and Yates, under the Fogarty Creek Unit Operating Agreement, pay their proportionate share of all operating and maintenance costs incurred at each well in the Fogarty Creek Unit up through the wing valve. Howell and Yates do not own any of the facilities from the wing valve through the tailgate of the Shute Creek plant. [Exhibit 175; Remand Transcript Vol. I, pp. 149-150].

8. Construction on the Shute Creek plant for processing gas from the LaBarge Field commenced in May 1984, and created an independent set of ownership issues, most significantly with Howell and Yates. Exxon Mobil refers to, and accounts for, the Shute Creek plant cost as the cost of the entire infrastructure beyond the wellhead. Plant cost, by 1985, had doubled over original projections, and methane prices were falling. In this financial climate, Exxon Mobil offered Howell and Yates a chance to acquire an ownership

interest in the plant. [*Joint Stipulation of Facts*, ¶¶ 8, 24; Remand Transcript Vol. I, pp. 96-97].

9. Howell and Yates declined to become owners in any of the facilities to be constructed and installed downstream of the LaBarge Field well heads. However, because their shares of the gas would have to be processed in the Shute Creek facility, Exxon Mobil, Howell, and Yates attempted to negotiate an agreement for processing the Howell and Yates respective shares. Howell and Yates balked at the alternative of a straight processing fee agreement with Exxon Mobil, because a fee based on Exxon Mobil's processing costs was too high, once depreciation and a return on investment were factored in. This impasse eventually prompted Howell and Yates to file an antitrust suit against Exxon Mobil, seeking damages of $380 million. [*Joint Stipulation of Facts*, ¶ 25; Transcript Vol. VI, pp. 746-747; Remand Transcript Vol. I, pp. 98-103].

10. The Howell and Yates litigation was ultimately resolved by negotiation of a complex processing agreement under which Exxon Mobil agreed to process the Howell and Yates respective shares of gas production from the Fogarty Creek Unit. The processing agreements, known by the parties as the "Howell and Yates" Agreements, were entered into effective August 1, 1988, by which date gas production from the Fogarty Creek Unit had already commenced. The gas produced before that date attributable to Howell and Yates was thus banked until the processing agreements were in place. [Transcript Vol. VI, pp. 748-751; Exhibits 802, 803, Confidential Exhibits 804, 805; Remand Transcript Vol. I, pp. 98-103; Vol. II, pp. 303-304].

11. Under the processing agreements, Exxon Mobil agreed to process Howell and Yates respective shares of the raw gas for a fee initially equal to 65% of the gross revenues received from the sale of their shares of the production. [*See 2004-84 Appeals* at Findings of Fact ¶ 11 (citations to record omitted); *Joint Stipulation of Facts*, ¶ 26]. The same form of Agreement has been employed over the years to process gas owned by several other interest owners in the Fogarty Creek Unit, including Washington Energy and Foreman Enterprises. [Transcript Vol. VI, pp. 748-751; Exhibits 802, 803, Confidential Exhibits 804, 805; Remand Transcript Vol. I, pp. 98-103].

12. Since 1988, EOG Resources, Inc. has succeeded Howell as a working interest owner at LaBarge. The Howell and Yates processing agreements, however, still remain in effect. [Transcript Vol. VI, p. 751].

13. All facilities downstream of the wing valve on the well head are owned exclusively by Exxon Mobil. These facilities include the gathering lines, manifolds, Black Canyon, the feed gas pipeline from Black Canyon to Shute Creek, and Shute Creek. All costs for facilities after the wing valve are incurred by Exxon Mobil which is compensated for the costs of owning and operating these facilities for the benefit of other working interests owners by the terms of the Howell and Yates Agreements. [Transcript Vol. VI, pp. 747-748; Confidential

Remand Transcript Vol. I, pp. 112-114].

14. Article 7.1 of the Howell and Yates Agreements covers the gas owned by the separate working interest owners in the Fogarty Creek wells. The Article, by its terms, provides that possession, custody and control of Howell and Yates gas is transferred to Exxon Mobil for processing immediately downstream of the wing valve on the wells, as measured by the metering stations located at each well site. [Transcript Vol. VI, pp. 751-755; Confidential Exhibit 805, pp. 51, 53, 54, 57, 58, 70; Confidential Remand Transcript Vol. I, pp. 109-110].

15. Cindy Lea Gentry was Operations Accounting Supervisor for Exxon Mobil for the LaBarge operations team which succeeded the project construction team in the summer of 1986. She and her team were responsible for assuring accounting systems existed to handle five operations issues: (1) cost accounting; (2) revenue accounting; (3) ownership; (4) state and federal royalties; and (5) severance and ad valorem taxes. Ms. Gentry retired from Exxon Mobil in 2008, but continues to be involved with taxation of the LaBarge Field as a consultant. She testified she was very familiar with the processing agreements for the LaBarge Field production, particularly from an accounting standpoint. [*Joint Stipulation of Facts*, ¶ 19; Remand Transcript Vol. I, pp. 83-92].

16. Ms. Gentry read from Article 7.1 of the Howell and Yates Agreements, and summarized the provision as follows:

> As [7.1] says, "The gas to be handled hereunder in this processing agreement shall be delivered to owner," which in the definition is Exxon as operator of the LaBarge facilities, "at the facilities," and that's also defined, immediately downstream of the wing valve on the wellhead, and will be measured at the metering stations into the facilities at the flowing gas well pressure and temperature.

[Transcript Vol. VI, pp. 752, 758; Confidential Exhibit 805, p. 57, Article 3.1 (definition of "facilities")]. As a result, Exxon Mobil takes custody of, but not title to, the raw gas at the wing valve and metering stations. Title remains with the working interest owner. [Transcript Vol. VI, pp. 752, 758; Confidential Remand Transcript Vol. I, pp. 113, 127-129]. Ms. Gentry described the purpose of this provision:

> Q. And why is this provision [Article 7.1] in here?
>
> A. You have to define at what point they're [Howell and Yates] going to deliver it. And in our case, remembering this is two years after we started up, so we have already gone to the MMS -- before you start up, you have to go to the MMS and get your metering and allocation process approved. So we had already done that. So the metering station referred to here is, in fact, the metering station that we had gotten

> approved by the MMS. So we wanted to be very specific how we were going to measure the gas they're delivering to us and at exactly what point. And it all ties into the processing agreement in that we define the facilities that are covered by the processing fee and they start at the wing valve on the wellhead. So that's where Yates [and Howell] has to deliver their gas to us.

[Transcript Vol. VI, pp. 752, 753] (Clarification added).

17. The Howell and Yates Agreements thus state produced gas shall be delivered to the owner of the processing facilities, Exxon Mobil, immediately down stream of the wing valves on each well. This provision defines the beginning point for recovery of costs under the processing agreements. The meters at issue which measure the gas at that point were approved by the Minerals Management Service [MMS] and in place before the Howell and Yates Agreements were negotiated. Those Agreements provided all facilities upstream of the wing valves were to be owned and operated pursuant to the unit agreements and unit operating agreements. [Confidential Exhibits 804, 805; Confidential Remand Transcript Vol. I, pp. 108-115, 128, 144].

18. Each of the Fogarty Creek Unit wells have multiple working interest owners. Despite the fact Fogarty Creek is unitized, each well has a slightly different working interest ownership because of parties who are "nonconsents," and because the wells were originally drilled in an inconsistent manner under federal unit drilling blocks. Exxon Mobil must account for each Fogarty Creek well separately to determine what percentage ownership in each well is attributable to Exxon Mobil, and what percentage ownership in each well is attributable to one or more of the other working interest owners. The meters at the wells are used to measure this production transferred to Exxon Mobil, and to properly account for the working interest and royalty ownership of the gas. [Transcript Vol. VI, pp. 753-757; Confidential Remand Transcript Vol. I, pp. 134-137].

19. The metering requirement is not limited to Fogarty Creek. Although Exxon Mobil owns the entire working interest in the Lake Ridge and Graphite Units, each well must be individually metered since the gas from all three units is combined for processing through the LaBarge facilities. This means measurements from each and every well, through the meters located at each well, are necessary to properly account for the transfer of gas from Howell and Yates to Exxon Mobil in the Fogarty Creek Unit. The total production from the LaBarge Field is allocated to the working interest owners based on each individual well. In order to properly calculate one working interest owner's share of production in a Fogarty Creek well, Exxon Mobil must know the amount of production from all the LaBarge Field wells. [Transcript Vol. VI, pp. 755-757; Confidential Remand Transcript Vol. I, pp. 130-132, 139-142, Vol. II, pp. 205-208].

20. In addition to the accounting and allocation issues between and among working

interest owners, the Bureau of Land Management [MMS] also requires individual meters at each well in all of the LaBarge units. [Transcript Vol. VI, p. 756; Remand Transcript Vol. I, p. 144].

21. After the gas is processed at Shute Creek, Exxon Mobil markets all production and sends payments to the working interest owners reflecting the revenue from sale of their respective shares of product gas, net of the processing fee, as measured by the meters at the wells. [Transcript Vol. VI, pp. 762-771; Exhibit 101 at ¶ 12 (*2004-84 Appeals* at ¶ 12); *Joint Stipulation of Facts* ¶ 27; Exhibit 161; Confidential Remand Transcript Vol. I, p. 142].

22. Ms. Gentry expressed her opinion that by agreeing to the terms of, and signing the processing agreements, Howell and Yates were complying with the Fogarty Creek Unit Operating Agreement which required they take in kind or separately dispose of their share of gas production. [Exhibit 175; Confidential Remand Transcript Vol. I, pp. 115-118].

23. Exxon Mobil operates all the production and down stream processing facilities in the Fogarty Creek Unit. It does so, however, under two different agreements, the Fogarty Creek Unit Operating Agreement and the Howell and Yates Agreements. [Exhibits 175, 804, 805; Remand Transcript Vol. I, pp. 151-163, 168].

24. Ms. Gentry stated that pursuant to the Fogarty Creek Unit Operating Agreement, Exxon Mobil had custody of the gas attributable to Howell and Yates at the wing valve. Immediately downstream of the wing valve Exxon Mobil had custody of the Howell and Yates gas because it was transferred to Exxon Mobil pursuant to the Howell and Yates Agreements. [Confidential Remand Transcript Vol. I, pp. 181-182, 184].

25. Craig Grenvik testified on behalf of the Department. He is the administrator of the Mineral Tax Division of the Department. [Remand Transcript Vol. II, pp. 224-226].

26. Mr. Grenvik testified the point of valuation determines which costs are deductible and which are not in determining the proper taxable value for mineral production. It is the position of the Department the point of valuation for gas produced from the LaBarge Field is the inlet of the Black Canyon facility since that facility has been determined to be a processing plant. [Remand Transcript Vol. II, pp. 228-230].

27. Mr. Grenvik asserted the meters in question are not custody transfer meters as there is no transfer of charge or control at those meters. Exxon Mobil has possession of the gas through all production and processing activities, both of which activities utilize facilities owned only by Exxon Mobil. Exxon Mobil has legal and physical control of the gas through all production and processing activities. Neither Howell nor Yates ever has custody of their gas. [Remand Transcript Vol. II, pp. 237-240, 259].

28. Mr. Grenvik acknowledged it is fairly common in the oil and gas industry that in units

having multiple working interest owners, custody of the gas produced from the unit is physically controlled by only one of the working interest owners as unit operator. The fact the other working interest owners never actually have physical custody of their share of the gas does not disqualify the meters which measure the transfer of the gas from being custody transfer meters. He agreed the fact Exxon Mobil is the operator of a unit which has multiple working interest owners is thus not unusual. [Remand Transcript Vol. II, p. 290].

29. Mr. Grenvik also agreed a custody transfer meter can exist even if there is no sale of product at the meter. In addition, a custody transfer meter is generally not mounted right on the well head, but rather somewhat downstream. [Remand Transcript Vol. II, p. 291].

30. Mr. Grenvik acknowledged the Fogarty Creek Unit Operating Agreement imposed a legal obligation on Howell and/or Yates to either take their gas in kind, or otherwise separately dispose of it when produced. [Exhibit 175, paragraph 6.3, Bates page 15587; Remand Transcript Vol. II, pp. 299-302, 307].

31. Mr. Grenvik agreed the Howell and Yates Agreements were the contractual mechanism by which Howell and Yates, as working interest owners in the Fogarty Creek Unit, separately disposed of their share of the gas production from the Unit. The share of Fogarty Creek Unit gas attributable to Howell and Yates prior to execution of the processing agreements was "banked." The gas was stored by effectively leaving it in the ground. Such activity is common in the oil and gas industry, and virtually always involves only one operator who physically runs the production equipment. [Confidential Exhibit 804; Confidential Remand Transcript Vol. II, pp. 309-314].

32. Mr. Grenvik agreed the Howell and Yates Agreements legally authorized Exxon Mobil to receive the ownership share of both Howell and Yates gas at the wing valves with the volume to be measured at the metering stations defined by the processing agreements and located approximately 50 feet away from the wing valve. [Confidential Exhibit 804; Confidential Remand Transcript Vol. II, pp. 315-319, 323-325, 384].

33. Mr. Grenvik stated it does not matter to the Department whether the same entity has physical possession before and after a meter. What ultimately matters to the Department is the nature of the legal reason why there is a meter in place. [Remand Transcript Vol. II, p. 334].

34. Mr. Grenvik testified that if someone purchased Howell's share of the raw gas stream at the meters at issue, the Department would consider those meters to be custody transfer meters for valuation purposes. Under such a scenario, there would be two points of valuation for the same gas stream depending solely on ownership. The point of valuation for the Howell gas, which had been sold, would be the meters at issue. The same point of valuation would not be applicable to gas owned by Exxon Mobil. [Remand Transcript Vol. II, pp. 345-346, 380-381].

35. Mr. Grenvik agreed Howell and Yates fulfilled the unit operating agreement requirement to take in kind or separately dispose of their share of the gas production by executing the processing agreements. [Remand Transcript Vol. II, pp. 350-351].

36. Mr. Grenvik stated the basic position of the Department is there must be a physical transfer of control before there can be a custody transfer meter. The Department has also considered a metering point to be a custody transfer meter if there is a sale of product at the metering point. [Transcript Vol. VII, pp. 892-894, 933; Remand Transcript Vol. II, pp. 353-357].

37. The statutory point of valuation for all LaBarge Field gas production, in the opinion, of the Department, is the inlet of Black Canyon. [Remand Transcript Vol. II, pp. 357-361].

CONCLUSIONS OF LAW - PRINCIPLES OF LAW

38. The role of this Board is strictly adjudicatory:

> It is only by either approving the determination of the Department, or by disapproving the determination and remanding the matter to the Department, that the issues brought before the Board for review can be resolved successfully without invading the statutory prerogatives of the Department.

Amoco Production Company v. Wyoming State Board of Equalization, 12 P.3d 668, 674 (Wyo. 2000). The Board's duty is to adjudicate the dispute between taxpayers and the Department.

39. The Board is required to "[d]ecide all questions that may arise with reference to the construction of any statute affecting the assessment, levy and collection of taxes, in accordance with the rules, regulations, orders and instructions prescribed by the department." *Wyo. Stat. Ann. § 39-11-102.1(c)(iv).*

40. "The burden of proof is on the party asserting an improper valuation." *Amoco Production Company v. Wyoming State Board of Equalization*, 899 P.2d 855, 858 (Wyo. 1995); *Teton Valley Ranch v. State Board of Equalization*, 735 P.2d 107, 113 (Wyo. 1987); *Britt v. Fremont County Assessor*, 2006 WY 10, ¶ 17, 126 P.3d 117, 123 (Wyo. 2006); *Thunder Basin Coal Company v. Campbell County, Wyoming Assessor*, 2006 WY 44, ¶ 13, 132 P.3d 801, 806 (Wyo. 2006); *Chevron U.S.A., Inc. v. Department of Revenue, State of Wyoming*, 2007 WY 79, ¶ 30, 158 P.3d 131, 139(Wyo. 2007). The Board's Rules provide:

> [T]he Petitioner shall have the burden of going forward and the ultimate burden of persuasion, which burden shall be met by a preponderance of the evidence. If Petitioner provides sufficient evidence to suggest the Department

> determination is incorrect, the burden shifts to the Department to defend its action....

Rules, Wyoming State Board of Equalization, Chapter 2 § 20.

41. The Wyoming Supreme Court has summarized the procedure the Board must follow when an oil and gas taxpayer challenges the fair market value determined by the Department:

> The Department's valuations for state-assessed property are presumed valid, accurate, and correct. *Chicago, Burlington & Quincy R.R. Co. v. Bruch*, 400 P.2d 494, 498-99 (Wyo. 1965). This presumption can only be overcome by credible evidence to the contrary. *Id.* In the absence of evidence to the contrary, we presume that the officials charged with establishing value exercised honest judgment in accordance with the applicable rules, regulations, and other directives that have passed public scrutiny, either through legislative enactment or agency rule-making, or both. *Id.*
>
> The petitioner has the initial burden to present sufficient credible evidence to overcome the presumption, and a mere difference of opinion as to value is not sufficient. *Teton Valley Ranch v. State Board of Equalization*, 735 P.2d 107, 113 (Wyo. 1987); *Chicago, Burlington & Quincy R.R. Co.*, 400 P.2d 499. If the petitioner successfully overcomes the presumption, then the Board is required to equally weigh the evidence of all parties and measure it against the appropriate burden of proof. *Basin* [*Electric Power Coop. Inc. v. Dep't of Revenue*, 970 P.2d 841,] at 851 [(Wyo. 1998)]. Once the presumption is successfully overcome, the burden of going forward shifts to the Department to defend its valuation. *Id.* The petitioner however, by challenging the valuation, bears the ultimate burden of persuasion to prove by a preponderance of the evidence that the valuation was not derived in accordance with the required constitutional and statutory requirements for valuing state-assessed property. *Id.*

Amoco Production Company v. Department of Revenue et al., 2004 WY 89, ¶¶ 7-8, 94 P.3d 430, 435-436 (Wyo. 2004). *Accord Airtouch Communications, Inc. v. Department of Revenue, State of Wyoming*, 2003 WY 114, ¶ 12, 76 P.3d 342, 348 (Wyo. 2003); *Colorado Interstate Gas Company v. Wyoming Department of Revenue*, 2001 WY 34, ¶¶ 9-11, 20 P.3d 528, 531 (Wyo. 2001). The presumption the Department correctly performed the assessment rests in part on the complex nature of taxation. *Airtouch Communications, Inc., supra,* 2003 WY 114, ¶ 13, 76 P.3d at 348.

42. Wyoming's valuation statute for oil and natural gas provides in part:

> Imposition.

* * *

(b) Basis of tax. The following shall apply:

(i) Crude oil, lease condensate and natural gas shall be valued for taxation as provided in this subsection;

(ii) The fair market value for crude oil, lease condensate and natural gas shall be determined after the production process is completed. Notwithstanding paragraph (x) of this subsection, expenses incurred by the producer prior to the point of valuation are not deductible in determining the fair market value of the mineral;

* * *

(iv) The production process for natural gas is completed after extracting from the well, gathering, separating, injecting and any other activity which occurs before the outlet of the initial dehydrator. When no dehydration is performed, other than within a processing facility, the production process is completed at the inlet to the initial transportation related compressor, custody transfer meter or processing facility, whichever occurs first;

Wyo. Stat. Ann. § 39-14-203 (emphasis added).

43. A taxpayer "aggrieved by any final administrative decision of the Department may appeal to the state board of equalization." *Wyo. Stat. Ann. § 39-14-209(b)(i).* Oil and gas taxpayers are entitled to this remedy:

> Following [the Department's] determination of the fair market value of... natural gas production the department shall notify the taxpayer by mail of the assessed value. The person assessed may file written objections to the assessment with the state board of equalization within thirty (30) days of the date of postmark and appear before the board at a time specified by the board...

Wyo. Stat. Ann. § 39-14-209(b)(iv).

44. This appeal falls within a statute which does not establish any specific standard to guide the Board's review. *Wyo. Stat. Ann. § 39-14-209(b).* In the absence of specific standards set by statute or rule, we judge the Department's valuation by the general standard that the valuation must be in accordance with constitutional and statutory requirements for valuing state-assessed property. *Amoco Production Company v. Department of Revenue*, 2004 WY 89, ¶¶ 7-8, 94 P.3d 430, 435-436; *Wyo. Stat. Ann. § 39-14-209(b)(vi).* In doing so, we must take into account "the rules, regulations, orders and instructions prescribed by the department." *Wyo. Stat. Ann. § 39-11-102.1(c)(iv).* We also consider the case in the context of the Board Rule governing the burdens of going forward and of persuasion. *Rules,*

Wyoming State Board of Equalization, Chapter 2 § 20. *Chevron U.S.A., Inc., et al.,* Docket No. 2002-54 (January 25, 2005), 2005 WL 221595 (Wyo. St. Bd. Eq.).

45. "As we have often stated, our rules of statutory construction focus on discerning the legislature's intent. In doing so, we begin by making an 'inquiry respecting the ordinary and obvious meaning of the words employed according to their arrangement and connection.' *Parker Land and Cattle Company v. Wyoming Game and Fish Commission*, 845 P.2d 1040, 1042 (Wyo.1993) (quoting *Rasmussen v. Baker*, 7 Wyo. 117, 133, 50 P. 819, 823 (1897)). We construe the statute as a whole, giving effect to every word, clause, and sentence, and we construe together all parts of the statute *in pari materia*. *State Department of Revenue and Taxation v. Pacificorp*, 872 P.2d 1163, 1166 (Wyo.1994)." *Chevron U.S.A., Inc. v. Department of Revenue*, 2007 WY 79, ¶ 15, 158 P.3d 131, 136 (Wyo. 2007).

46. The Wyoming Supreme Court has previously summarized a number of useful precepts concerning statutory interpretation:

> Statutes must be construed so that no portion is rendered meaningless. (citation omitted) Interpretation should not produce an absurd result. (citation omitted) We are guided by the full text of the statute, paying attention to its internal structure and the functional relation between the parts and the whole. (citations omitted) Each word of a statute is to be afforded meaning, with none to be rendered superfluous. (citation omitted) Further, the meaning afforded to a word should be that word's standard popular meaning unless another meaning is clearly intended. (citation omitted) If the meaning of a word is unclear, it should be afforded the meaning that best accomplishes the statute's purpose. (citation omitted) We presume that the legislature acts intentionally when it uses particular language in one statute, but not in another. (citations omitted) If two sections of legislation appear to conflict, they should be given a reading that gives them both effect. (citation omitted)

Rodriguez v. Casey, 2002 WY 111, ¶ 10, 50 P.3d 323, 326-327 (Wyo. 2002); *quoted in Hede v. Gilstrap*, 2005 WY 24, ¶ 6, 107 P.3d 158, 163 (Wyo. 2005).

47. "The omission of words from a statute must be considered intentional on the part of the legislature. (citation omitted) Words may not be supplied in a statute where the statute is intelligible without the addition of the alleged omission. (citation omitted) Words may not be inserted in a statutory provision under the guise of interpretation. (citations omitted) The Supreme Court will not read into laws what is not there. (citations omitted)" *Matter of Adoption of Voss*, 550 P.2d 481, 485 (Wyo. 1976).

48. "Determining the point of valuation is of particular significance because 'expenses incurred by the producer prior to the point of valuation are not deductible in determining the fair market value of the [CBM].' Wyo. Stat. Ann. § 39-14-203(b)(ii). Thus, because certain

expenses 'downstream' of the point of valuation ***are*** deductible, it is to the producer's benefit to have the point of valuation determined 'upstream' as far as possible. That is the instant case in a nutshell. Williams seeks an 'upstream' point of valuation instead of the 'downstream' point of valuation determined by the Department and confirmed by the Board." *Williams Production RMT Company v. Department of Revenue*, 2005 WY 28, ¶ 10, 107 P.3d 179, 183-184 (Wyo. 2005)(Emphasis in original).

49. The "value of the gross product," for oil and gas, means the fair market value as prescribed by Wyo. Stat. Ann. § 39-14-203(b), less any deductions and exemptions allowed by Wyoming law or rules. *Wyo. Stat. Ann. § 39-14-201(a)(xxix).*

50. The uniformity of assessment requirement mandates only the method of appraisal be consistently applied, recognizing there will be differences in valuation resulting from application of the same appraisal method:

> The Board contends that reliance upon hypothetical costs is required because of the mandates for uniform assessment (Art. 15, § 11) and equal uniform taxation (Art. 1, § 28) found in the Constitution of the State of Wyoming. These provisions do not require, however, that all minerals of the like kind be assigned the same value. Uniformity of assessment requires only that the method of appraisal be consistently applied. *Hillard v. Big Horn Coal Company,* supra. It is an intrinsic fact in mineral valuation that differences in values result from the application of an appraisal method.

Appeal of Monolith Portland Midwest Co., Inc., 574 P.2d 757, 761 (Wyo. 1978).

CONCLUSIONS OF LAW: APPLICATION OF PRINCIPLES OF LAW

51. Exxon Mobil brought these consolidated appeals pursuant to Rules, Wyoming State Board of Equalization, Chapter 2 § 5. [*Notices of Appeal*]. We presume the appeals were also filed pursuant to Wyo. Stat. Ann. § 39-14-209(b)(i) under which "[a]ny person aggrieved by any final administrative decision of the department may appeal to the state board of equalization." We thus judge the Department's valuation decisions by the general standard that the valuation must be in accordance with constitutional and statutory requirements for valuing state-assessed property. *Amoco Production Company v. Department of Revenue et al.*, 2004 WY 89, ¶¶ 7-8, 94 P.3d 430, 435-436 (Wyo. 2004); *Wyo. Stat. Ann. § 39-14-209(b)(vi).* A taxpayer's burdens of proof and persuasion are further articulated in the Board's Rules. The burden of going forward and the burden of ultimate persuasion rests with Exxon Mobil. *Rules, Wyoming State Board of Equalization, Chapter 2 § 20. Conclusions*, ¶¶ 40, 41.

Remand Proceedings

52. These consolidated appeals are before the Board for a second time pursuant to a remand by the Wyoming Supreme Court in an appeal initiated by Exxon Mobil. The Supreme Court opinion stated, in pertinent part:

> Black Canyon is instead a "processing facility" as that term is used in the second sentence of the statute, and the proper point of valuation is "at the inlet to the initial transportation related compressor, custody transfer meter or processing facility, whichever occurs first."
>
> Exxon Mobil urges us to choose among these three options. It asserts that there is a custody transfer meter located at each wellhead, so the proper point of valuation is at the inlet to these custody transfer meters. **The record before us, however, does not establish with sufficient certainty whether those meters are custody transfer meters or volume meters. If they are volume meters, they are not the proper points of valuation**. *See Amoco Prod. Co.,* ¶ 31, 94 P.3d at 443. **We are unable to resolve this issue based on the record before us, and will remand this case to the Board to determine the correct point of valuation in accordance with this opinion**.
>
> * * *
>
> ***CONCLUSION***
>
> On both issues in this appeal, we reverse the Board's decisions, and remand to the district court for further proceedings consistent with this opinion.

Exxon Mobil Corporation v. The State of Wyoming, Department of Revenue, 2009 WY 139, ¶¶ 52, 69, 291 P.3d 128, 143-144, 147 (Wyo. 2009). [Emphasis added].

53. Exxon Mobil, in its Updated Summary of Contentions on Remand, asserts the evidence necessary for the Board to determine the correct point of valuation of the natural gas at issue in accord with the Wyoming Supreme Court decision has already been presented to the Board during the June, 2007, hearing, and was not challenged on appeal. Exxon Mobil thus argues the Board should not admit any additional evidence on remand. The Department, as would be expected, has expressed an opposing view through its response to Exxon Mobil's Updated Summary to which Exxon Mobil filed a Reply to which the Department filed a Response. *Petitioner Exxon Mobil Corporation's Updated Summary of Contentions on Remand*; *Wyoming Department of Revenue's Brief in Response to Exxon Mobil's Contention/Motion that the Scope of Board's Proceedings on Remand Be Limited; Petitioner Exxon Mobil Corporation's Reply in Support of its Updated Summary of Contentions on Remand*; *Wyoming Department of Revenue's Brief in Response to Exxon Mobil's Reply in Support of Its Updated Summary of Contentions on Remand.*

54. Exxon Mobil, in effect, raises three contentions as to why the Board should not take additional evidence. First, any additional evidence can only be admitted pursuant to Wyoming Rules of Appellate Procedure (WRAP) 12.08. Alternately, any additional evidence can only be admitted pursuant to Rules, Wyoming State Board of Equalization, Chapter 2 § 33. And finally, and perhaps most significantly, when the Wyoming Supreme Court finds further evidence should be taken on remand, it specifically so instructs an agency in its remand instructions. Exxon Mobil asserts the Supreme Court did not state such an instruction in its remand in this matter. *Petitioner Exxon Mobil Corporation's Reply in Support of its Updated Summary of Contentions on Remand*, pp. 2-7.

55. WRAP 12.08 states:

> If, before the date set for hearing, **application is made to the reviewing court for leave to present additional evidence**, and it is shown to the satisfaction of the court the additional evidence is material, and good cause for failure to present it in the proceeding before the agency existed, the reviewing court, in contested cases, shall order the additional evidence to be taken before the agency upon those conditions determined by the reviewing court. The agency may adhere to, or modify, its findings and decision after receiving such additional evidence, and shall supplement the record to reflect the proceedings had and the decision made. Supplemental evidence may be taken by the reviewing court in cases involving fraud, or involving misconduct of some person engaged in the administration of the law affecting the decision. In all cases other than contested cases, additional material evidence may be presented to the reviewing court.

[Emphasis added].

56. This Rule is, for at least two reasons, not applicable to these consolidate appeals. First, these appeals are no longer within the jurisdiction of any "reviewing court," having been remanded to the Board by the Supreme Court. Second, even assuming arguendo WRAP 12.08 might somehow be applicable to an appeal remanded to an agency, there has been no "application made" for the presentation of additional evidence. The Department, in it pleadings, has merely objected to the assertion by Exxon Mobil that additional evidence should not be allowed. There is thus no specific additional evidence request for the Board to consider.

57. The same basic reasoning applies to the assertion Chapter 2 § 33 of the State Board Rules prohibits the Board from taking additional evidence. The Board Rule states:

> Section 33. Post-hearing Supplementation.
>
> After a hearing and before a Board decision has been issued, any party

> may file a motion for post-hearing supplementation of the record to submit additional, newly discovered evidence on material issues. If such motion is granted, all other parties are entitled to at least one response to the new evidence as may be ordered by the Board, with the record to be closed on a date set by the Board order allowing supplementation of the record. All evidence submitted contrary to Board order shall be returned.

Rules, Wyoming State Board of Equalization, Chapter 2 § 33.

58. This Rule clearly anticipates a post-hearing supplementation before the Board renders a decision on an appeal, and then only if a motion for such supplementation is offered. These consolidated appeals are well beyond the point in the contested case process anticipated by Chapter 2 § 33 of the Board Rules. The Board has rendered a decision which has been subject to judicial review. There has as well, even if the Rule was applicable, been no motion filed by either party for post-hearing supplementation.

59. The real crux of the issue raised by Exxon Mobil with regard to admission of additional evidence requires a careful review of the specific language of the Wyoming Supreme Court opinion, as well as the applicable legal principles touching on the judicial remand to an administrative agency of a decision by that agency after judicial review.

60. Exxon Mobil asserts when the Wyoming Supreme Court determines further evidence should be taken on remand of an appeal to an agency, the Court so instructs the agency on remand. Exxon Mobil argues that because the Supreme Court did not instruct the Board to take additional evidence, it is not authorized to do so. In support of this argument, Exxon Mobil directs the Board to decisions by the Wyoming Supreme Court, as well as the Supreme Court of South Carolina. *Scott v. McTiernan*, 974 P.2d 966 (Wyo. 1999); *Decker v. Wyoming Medical Commission*, 2008 WY 100, 191 P.3d 105 (Wyo. 2008); *Parker v. South Carolina Public Service Commission*, 342 S.E. 2d 403 (S.C. 1986); *Piedmont Natural Gas Company, Inc. v. Hamm*, 389 S. E. 2d 655 (S.C. 1990); *See Petitioner Exxon Mobil Corporation's Reply in Support of its Updated Summary of Contentions on Remand*, pp. 5-7.

61. The Board decision in these consolidated appeals is, however, distinctly distinguishable from the agency decision in each case cited by Exxon Mobil. The Board, in its decision, did not address, and thus did not make a decision on, the sole issue on remand, whether the meters at each well head are custody transfer meters, or simply volume meters. In each of the cases cited by Exxon Mobil, the agency involved had made a decision, which had been challenged on the issue which was the subject of remand.

62. In *Decker v. Wyoming Medical Commission*, 2005 WY 160, 124 P.3d 686 (Wyo. 2005), the predecessor to the *Decker* decision cited by Exxon Mobil, the Wyoming Medical Commission Hearing Panel [Medical Commission] denied Decker's claim for workers' compensation benefits. The Wyoming Supreme Court concluded the Medical Commission

order denying benefits was deficient because it failed "to make findings that adequately explain the rationale for the Commission's decision,...." *Decker v. Wyoming Medical Commission*, 2005 WY 160, ¶ 36, 124 P.3d at 697. The Supreme Court remanded the matter to the Medical Commission "for supplemental findings of fact." *Decker v. Wyoming Medical Commission*, 2005 WY 160, ¶ 36, 124 P.3d at 697-698. The Medical Commission, on remand, refused to allow Decker to present additional evidence, a refusal which the Supreme Court affirmed.

> On remand after *Decker I,* our mandate did not require the case be reopened to allow additional evidence. It only required the Medical Commission enter a new order more thoroughly explaining the reason for its denial of benefits based on the evidence adduced at the hearing so we could rationally review its decision.

Decker v. Wyoming Medical Commission, 2008 WY 100, ¶ 21, 191 P.3d 105, 119 (Wyo. 2008). The Supreme Court ultimately determined the denial of benefits by the Medical Commission was not supported by substantial evidence. *Supra*, 2008 WY 100, ¶ 36, 191 P.3d at 122.

63. In *Scott v. McTiernan* 974 P. 2d 966 (Wyo. 1999), the Wyoming Supreme Court concluded the State Board of Control had failed to make findings of fact which adequately explained the rationale for its decision. The Court remanded the matter to the Board for additional findings of fact. *Scott v. McTiernan*, 974 P.2d at 969, 974.

64. In *Parker v. South Carolina Public Service Commission*, 314 S.E.2d 597 (S.C. 1984), the predecessor to the *Parker* decision cited by Exxon Mobil, a South Carolina Public Service Commission [PSC] order was the focus of a challenge by the State Consumer Advocate. The South Carolina Supreme Court, in this first appeal, concluded the PSC record was "to say the least, inadequate to form the basis of an assessment of factors necessary for a determination of a depreciation rate." 314 S.E.2d at p. 599. The South Carolina Supreme Court remanded the matter to the PSC for further consideration. 314 S.E.2d at p. 599. When the matter came back to the South Carolina Supreme Court after a PSC hearing during which additional evidence was presented, the Court stated its use of the term "consideration" did not authorize the PSC to hold a new hearing for the admission of additional evidence. *Parker v. South Carolina Public Service Commission*, 342 S.E.2d 403, 405 (S.C. 1986).

65. Finally, in *Piedmont Natural Gas Company, Inc. v. Hamm,* a decision by the South Carolina PSC was again the subject of protracted litigation. The South Carolina Supreme Court ultimately held its "use of the words 'substantiate the record' means that we intended for the Commission merely to review the evidence which was already contained in the record, not hold a new hearing for the admission of additional evidence. To hold otherwise would violate the precedent set forth in *Parker* II." *Piedmont Natural Gas Company, Inc. v. Hamm*, 389 S.E.2d 655, 657 (S.C. 1990).

66. The critical point in each of the referenced litigations is the fact the administrative agency had made a decision on the issue being challenged on appeal. In each case, the issues presented to the respective courts concerned the evidentiary support for the decisions made by the administrative agencies. In contrast, the original opinion of the Board in this matter did not address the question of the character of the meters at each wellhead. This significant difference undermines the authoritative effect of the decisions cited by Exxon Mobil.

67. The Wyoming Supreme Court did not conclude the decision by the Board was not properly supported by its findings of fact. The Court's order clearly states the record "does not establish with sufficient certainty whether those meters are custody transfer meters or volume meters." *Exxon Mobil Corporation v. The State of Wyoming, Department of Revenue*, 2009 WY 139, ¶ 52, 219 P.3d 128, 143 (Wyo. 2009). The Court remanded these consolidated appeals to the Board "to determine the correct point of valuation in accordance with this opinion." *Id*, ¶ 52, 219 P.3d at 144. This remand is not a direction to the Board to justify a conclusion it has reached. It, in effect, revests jurisdiction in the Board with a general direction to the Board to engage in its statutory appeal function, and render a decision on the point of valuation in light of the Court's determination Black Canyon is a processing facility. *73A C.J.S. Public Administrative Law and Procedure § 466.* Such a remand by the Court to the Board is completely appropriate, and allows the Board to entertain further proceedings, including supplementation of the administrative record, on the point of valuation issue left undecided by the Supreme Court. *73A C.J.S. Public Administrative Law and Procedure §§ 461, 465, 466.*

68. Supplementation of the administrative record seems particularly appropriate as well in light of the Wyoming Supreme Court statement it was "unable to resolve this issue based on the record before" it. *Exxon Mobil Corporation v. The State of Wyoming, Department of Revenue*, 2009 WY 139, ¶ 52, 219 P.3d 128, 143 (Wyo. 2009)

Point of Valuation

69. The valuation of natural gas for purposes of ad valorem taxation is determined by the Department pursuant to Wyo. Stat. Ann. § 39-14-203. *Conclusions*, ¶ 42. The portion of that statute relevant to this remanded appeal states:

> The production process for natural gas is completed after extracting from the well, gathering, separating, injecting and any other activity which occurs before the outlet of the initial dehydrator. When no dehydration is performed, other than within a processing facility, the production process is completed at the inlet to the initial transportation related compressor, custody transfer meter or processing facility, whichever occurs first;

Wyo. Stat. Ann. § 39-14-203(b)(iv).

70. The Wyoming Supreme Court has determined the Black Canyon facility, which was initially the subject of this appeal, is a processing facility in which initial dehydration occurs. *Exxon Mobil Corporation v. The State of Wyoming, Department of Revenue*, 2009 WY 139, ¶¶ 44, 45, 46, 47, 219 P.3d at 142. The question now before the Board, pursuant to the Court's remand, is whether the meters located at each well are custody transfer meters, and thus the statutory point of valuation. *Id. at* 2009 WY 139, ¶ 52, 219 P.3d at143; *Conclusions*, ¶ 42

71. The Wyoming Supreme Court, in a 2004 decision regarding the valuation of processed natural gas in which custody transfer meters were an issue, stated:

> "Custody" is defined as "immediate charge and control ... exercised by a person or an authority; *also:* safekeeping." Merriam-Webster's Collegiate Dictionary 285 (10th ed.2000). "Transfer" is defined as "to convey from one person, place, or situation to another: transport" or "to cause to pass from one to another: transmit" or "to make over the possession or control of: convey." *Id.* at 1249. "Meter" is defined as "one that measures; *esp:* an official measurer of commodities." *Id.* at 729. Construing the words in the context of valuing gas, **a custody transfer meter is an official measurer of gas as it passes from one entity to another for the other's immediate charge or control.**

Amoco Production Company v. Department of Revenue, 2004 WY 89, ¶ 35, 94 P.3d 430, 444 (Wyo. 2004). [Emphasis added].

72. Mr. Grenvik agreed a custody transfer meter can exist even if there is no sale of product at the meter. *Facts*, ¶ 29.

73. The narrow question for resolution in this remanded appeal is thus whether the meters at each well in the LaBarge Field are custody transfer meters as defined by the Wyoming Supreme Court. More specifically, are those meters "an official measurer of gas as it passes from one entity to another for the other's immediate charge or control." *Id.* Resolution of that question requires an inquiry into the history of the LaBarge Field, the ownership of the leaseholds in that field, as well as the relevant unit, operating, and processing agreements.

74. The LaBarge Field consists of three federal units. The Fogarty Creek Unit was created in 1975. (Exhibit 176). The Lake Ridge and Graphite Units were created in 1980. (Exhibits 178, 180). Exxon Mobil, for purposes of 2005 production, was the operator of all three Units. Mr. Grenvik acknowledged that Exxon Mobil having sole physical control, as the operator of a unit with multiple working interest owners, of all gas produced in the unit was not unusual. *Facts*, ¶¶ 1, 4, 28.

75. Each of the federal units is subject to an operating agreement which defines how the unit operator will develop the unit. The operating agreements also control well operations

once there is production of the unitized substances. *Facts*, ¶ 5; Exhibits 175, 177, 179.

76. Exxon Mobil, as concerns the 2005 production, was the sole holder of the federal leases, and therefore the only working interest owner, in the Lake Ridge and Graphite Units. There were, however, other leaseholders in the Fogarty Creek Unit, including Howell and Yates. *Facts*, ¶¶ 2, 12.

77. The Fogarty Creek and Lake Ridge Unit Operating Agreements each require a working interest owner to "currently as produced take in kind or separately dispose of its share of Production." Exhibit 175, ¶ 6.3, Bates 15587; Exhibit 177, ¶ 6.3, Bates 15637. The Graphite Unit Operating Agreement is slightly different in that it states each working interest owner "shall currently as produced **have the right to** take in kind or separately dispose of its share of Production." Exhibit 179, ¶ 6.3, Bates 15688. [Emphasis added]. Mr. Grenvik acknowledged the Fogarty Creek Unit Operating Agreement imposed a legal obligation on Howell and Yates to separately dispose of their share of gas production from the Fogarty Creek Unit. *Facts*, ¶ 30.

78. Exxon Mobil is the sole working interest owner in both the Graphite and Lake Ridge Units. There are, therefore, no other working interest owners affected by those two unit operating agreements. The disagreement between the Department and Exxon Mobil with regard to whether the meters at each well are custody transfer meters is thus focused most particularly on the Fogarty Creek Unit because it includes working interest owners other than Exxon Mobil. *Facts*, ¶ 2.

79. Two of the original leaseholders, working interest owners, in the Fogarty Creek Unit were Howell Petroleum and Yates Petroleum, both of whom declined to participate with Exxon Mobil in construction of the Shute Creek plant to process the raw gas from the LaBarge Field. Howell and Yates also could not reach an agreement with Exxon Mobil on the cost to process their respective raw gas shares through the Shute Creek plant. Both companies filed an anti-trust suit against Exxon Mobil. The suit was ultimately settled through negotiation of a complex agreement which resulted in two identical processing agreements with Exxon Mobil. The two agreements are collectively known as the Howell and Yates Agreements, and were in effect for 2005 production. *Facts*, ¶¶ 2, 6, 8, 9, 10, 11, 12.

80. The Howell and Yates Agreements provide "[t]he gas to be handled hereunder shall be delivered to Owner at the Facilities immediately downstream of the wing valve on the wellhead and will be measured at the Metering Station(s) into the Facilities . . ." Confidential Exhibit 804, Art. 7.1, Bates 188; Confidential Exhibit 805, Art. 7.1, Bates 70. The Agreements both define "Owner" as Exxon Mobil, and the "Facilities" as the gas gathering and processing system. Confidential Exhibit 804, Art. 1, Bates 169, 171-172, Art. 3.1, Bates 175-176; Confidential Exhibit 805, Art. 1, Bates 51, 53-54; Art. 3.1, Bates 57-58. *Facts*, ¶¶ 13, 14, 16, 17, 23.

81. It is the legal effect of the language of Art. 7.1 of the Howell and Yates Agreements which denotes the crux of the custody transfer meter issue on remand. Exxon Mobil asserts compliance with Art. 7.1 of the Agreements by a working interest owner and leaseholder fulfills the "take in kind or separately dispose of" legal requirement set out in the Fogarty Creek Unit Operating Agreement, and in so doing, transfers to Exxon Mobil "charge or control," as defined by the Wyoming Supreme Court in *Amoco Production Company v. Department of Revenue*, of the Howell and Yates production. The meters which measure this transfer are therefore custody transfer meters. The Department, to the contrary, asserts there is no "custody transfer" at the wing valves in as much as Exxon Mobil has physical possession of all gas production in the Fogarty Creek Unit, including the production owned by Howell and Yates from each Fogarty Creek well bore through the tailgate of the Shute Creek processing plant. It is our conclusion, for the reasons stated hereafter, the meters in question are in fact custody transfer meters and thus the point of valuation for gas production from the Fogarty Creek Unit which is not owned by Exxon Mobil. *Facts*, ¶¶ 22, 24, 26, 27, 36.

82. The Wyoming Supreme Court has clearly stated a custody transfer meter measures gas "as it passes from one entity to another for the other's immediate charge[2] or control." *Conclusions*, ¶ 71 [*Footnote added*]. Such a transfer is precisely what occurs within the parameters of the interplay between the Fogarty Creek Operating Agreement and the Howell and Yates Agreements. Howell and Yates have the legal charge, the legal responsibility pursuant to their leaseholder interests of a certain percentage of the raw gas in the Fogarty Creek Unit of the LaBarge Field. Exxon Mobil may well have physical control and possession of the Howell and Yates share of the raw gas. Such possession or control is, however, premised solely on the fact Exxon Mobil is the unit operator pursuant to the Fogarty Creek Unit Operating Agreement. *Exhibit 175*. Nothing in that operating agreement transfers to Exxon Mobil anything more than the right to physically control production of the unitized substances. Such a conclusion is reinforced by the fact the operating agreement requires the working interest owners to "take in kind or separately dispose of" their share of raw gas as produced, and when they do so, any other rights to sell or dispose of the raw gas production attributable to those working interest owners which Exxon Mobil might have had as operator under the operating agreement are negated. *Facts*, ¶¶ 22, 24. Exhibit 175 ¶ 37.1, Bates15597.

83. Mr. Grenvik agreed the Howell and Yates processing agreements were the contractual mechanism by which Howell and Yates, as working interest owners in the Fogarty Creek Unit, separately disposed of their share of the gas production from the Unit. He also agreed those processing agreements legally authorized Exxon Mobil to receive the ownership share of both Howell and Yates gas at the wing valves, with the volume to be measured at the metering stations defined by the processing agreements and located approximately 50 feet

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[2] Make responsible for; responsibility or duty. *Webster's New World College Dictionary*, 246, (4th Edition, 2002).

away from the wing valve. *Facts*, ¶¶ 31, 32, 35.

84. Howell and Yates, by entering into the processing agreements with Exxon Mobil, have agreed to a transfer, at the wing valve of each Fogarty Creek well as measured at the meters in question, their share of the Labarge Field raw gas to Exxon Mobil for its immediate charge - its immediate responsibility - for processing at Shute Creek. It is not necessary for Howell and Yates to have had physical possession of their share of the raw gas to still have the charge or responsibility as leaseholders for that gas until it passes through the wing valves on each Fogarty Creek wellhead. Even if one interprets the term control to mean physical possession, such an interpretation does not negate a conclusion one party may have physical possession while a different party has the charge or responsibility for what is in the other's possession. *Aguirre-Alvarez v. Regents of the University of California*, 67 Cal. App. 4th 1058, 79 Cal. Reptr. 2d 580 (California, 1998)(Coroner has "charge or control" of decedent's body even though hospital may have physical possession). The Wyoming Supreme Court arguably recognized this distinct when it stated a custody transfer meter measured the transfer of "charge or control." *Conclusions*, ¶ 17.

85. Exxon Mobil may well have control - possession - of the Howell and Yates share of raw gas through the entire production and processing functions, however, it only acquires responsibility - charge - for that gas pursuant to the Howell and Yates Processing Agreements after the gas passes through the wing valves.

86. The meters which measure gas production from each of the Fogarty Creek Unit wells are custody transfer meters, as defined by the Wyoming Supreme Court, for all produced gas in that Unit which is not owned by Exxon Mobil.

87. This same analysis mandates a conclusion the meters in question in the Fogarty Creek Unit, as well as those in the Lake Ridge and Graphite Units, are not, under the definition set out by the Wyoming Supreme Court in *Amoco*, custody transfer meters with regard to raw gas production owned by Exxon Mobil. *Conclusions*, ¶ 71.

88. Exxon Mobil is the sole leaseholder - working interest owner - in both the Lake Ridge and Graphite Units. It is therefore the only "entity" entitled to the raw gas produced in those Units, thus such gas can not, in any legal senses, pass "from one entity to another for the other's immediate charge or control." *Facts*, ¶ 2, 12; *Conclusions*, ¶ 71.

89. The same conclusion applies for the raw gas produced from the Fogarty Creek Unit to which Exxon Mobil is entitled. That gas as well does not pass, in fact, cannot pass, from one entity to another at the wing valve as Exxon Mobil is the only entity entitled thereto. *Facts*, ¶ 2, 12; *Conclusions*, ¶ 71.

90. The fact a meter may be necessary on each well in the LaBarge Field for revenue accounting purposes, or as required by the MMS, does not equate to a conclusion such meters

are custody transfer meters as defined by the Wyoming Supreme Court. *Facts*, ¶¶ 3, 16, 17, 18, 19, 20, 21; *Conclusions*, ¶ 71.

91. Exxon Mobil also argues, in effect, once a conclusion has been reached the meters in question are custody transfer meters for the raw gas production of Howell and Yates from the Fogarty Creek Unit wells, uniformity of taxation requires those same meters in the Fogarty Creek Unit as well as the similar meters in the Lake Ridge and Graphite Units must also be custody transfer meters, i.e., the point of valuation, for all raw gas produced from the LaBarge Field, even the gas owned by Exxon Mobil. *Exxon Mobil Brief on Remand*, pp. 20-22.

92. We do not agree. The question of uniformity of is not one of uniformity of taxation, but rather one of uniformity of valuation.

93. The Wyoming Constitution, as the Wyoming Supreme Court has noted in a number of opinions, requires property be uniformly valued at its full value which requirement is fulfilled by a rational method of appraisal being equally applied to all property.

> We turn now to the methodology employed by the Department of Revenue in its assessments of the Telephone Companies. **In reviewing property tax assessments, "this court has consistently interpreted Wyo. Const. art. 15, § 11 [FN6] to require 'only a rational method [of appraisal], equally applied to all property, which results in essential fairness.' "** *Holly Sugar Corporation v. State Board of Equalization,* 839 P.2d 959, 964 (Wyo.1992) (quoting *Teton Valley Ranch v. State Board of Equalization,* 735 P.2d 107, 115 (Wyo.1987)).
>
> FN6. Article 15, Section 11 of the Wyoming Constitution provides:
>
> (a) All property, except as in this constitution otherwise provided, shall be uniformly valued at its full value as defined by the legislature, in three (3) classes as follows:
>
> (i) Gross production of minerals and mine products in lieu of taxes on the land where produced;
>
> (ii) Property used for industrial purposes as defined by the legislature; and
>
> (iii) All other property, real and personal.
>
> (b) The legislature shall prescribe the percentage of value which shall be assessed within each designated class. All taxable property shall

> be valued at its full value as defined by the legislature except agricultural and grazing lands which shall be valued according to the capability of the land to produce agricultural products under normal conditions. The percentage of value prescribed for industrial property shall not be more than forty percent (40%) higher nor more than four (4) percentage points more than the percentage prescribed for property other than minerals.
>
> (c) The legislature shall not create new classes or subclasses or authorize any property to be assessed at a rate other than the rates set for authorized classes.
>
> (d) All taxation shall be equal and uniform within each class of property. The legislature shall prescribe such regulations as shall secure a just valuation for taxation of all property, real and personal.

RT Communications, Inc., TCT v. State Board of Equalization, 11 P.3d 915, 923 (Wyo. 2000). [Emphasis added].

94. All 2005 gas production from the LaBarge Field was uniformly valued using the proportionate profits methodology. *Exxon Mobil*, 2009 WY 139, ¶¶ 9, 54, 219 P.3d at 133, 144. And it is of no consequence the gas owned by Howell and Yates may have a different ad valorem fair market value than the value of gas production from the same field owned by Exxon Mobil.

> These provisions do not require, however, that all minerals of the like kind be assigned the same value. Uniformity of assessment requires only that the method of appraisal be consistently applied. Hillard v. Big Horn Coal Company, supra. It is an intrinsic fact in mineral valuation that differences in values result from the application of an appraisal method.

Appeal of Monolith Portland Midwest Company, Inc. v. State Board of Equalization, 574 P.2d 757, 761 (Wyo. 1978) Conclusions, ¶ 50. *See also Chevron U.S.A. Inc. v. Department of Revenue*, 2007 WY 79, ¶¶ 32, 33, 34, 158 P.3d 131, 140 (Wyo. 2007).

95. There is, therefore, no basis for a constitutional uniformity argument.

ORDER

IT IS THEREFORE HEREBY ORDERED the meters which measure raw gas flow at each well in the LaBarge Field are custody transfer meters only as to the raw gas production attributable to Howell and Yates, or their successors in interest, in the Fogarty Creek Unit.

Pursuant to Wyo. Stat. Ann. § 16-3-114 and Rule 12, Wyoming Rules of Appellate Procedure, any person aggrieved or adversely affected in fact by this decision may seek judicial review in the appropriate district court by filing a petition for review within 30 days of the date of this decision.

DATED this 21st day of December, 2010.

STATE BOARD OF EQUALIZATION

Thomas D. Roberts, Chairman

Steven D. Olmstead, Vice-Chairman

Deborah J. Smith, Board Member

ATTEST:

Jana R. Fitzgerald, Executive Assistant

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of December, 2010, I served the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER ON REMAND** by placing a true and correct copy thereof in the United States Mail, postage prepaid, and properly addressed to the following:

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