

BEFORE THE STATE BOARD OF EQUALIZATION

FOR THE STATE OF WYOMING

IN THE MATTER OF THE APPEAL OF)
WYODAK RESOURCES DEVELOPMENT)
CORPORATION FROM A DECISION BY)
THE DEPARTMENT OF REVENUE) Docket No. 2013-12
(Production Years 2009-2011))

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

APPEARANCES

Lawrence J. Wolfe, P.C., and Brynn A. Hvidston¹ of Holland & Hart, LLP, appeared on behalf of Wyodak Resources Development Corporation (Wyodak).

Karl Anderson, Senior Assistant Attorney General, of the Wyoming Attorney General's Office, appeared on behalf of the Wyoming Department of Revenue (Department).

STATEMENT OF THE CASE

Wyodak timely filed amended annual gross products returns (tax returns or returns) for production years 2009, 2010, and 2011, requesting the Department accept revised locations for the mouth of the mine for each production year. Wyodak also amended various environmental and government-imposed costs from direct mining costs to indirect costs, and its conveyor repair and labor costs to reflect its revised mine mouth location. (Wyodak Notice of Appeal).

The Department rejected the amended returns in its final decision letter, stating “[t]he configuration of Wyodak’s mining operations does not prevent the application of W.S. 39-14-103(b) in determining the fair market value of Wyodak’s coal production.” (Ex. 706 at 0054). The Department also rejected the amended returns seeking to treat environmental and government-imposed costs as indirect costs, maintaining its treatment

¹ Brynn A. Hvidston withdrew by Notice of Withdrawal of Counsel dated September 10, 2014.

of these expenses as “direct mining expenses unless a reasonable allocation to other functions is warranted.” *Id.* The Department did not specifically reference conveyor repair and labor costs in its final decision letter.

The matter was heard by the State Board on November 12 through 14, 2013. The State Board, consisting of Chairman E. Jayne Mockler, and Board Member Robin Sessions Cooley,² considered the record and the hearing transcript, and being fully informed on the issues and the law, affirms the Department’s decision to reject Wyodak’s amended returns as it relates to the “mouth of the mine,” and further affirms the Department’s rejection of Wyodak’s amended returns relating to the treatment of various costs.

CONTENTIONS AND ISSUES

In its prehearing pleadings, Wyodak identified the following contested issues of fact and law as follows:

1. Contested Issues of Fact (which may be mixed questions of fact and law)
 - a. Whether Wyodak has determined the correct location of the mouth of the mine for each of the production years, 2009-2011.
 - b. Whether Wyodak correctly assigned certain conveyor costs to transportation costs.
 - c. Whether environmental costs and government required costs should be treated as indirect costs.
 - d. Whether the Department’s rejection of Wyodak’s amended filing results in Wyodak’s coal production not being valued in the same manner as coal produced by others, contrary to the

² The State Board included E. Jayne Mockler, Paul Thomas Glause, and Steven D. Olmstead when it heard the case. Mr. Glause resigned from the State Board, effective January 2, 2015. Mr. Olmstead’s term on the State Board expired on March 1, 2015. Governor Mead appointed Martin L. Hardsocg and Robin Sessions Cooley to the State Board effective March 16, 2015. Mr. Hardsocg recused himself from consideration of the case by Order dated August 10, 2015.

requirements of the principles of uniformity and equality in the Wyoming constitution.

2. Contested Issues of Law (which may be mixed questions of fact and law)
 - a. Whether the valuations determined by Wyodak for each production year 2009-2011 are consistent with the requirements of Wyoming law for determining the fair market value of coal production under Wyo. Stat. §§ 39-14-101 et seq., and all other applicable Wyoming constitutional and statutory provisions.
 - b. Whether principles of uniformity and equality are violated if the DOR's methods of valuation are sustained. Wyo. Const. art. 1, § 28; art. 15, § 11.

(Pet'r's Issues of Fact & Law & Ex. Index, 1-2) (emphasis omitted).

The Department identified the following issues of fact and law:

Contested Issues of Fact

- 1) Did the Department properly and correctly reject Petitioner's amended tax returns related to its 2009-2011 coal production? (Mixed question of fact/law)
- 2) Where is the proper physical location of Petitioner's mouth of the mine, as that term is defined in statute?
- 3) Is Petitioner's mouth of the mine, as designated in its amended returns, a hypothetical non-existing ramp that was not physically present during the 2009-2011 production years?
- 4) Did Petitioner, by filing amended returns, improperly assign certain expenses (such as conveyor costs) based upon a hypothetical non-existing point of valuation? (Mixed question of fact and law)
- 5) Whether certain environmental costs are direct mining costs? (Mixed question of fact and law)
- 6) Whether Wyodak's amended returns result in fair market value for its production? (Mixed question of fact and law).

Contested Issues of Law

- 1) Did the Department properly and correctly reject Petitioner's amended tax returns related to its 2009-2011 coal production? (Mixed question of fact/law)
- 2) Where is the proper statutory location of Petitioner's mouth of the mine, as that term is defined in statute?
- 3) Is Petitioner's mouth of the mine, as designated in its amended returns, a hypothetical non-existing ramp that was not physically present during the 2009-2011 production years?
- 4) Did Petitioner, by filing amended returns, improperly attempt to assign certain expenses (such as conveyor costs) based upon a hypothetical non-existing point of valuation? (Mixed question of fact and law)
- 5) Whether certain environmental costs are direct mining costs? (Mixed question of fact and law)⁶⁵ [sic] Whether Wyodak's amended returns result in fair market value for its production? (Mixed question of fact and law).

(Wyo. Dep't of Revenue's Issues of Fact & Law & Ex. Index 1-2) (emphasis omitted).

The State Board condenses the issues for decision as follows:

- I. Did the Department correctly interpret Wyoming Statutes section 39-14-101(a)(vi), and related statutes referring to the "mouth of the mine," in rejecting Wyodak's amended 2009 through 2011 gross products returns?
- II. Did the Department properly reject Wyodak's reclassification of environmental, government-imposed, and conveyor costs upon which Wyodak based its amended 2009 through 2011 gross products returns?
- III. In rejecting Wyodak's amended gross products returns, did the Department violate Wyoming Constitution article 15, section 11, requiring that it treat all taxpayers uniformly and equally?

JURISDICTION

The Wyoming State Board of Equalization (State 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) (2009). Taxpayers are specifically authorized to appeal final decisions of the Department. The taxpayer's appeal must be filed with the State Board within thirty (30) days of the Department's final decision. Wyo. Stat. Ann. § 39-14-109(b) (2009); Rules, Wyo. State Bd. of Equalization, ch. 2 § 5(e) (2006).

In accordance with State Board Rules, Wyodak filed its Case Notice for Review/Notice of Appeal on April 15, 2013, within thirty (30) days of the Department's March 15, 2013, letter rejecting the amended returns. The State Board accordingly has jurisdiction to hear this matter. Rules, Wyo. State Bd. of Equalization, ch. 2 § 5(e) (2006).

FINDINGS OF FACT

A. General procedural chronology and hearing witnesses

1. In 2012, the Department of Audit (DOA) completed an audit, and the Department subsequently issued an assessment for production years 2005 through 2008. (Parties' Stipulation of Facts ¶ 3). Wyodak appealed the assessment to the State Board in Docket No. 2012-54, questioning the Department's location of the mouth of the mine for production years 2005 through 2008. (Parties' Stipulation of Facts ¶ 4). Wyodak and the Department settled the matter, and the State Board dismissed the case at the request of the parties. (Parties' Stipulation of Facts ¶ 5; Tr. vol. I, 45).
2. Subsequently Wyodak timely filed amended annual gross products returns with the Department for production years 2009, 2010, and 2011, although only the 2009 amended return was subject to a filing deadline. (Parties' Stipulation of Facts ¶ 6). The amended returns sought to: 1) amend the mine mouth location; 2) change the classification of environmental and government-imposed costs from direct mining costs to indirect costs within the "proportionate profits" valuation methodology; and 3) amend the conveyor costs associated with the transportation of coal from the pit to the power plant complex. (Tr. vol. I, 48-50; vol. II, 191-93).
3. The Department rejected the amended returns by a final decision letter dated March 15, 2013, but provided Wyodak the option of resubmitting amended returns revising only its reclamation costs. (Parties' Stipulation of Facts ¶ 7; Ex. 706).

4. Wyodak timely filed its Notice of Appeal on April 15, 2013, appealing the Department's final decision letter rejecting the amended returns. (Parties' Stipulation of Facts ¶ 8).

5. The State Board held a hearing in the matter on November 12 through 14, 2013. At the hearing, Mr. Randy Kutz, Mr. Donald Coovert, and Mr. Kurt Triscori testified for Wyodak. Mr. Craig Grenvik testified for the Department. (Tr. vols. I – III).

6. Mr. Kutz is one of the Black Hills Corporation Tax Managers, overseeing tax issues for Wyodak. (Tr. vol. I, 41-42). Wyodak is owned and operated by Wyodak Resources Development Company, a subsidiary of Black Hills Corporation, Rapid City, South Dakota. (Parties' Stipulation of Facts ¶ 1). Mr. Kutz had previously worked for the South Dakota Department of Revenue, Audit Division for 30 years. (Tr. vol. I, 41-42).

7. Mr. Coovert is a Certified Public Accountant and President of Venture Management International, Limited. Wyodak hired Mr. Coovert as a consultant to analyze and provide advice regarding the issues under appeal. Mr. Coovert has worked on taxation issues relating to the coal industry for over 40 years. (Tr. vol. I, 67-71; Ex. 103).

8. Mr. Triscori is the Engineering Superintendent at the Wyodak mine. Wyodak hired Mr. Triscori as a Mine Engineer in 2001, and subsequently promoted him to Senior Engineer and then Engineering Superintendent. Mr. Triscori has a Bachelor of Science degree in geological engineering. He held several positions including engineer for Homestake Mining Company for 14 years, prior to his employment with Wyodak. (Tr. vol. II, 331-32; Ex. 104).

9. Mr. Grenvik is the Wyoming Department of Revenue, Mineral Tax Division Administrator, having held that position since 2004. Prior to that, he was the Audit Coordinator/Valuation Manager with the Department. He also worked for the DOA performing various auditing functions for Wyoming production taxes and federal mineral royalties. Mr. Grenvik has a Bachelor's Degree in petroleum engineering and a Master's Degree in business administration. He has been involved with coal assessments for either the Department or the DOA since approximately 1994. (Tr. vol. III, 499-501, 540-41).

B. Wyodak Mine - General Layout and Mine Process

10. The Wyodak mine is a surface coal mine located approximately five (5) miles east of Gillette, in Campbell County, Wyoming. (Parties' Stipulation of Facts ¶ 1; Tr. vol. I, 43-44).

11. The Wyodak mine is adjacent to two (2) Wyoming roads, Interstate 90 (I-90) and Highway 51. (Tr. vol. II, 333, 340; Exs. 115, 143). A number of nearby power plants including Neil Simpson I, Neil Simpson II, Combustion Turbines I, Combustion Turbines II, WyGen I, WyGen II, WyGen III, and the Wyodak plant, purchase coal from the mine. (Tr. vol. I, 44-45; vol. II, 333-34; Ex. 143). This grouping of power plants is called the Gillette Energy Complex. (Tr. vol. I, 44; Ex. 143).

12. As a surface mine, Wyodak mines coal by first removing the top soil and overburden to reach the underlying coal seams. (Tr. vol. I, 75-76). The overburden depth at the Wyodak mine varies from between 40 and 220 feet depending on the natural topography of the land. (Tr. vol. II, 336). Scrapers remove the topsoil and haul trucks deposit it in the overburden backfill areas. (Tr. vol. I, 76, 78; Exs. 116, 122).

13. Wyodak severs coal from the coal faces using explosives. (Tr. vol. I, 92; vol. II, 265). Front-end loaders then dump the coal into primary crushers, which break the coal up into approximately eight-inch size pieces. (Tr. vol. I, 79, 90; vol. II, 263-64; Exs. 117, 122).

14. After removing the coal from the pit, Wyodak uses the stored overburden to backfill and reclaim the open pit to restore it to its original topography although the ground surface elevation generally decreases following coal removal. (Tr. vol. I, 91). That is, when the pit is backfilled with overburden, the overburden does not entirely fill the void from the mined coal. (Tr. vol. III, 534-35). *Id.*

C. Wyodak's Clovis Pit and Conveyor System

15. Although Wyodak has produced coal from several different pits at the mine, it only produced and sold coal from the Clovis Pit located north of I-90 for the production years at issue in this appeal. (Tr. vol. II, 337-38, 342; Ex. 115). Wyodak first started to mine from the Clovis Pit north of the interstate in 2005. (Tr. vol. III, 497). Wyodak designed the Clovis Pit mine plan around several factors: coal lease and permit requirements which include environmental permit obligations, I-90, the topography of the surrounding areas, area geology, the previous mining of the land, and various economic concerns. (Tr. vol. II, 347; vol. III, 459-61).

16. The Clovis Pit's coal seam is divided into an upper and a lower bench for ease of mining and blending. (Tr. vol. II, 335-36, 347-48). The upper and lower benches have

different Btu,³ ash and sulfur contents; the lower bench contains a higher quality coal with a higher Btu and lower sulfur and ash content. (Tr. vol. II, 335). Based on a purchaser's quality specifications, Wyodak blends the extracted coal from the different benches in the pit. (Tr. vol. I, 76-77, 93; vol. II, 335-37, 352-55, 391). This coal seam is between 80 and 82 feet thick; the upper bench is roughly 50 feet thick, and the lower bench is between 30 and 32 feet thick. (Tr. vol. II, 337).

17. For 2009 through 2011 production years, Wyodak sold a small amount of coal from the Clovis Pit to the Dave Johnston Power Plant in Glenrock, Wyoming. (Tr. vol. II, 335). Wyodak hauled this coal out of the pit by trucks via a haul road, commonly referred to as the Clovis Truck Haul Road. (Tr. vol. II, 346; vol. III, 440-43; Exs. 116, 144). The Clovis Truck Haul Road begins in the pit, which is under the natural topography of the ground, gradually rising to where the road reaches the elevation of the surrounding undisturbed land. The trucks then follow the road to an out-of-pit train load-out facility. (Tr. vol. III, 441-43).

18. All other coal sales from the mine during the 2009 through 2011 production years, approximately seventy-five to eighty percent (75-80%), were made to the adjacent power plant complex. (Tr. vol. I, 44-45; vol. II, 334-35; vol. III, 497; Ex. 143).

19. Wyodak delivers coal from the Clovis Pit to the power plant complex via an in-pit conveyor system. (Tr. vol. II, 347-52; vol. III, 424-40; Exs. 116, 120). After Wyodak crushes the coal in the primary in-pit crushers, mobile or temporary conveyors move the coal to the permanent overland conveyors. (Tr. vol. II, 348-50, 355; vol. III, 424-40; Exs. 116, 120). The overland conveyors physically move the coal south toward I-90 and the power plant complex. (Tr. vol. III, 436-37).

20. These overland conveyors are placed in what Wyodak terms the "transportation corridor." (Tr. vol. I, 115-16; vol. II, 355-57). The transportation corridor varies in depth from between 250 to 50 feet below the natural topography of the surrounding land for its entire length. Coal transported along the overland conveyors in the corridor remains below the surface of the ground at all times. (Tr. vol. I, 116-18; vol. II, 348-50; vol. III, 424-40; Exs. 107-113).

21. In 2005, the coal pit was just north of I-90, and no transportation corridor existed. (Tr. vol. I, 106; Ex. 144). By 2007, the pit had moved sufficiently northward that Wyodak established the corridor. By 2008, the pit had moved further north, but Wyodak

³ Btu (or BTU) is the unit measure of energy content and stands for British Thermal Unit, which is the amount of heat needed to raise the temperature of one pound of water by one degree Fahrenheit. (Tr. vol. II, 334). *See also*, Dictionary.com: <http://dictionary.reference.com/browse/btu>, last visited Nov. 10, 2015).

left the transportation corridor open. (Tr. vol. I, 109-15; Ex. 144). Wyodak did not mine in the transportation corridor during this time frame nor reclaim the corridor because it sits on a coal seam Wyodak planned to later mine. (Tr. vol. I, 116-17; vol. II, 355-56; vol. III, 443-45, 565; Ex. 144). From 2009 to 2011, this mining pattern continued northward, and Wyodak left the transportation corridor open for the overland conveyors. (Tr. vol. I, 115-17; vol. II, 359-73; Ex. 144A).

22. Upon reaching I-90, the overland conveyor passes the coal under the interstate via a tunnel, which existed before Wyodak mined the Clovis Pit. (Tr. vol. III, 435-39, 477). This tunnel is the only access to the power plant complex from north of I-90. (Tr. vol. I, 83-84). After passing through the tunnel, the conveyor's elevation increases. It reaches the level of the natural topography of the surrounding land shortly after leaving the I-90 tunnel, where the coal is moved to a secondary crusher and into several silos that store the coal for delivery to the power plants. (Tr. vol. I, 55-56, 58-59, 79; vol. II, 348-51, 355; vol. III, 436-40; Exs. 116, 120, 122).

23. Wyodak uses a conveyor system rather than a truck haul system in the Clovis Pit for economic and business reasons, including less up-front capital costs, fewer maintenance costs, fewer employees needed to run conveyors, environmental benefits, and less fuel cost volatility. (Tr. vol. II, 351-52).

D. Wyodak's Calculated Mine Mouth

24. As part of its annual gross products tax return filings to the Department, Wyodak is required to calculate and determine the mouth of the mine which provides the point of valuation for taxation. Wyo. Stat. Ann. § 39-14-103(b) (2009). While there are various statutory methods to determine taxable value, for 2009 through 2011 production years, Wyodak reported under what is commonly referred to as the proportionate profits methodology. Wyo. Stat. Ann. § 39-14-103(b)(vii) (2009). “ ‘The objective of the *proportionate profits method* of computation is to ascertain gross income from mining by applying the principle that each dollar of the total costs paid or incurred to produce, sell, and transport the first marketable product . . . earns the same percentage of profit.’ ” *Powder River Coal Co. v. Wyo. State Bd. of Equalization*, 2002 WY 5, ¶ 8, 38 P.3d 423, 427 (Wyo. 2002) (quoting 26 C.F.R. § 1.613-4(d)(4) (2001)) (emphasis in original). The Wyoming Supreme Court further explained, “The federal formula multiplies the gross sales by the ratio of mining costs to total costs. Wyoming’s formula differs slightly by using a ratio of *direct* mining costs to total direct costs. Section 39-14-103(b)(vii).” *Id.* (emphasis in original).

25. The ratio of direct mining costs to total direct costs, is called the direct cost ratio. Taxpayers are required to apply this ratio of categorized expenses to the total

consideration received for coal, including but not limited to, the arms-length contract price paid. *See* Wyo. Stat. Ann. § 39-14-103(b)(vii) (2009). *See infra* ¶¶ 54-62.

26. The term “mouth of the mine” as used in the proportionate profits methodology is specifically defined by statute as:

(vi) “Mouth of the mine” means the point at which a mineral is brought to the surface of the ground and is taken out of the pit, shaft or portal. For a surface mine, this point shall be the top of the ramp where the road or conveying system leaves the pit. For an in situ mine, the point shall be the wellhead[.]

Wyo. Stat. Ann. § 39-14-101(a)(vi) (2009). *See infra* ¶¶ 55, 58.

27. For the coal volumes sent to the Dave Johnston Power Plant, Wyodak calculated and originally reported a mine mouth location at the point where the truck haul road exited the subsurface pit and reached the topography of the earth. (Tr. vol. III, 450, 486-88; Ex. 116). For Wyodak’s remaining coal volumes, it originally reported the mine mouth at the point where the overland conveyor entered the tunnel under I-90. (Tr. vol. II, 365; vol. III, 449-50; Exs. 144A; Confidential Exs. 700-702).

28. The Department agreed with these physical points as the locations where the coal is either brought to the surface of the ground from the haul road or where the conveyor system leaves the pit upon entering the tunnel. (Tr. vol. II, 365-66; Exs. 144A, 706). The Department recognized that the inlet to the I-90 tunnel was still slightly below the elevation of the natural topography, but determined that the additional small distance before the conveyor exited the tunnel and climbed to the surface was de minimus. (Tr. vol. III, 562-67, 583-87).

29. In 2012, in consultation with Mr. Coovert, Wyodak determined that its mine was not a traditional mine as contemplated by the coal valuation statutes. Wyodak contends the Clovis Mine does not “fit” the coal valuation statutes because it does “not have a conveyor system that comes up out of the active pit of the mine” and there is no point where the coal reaches “the top of the ramp” as discussed in the statute. (Tr. vol. I, 51, 80-84; vol. II, 374-88). *See* Wyo. Stat. Ann. § 39-14-101(a)(vi) (2009).

30. Wyodak developed its mine plan so that the “active pit” moved northward with the coal seam, and only a portion of the remaining southern pit was reclaimed. Leaving a portion of the pit unreclaimed allowed Wyodak to maintain a “transportation corridor” for its conveyor system to transport coal from the “active pit” to the power plant complex south of I-90. *Supra* ¶¶ 19-23. Because a portion of the pit that formed the transportation corridor was not reclaimed, the coal moving along that corridor was still in the “pit” and

never moved up a "ramp" that transported the coal "to the surface of the ground and . . . out of the pit," as required by Wyoming Statutes section 39-14-101(a)(vi) (2009). (Tr. vol. I, 80, 82-83, 127; vol. II, 373-74; Ex. 100).

31. Wyodak based this decision on a 1999 memorandum prepared by Mr. Coovert, as part of a subcommittee of the Wyoming Mining Association. (Tr. vol. I, 95-97, 128-29; vol. II, 373-74, 381-86; vol. III, 447-52; Exs. 102, 144A, 501). Mr. Coovert testified to his intent in the memo to develop a method to value coal that was consistent with the statute and with the practices in the Powder River Basin, and that the coal industry and the Department could adopt without statutory amendments. (Tr. vol. I, 95, 104; Ex. 102).

32. Using Mr. Coovert's memo, Mr. Triscori, the Engineering Superintendent at the Wyodak mine, used engineering calculations to identify where a truck haul road would reach the surface of the ground from both coal benches if, rather than an in-pit conveyor system, roads were built to transport the coal. (Tr. vol. II, 215, 257-58, 374-75, 381-86; vol. III, 447-52; Exs. 102, 501). Mr. Triscori calculated a mine mouth using a typically configured mine operation layout with a truck haul system, including a centroid at the coal face,⁴ a working setback,⁵ a ramp toe,⁶ and a ramp leaving the pit. (Ex. 201). *Id.*

33. Mr. Triscori calculated a centroid for each bench and year by referencing Wyodak aerial photographs. (Tr. vol. II, 381-82; vol. III, 451; Exs. 102, 111-113, 144A). He then calculated a working setback distance of 300 feet and chose a route for the trucks intersecting the setback on both benches. The distance between the centroid and where it intersected the setback was the in-pit travel distance, which also represented the point at which the toe of the eight percent (8%) grade ramp would begin. (Tr. vol. I, 99-100; vol. II, 381-83; Exs. 102, 144A). Next, he calculated a ramp distance at an eight percent (8%) grade to determine the length of the truck ramp. He identified this grade percentage as the industry standard for efficient and safe ramps. (Tr. vol. I, 100, 123; vol. II, 384; vol. III, 475; Ex. 102). Finally, Mr. Triscori identified calculated mine mouths for both the upper and lower benches, at the point where the ramp would reach a 4,420-foot elevation, for each year at issue. Mr. Triscori used this elevation because it is the elevation under the I-90 bridge, and if Wyodak had built a road, it would have been more economical to run it under the bridge than over it. (Tr. vol. I, 83-84, 119-20, 122-23; vol. II, 322, 343-45, 384-86, 395, 397, 399, 402, 405, 410-12; Exs. 111-116, 144A, 501).

⁴ A centroid is a weighted average center of a pit that changes in shape and size over the course of a year. (Tr. vol. I, 97-98; Ex. 102).

⁵ The working setback is an area along the coal face used to maneuver equipment safely and efficiently. (Tr. vol. II, 382; Ex. 102).

⁶ The ramp toe is the start of the truck ramp out of the pit. (Tr. vol. I, 99-100; vol. II, 384; Ex. 102).

34. After Mr. Triscori identified the calculated mine mouth locations for both the upper and lower benches as described above, he calculated a weighted average in-pit haul distance for both benches based on coal-tons produced. Based on these engineering calculations, Wyodak amended its 2009, 2010, and 2011 gross products returns to reflect these revised mouth of the mine locations. (Tr. vol. I, 49-50; Confidential Tr. vol. I, 138-62; vol. II, 198-99, 384-86; Confidential Exs. 128-142, 700-705; Parties' Stipulation of Facts ¶ 6).

35. Because of the nature of the proportionate profits methodology, *infra* ¶¶ 54-62, the amended mine mouth substantially reduced Wyodak's tax obligations to the State and the county. "[T]he bottom line on where you locate the mine mouth and the other two smaller [cost] issues is that it affects the taxable value It changes the direct cost ratio." (Tr. vol. I, 132; Confidential Tr. vol. I, 138-62; Ex. 116; Confidential Exs. 700-705).

36. In performing these engineering calculations, Wyodak interpreted "pit" in Wyoming Statutes section 39-14-101(a)(vi) (2009) to mean "the active pit." Wyodak claimed this was the area where "active" mining occurred like blasting, loading coal, roadwork, overburden removal, pre-mine mouth reclamation, and transportation from the point of severance at the coal face to the mine mouth. (Tr. vol. II, 357, 366; Ex. 144A).

37. To support this interpretation, Mr. Triscori testified that the definition of "pit" in the mining industry is "the area in which the mineral is being extracted or severed." (Tr. vol. II, 357). Mr. Coovert similarly testified that the "pit" is the "hole where you're removing the coal." (Tr. vol. I, 91). Mr. Grenvik testified he believed the "pit" is the "hole" in the ground. (Tr. vol. III, 544).

38. Mr. Grenvik also testified that in 1990, just after the legislature enacted the current statute, he recalled that the Department allowed one mine in the Powder River Basin to use some of these concepts. (Tr. vol. III, 551, 583).

E. Other Costs at Issue

Along with the mine mouth location amendments, Wyodak also amended its claimed environmental, government-imposed, and conveyor costs.

1. Environmental and government-imposed costs

39. Wyodak lists the environmental and government-imposed costs to include wildlife monitoring, air and water quality testing, weed control, and aerial photography of the mine. (Tr. vol. II, 193; vol. III, 465, 518-21). These costs generally occur throughout the mine property. (Tr. vol. II, 195-96, 294-96). For instance, air quality monitoring is

conducted throughout the mine property pursuant to Department of Environmental Quality (DEQ) and Bureau of Land Management (BLM) permit obligations. (Tr. vol. II, 292-93, 300; vol. III, 465-68, 515). Wyodak's tests measure air particulates that mainly originate from the in-pit activities of blasting and overburden removal. (Tr. vol. III, 465). Wyodak is also required to test water quality across the mine property, including the pit, its offices, the shop, and even the transportation corridor. (Tr. vol. II, 299-301). Aerial photographs are taken for many purposes, including mine planning, determining volumes of both overburden and coal volumes severed, and determining locations of roads, power lines, and poles. (Tr. vol. II, 340-41). The areas tested are not delineated by invoice through Wyodak's accounting system or by the subcontractors doing the testing. (Tr. vol. II, 301-04).

40. Wyodak argues all of these expenses are indirect costs under Wyoming Statutes section 39-14-103(b)(vii)(D), meaning the costs are not included in the proportionate profits computation at all. *See infra* ¶¶ 54-62. Wyodak claims the costs are indirect because they are general costs that cannot be allocated to another function. (Tr. vol. II, 305-08). Wyodak amended its returns for production years 2009 through 2011 based on this revised designation of costs. (Ex. 706).

41. In its final determination letter, the Department disagreed and outlined its position to treat these costs as direct mining expenses under Wyoming Statutes section 39-14-103(b) unless a reasonable allocation to other functions was warranted. (Ex. 706). The Department concluded: "The preponderance of environmental concerns are due to pit water that is pumped to other locations and particulates that are ejected into the air during blasting. These are direct mining functions." (Tr. vol. III, 525; Ex. 706).

42. At the time of the hearing, the DOA was conducting an audit of these issues for 2009 through 2011 production years. The Department had not yet had the opportunity to examine the source documents for the environmental and government-imposed costs. (Tr. vol. III, 513-14).

2. Conveyor costs

43. There was very little evidence or argument regarding conveyor costs. Mr. Covert testified that Wyodak sought to have the depreciation, and repair labor and parts for the conveyor grouped together in transportation and then split the grouped costs based on where the mine mouth was located into pre and post mine mouth percentages. (Tr. vol. II, 191-92).

44. The Department did not submit any evidence regarding the conveyor cost allocations. Mr. Grenvik testified that the Department rejected the amended returns

because of the mine mouth and the environmental cost issues. (Tr. vol. III, 525-26; Ex. 706).

45. Any portion of the Conclusions of Law: Principles of Law or the Conclusions of Law: Application of Principles of Law set forth below which includes a finding of fact may also be considered a Finding of Fact, and is therefore incorporated herein by reference.

CONCLUSIONS OF LAW: PRINCIPLES OF LAW

A. General Review Principles

46. Upon application of any person adversely affected, the State Board must review final Department actions concerning coal taxation and “[h]old hearings after due notice in the manner and form provided in the Wyoming Administrative Procedure Act and its own rules and regulations of practice and procedure.” Wyo. Stat. Ann. § 39-11-102.1©(viii) (2009). *See* Wyo. Stat. Ann. § 39-14-109(b)(i)-(iii) (2009). The State Board’s rules provide:

Except as specifically provided by law or in this section, the Petitioner shall have the burden of going forward and the ultimate burden of persuasion, which burden shall be met by the 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. For all cases involving a claim for exemption, the Petitioner shall clearly establish the facts supporting an exemption. In proceedings involving the question of whether or not there is a taxable event under Wyoming law, the Petitioner shall have the burden of going forward and the Department shall have the ultimate burden of persuasion.

Rules, Wyo. State Bd. of Equalization, ch. 2 § 20 (2006). “A preponderance of the evidence is ‘proof which leads the trier of fact to find that the existence of the contested fact is more probable than its non-existence.’ ” *In re Mitcheson v. State, ex rel., Wyo. Workers’ Safety & Comp. Div.*, 2012 WY 74, ¶ 11, 277 P.3d 725, 730 (Wyo. 2012) (quoting *Kenyon v. State, ex rel., Wyo. Workers’ Safety & Comp. Div.*, 2011 WY 14, ¶ 22, 247 P.3d 845, 851 (Wyo. 2011)).

47. The role of the State 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 Prod. Co. v. Wyo. State Bd. of Equalization*, 12 P.3d 668, 674 (Wyo. 2000). In its adjudicatory role, the State Board must “[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©(iv) (2009).

48. “A statute is construed as a whole with the ordinary and obvious meaning applied to the words as they are arranged in paragraphs, sentences, clauses and phrases to express intent.” *Wyo. Ins. Guar. Ass’n v. Woods*, 888 P.2d 192, 197 (Wyo. 1994); (citing *Parker Land & Cattle Co. v. Wyo. Game & Fish Comm’n*, 845 P.2d 1040, 1042 (Wyo. 1993)). The intent of the legislature must be ascertained from the language of the statute which is viewed in light of its object and purpose. *Wyo. Ins. Guar. Ass’n*, 888 P.2d at 196-97 (citing *Barcon v. Wyo. State Bd. of Equalization*, 845 P.2d 373, 377 (Wyo. 1992)). All portions of a statute must be read in pari materia and every word, clause and sentence of it must be given effect, all with the purpose of ascertaining legislative intent. *Int’l Ass’n of Fire Fighters v. Civil Serv. Comm’n*, 702 P.2d 1294, 1297 (Wyo. 1985) (citing *Haddenham v. City of Laramie*, 648 P.2d 551, 553 (Wyo. 1982)).

49. The goal of determining legislative intent:

is best achieved by reading any particular statute or statutory provision in harmony with related statutes with the same subject or purpose as a whole and giving appropriate effect to the plain, ordinary meaning of every word, clause and sentence. *Rock v. Lankford*, 2013 WY 61, ¶¶ 17, 19, 301 P.3d 1075, 1080 (Wyo. 2013). Courts should presume that lawmakers intend related statutes to operate consistently and harmoniously. Therefore, parts of them should not be viewed in isolation, but should be interpreted by comparing them with other parts or sections. 2A Norman Singer & Shambie Singer, *Sutherland Statutory Construction* § 46:5 (7th ed. Updated November 2014).

Laramie Cty. Sch. Dist. No. 1 ex rel. Bd. of Tr. of Laramie Cty. Sch. Dist. No. 1 v. Kinstler, 2015 WY 143, ¶ 10, 2015 WL 7074635 at 2, ___ P.3d ___ (Wyo. Nov. 12, 2015).

50. “We must accept statutes as they are written; neither omitting words that are included, nor including words that are omitted.” *Cheyenne Newspapers, Inc. v. Bldg. Code Bd. of Appeals of the City of Cheyenne*, 2010 WY 2, ¶ 9, 222 P.3d 158, 162 (Wyo. 2010). In addition, the State Board must avoid construction of statutes that produce absurd, illogical or unreasonable results. *In re Cordova*, 882 P.2d 880, 883 (Wyo. 1994) (citing *Stauffer Chemical Co. v. Curry*, 778 P.2d 1083, 1093 (Wyo. 1989)). There is a presumption that the legislature intends to adopt legislation that is reasonable and logical,

with full knowledge of existing law, and as part of a uniform system of jurisprudence. *Wyo. Ins. Guar. Ass'n*, 888 P.2d at 197 (citing *Parker Land & Cattle Co. v. Wyo. State Bd. of Equalization*, 845 P.2d 373, 377 (Wyo. 1992)); See *Gerstell v. State, ex rel., Dep't of Revenue & Taxation*, 769 P.2d 389, 394 (Wyo. 1989). In addition, “[w]ords and phrases shall be taken in their ordinary and usual sense, but technical words and phrases having a peculiar and appropriate meaning in law shall be understood according to their technical import[.]” Wyo. Stat. Ann. § 8-1-103(a)(i) (2009).

51. The Wyoming Supreme Court has concluded “the legislature is well acquainted with the need to draw its tax statutes carefully and with precision.” *RME Petroleum Co. v. Wyo. Dep't of Revenue*, 2007 WY 16, ¶ 48, 150 P.3d 673, 690 (Wyo. 2007). “[T]axes may not be imposed by any means other than a clear, definite and unambiguous statement of legislative authority.” *Qwest Corp. v. State, ex rel. Wyo. Dep't of Revenue*, 2006 WY 35, ¶ 9, 130 P.3d 507, 511 (Wyo. 2006) (citing *Chevron U.S.A., Inc. v. State*, 918 P.2d 980, 984 (Wyo. 1996)). However, the State Board will give deference to the statutory interpretation of an agency charged with administration of a statute, unless that interpretation is clearly erroneous. *Parker Land & Cattle Co.*, 845 P.2d at 1045.

B. Specific Constitutional and Statutory Provisions with Explanation

52. Coal is a valuable mineral and is subject to severance and ad valorem taxation by the State of Wyoming. Wyo. Const. art. 15, §§ 2, 3, 11, 19; Wyo. Stat. Ann. § 39-14-101 through 111 (2009). The Department is the state agency responsible for the collection of mineral taxes. Wyo. Stat. Ann. § 39-11-102© (2009). The valuation and tax imposition for coal is governed by Wyoming Statutes section 39-14-101 through 111 (2009).

53. The tax code imposes a self-reporting system whereby mineral producers, such as Wyodak, are required to routinely report the volumes and value of their production to the Department. Wyo. Stat. Ann. § 39-14-107(a) (2009). Wyoming Statutes section 39-14-108(b)(iii-iv) (2009) also allows a taxpayer to file amended returns, which the Department reviews for compliance and to make adjustments to the reported values, if necessary. Thereafter, “[m]ine product valuation amendments under this section may be appealed by the taxpayer to the board within thirty (30) days of the final administrative decision.” Wyo. Stat. Ann. § 39-14-109(b)(ii) (2009).

54. In Wyoming Statutes section 39-14-103 (2009), the legislature provides the point of valuation for coal, and identifies particular costs and their treatment. The parties referred to this provision in the statute as the imposition statute:

39-14-103. Imposition

....

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

(i) Coal shall be valued for taxation as provided in this subsection;

....

(iii) Except as otherwise provided, the mining or production process is deemed completed when the mineral product reaches the **mouth of the mine**. In no event shall the value of the mineral product include any processing functions or operations regardless of where the processing is performed;

....

(vii) For coal sold away from the **mouth of the mine** pursuant to a bona fide arms-length sale, the department shall calculate the fair market value of coal by multiplying the sales value of extracted coal, less transportation to market provided by a third party to the extent included in sales value, all royalties, ad valorem production taxes, severance taxes, black lung excise taxes and abandoned mine lands fees, by the ratio of direct mining costs to total direct costs

(B) Direct mining costs include mining labor including mine foremen and supervisory personnel whose primary responsibility is extraction of coal, supplies used for mining, mining equipment depreciation, fuel, power and other utilities used for mining, maintenance of mining equipment, coal transportation from the point of severance to the **mouth of the mine**, and any other direct costs incurred prior to the **mouth of the mine** that are specifically attributable to the mining operation;

I Total direct costs include direct mining costs determined under subparagraph (B) of this paragraph plus mineral processing labor including plant foremen and supervisory personnel whose primary responsibility is processing coal, supplies used for processing, processing plant and equipment depreciation, fuel, power and other utilities used for processing, maintenance of processing equipment, coal transportation from the **mouth of the mine** to the point of shipment, coal transportation to market

to the extent included in the price and provided by the producer, and any other direct costs incurred that are specifically attributable to the mining, processing or transportation of coal up to the point of loading for shipment to market;

(D) Indirect costs, royalties, ad valorem production taxes, severance taxes, black lung excise taxes and abandoned mine lands fees shall not be included in the computation of the ratio set forth in this paragraph. Indirect costs include but are not limited to allocations of corporate overhead, data processing costs, accounting, legal and clerical costs, and other general and administrative costs which cannot be specifically attributed to an operational function without allocation.

(Emphasis added).

55. As highlighted above, calculation of taxable value under Wyoming Statutes section 39-14-103(b)(vii) (2009) centers around a correct determination of the “mouth of the mine.” Wyodak amended its 2009 through 2011 returns to reflect its interpretation and application of various statutory terms, including “mouth of the mine,” found at Wyoming Statutes section 39-14-101(a) (2009):

(vi) **“Mouth of the mine”** means the point at which a mineral is brought to the surface of the ground and is taken out of the pit, shaft or portal. For a surface mine, this point shall be the top of the ramp where the road or conveying system leaves the pit. For an in situ mine, the point shall be the wellhead[.]

(Emphasis added).

56. “Mining or production” is defined by the legislature as:

(v) “Mining or production” means drilling, blasting, loading, roadwork, overburden removal, **pre-mouth of the mine** reclamation, transportation from the point of severance to the **mouth of the mine**, and maintenance of facilities and equipment directly relating to any of the functions stated in this paragraph[.]

Wyo. Stat. Ann. § 39-14-101(a)(v) (2009) (emphasis added).

57. “Processing” is defined by the legislature as:

(vii) “Processing” means crushing, sizing, milling, washing, drying, refining, upgrading, beneficiation, sampling, testing, treating, heating, separating, tailings or reject material disposal, compressing, storing, loading for shipment, transportation from the **mouth of the mine** to the loadout, transportation to market to the extent included in the price and provided by the producer, processing plant site and **post-mouth of mine** reclamation, maintenance of facilities and equipment relating to any of the functions stated in this paragraph, and any other function after severance that changes the physical or chemical characteristics or enhances the marketability of the mineral[.]

Wyo. Stat. Ann. § 39-14-101(a)(vii) (2009) (emphasis added).

58. The Department Rules further clarify several important statutory terms and considerations:

“**Mouth of the mine**” means the point at which a mineral is brought to the surface of the ground and is taken out of the pit, shaft or portal. For a surface mine, this point shall be the top of the ramp where the road or conveying system leaves the pit. For an in situ mine, the point of valuation shall be the wellhead. (W.S. 39-2-202(b)(i)). For solid minerals, the “**mouth of the mine**” is the “point of valuation” (see general definition for “point of valuation”).

Rules, Dep’t of Revenue, ch. 6 § 4a(b.) (2006) (emphasis added).

“Point of valuation” means the point where value for severance and ad valorem tax is established. This point is generally after all mining functions have been performed and before the mineral is further processed (pursuant to W.S. 39-2-202(b) for solid minerals and W.S. 39-2-208(b) for oil and gas).

Rules, Dep’t of Revenue, ch. 6 § 4(i.) (2006) (emphasis added).

59. The proportionate profits methodology is a mathematical calculation designed to use a cost basis formula to arrive at the value of the mineral production which is solely

attributable to the production/mining function, as opposed to processing and transportation. Wyoming Statutes section 39-14-103(b)(vii).

60. The calculation of taxable value using proportionate profits methodology is driven by the “direct cost ratio.” That is, the ratio of the direct costs of producing the mineral, to the direct cost of mining, processing and transporting the mineral. As the ratio rises, the resulting taxable value increases; conversely, as the ratio falls so does the taxable value. Thus, classification of the taxpayer’s expenses (as either direct mining costs, direct processing costs, direct transportation costs, or as indirect costs) significantly impacts this ratio.

61. Wyoming Statutes section 39-14-103(b)(vii) (2009) can be expressed in a simple mathematical formula:⁷

$$\text{Direct Cost Ratio} = \frac{\text{Direct Costs of Mining}}{\text{Direct Costs of Mining, Processing and Transportation}}$$
$$\text{Taxable Value} = \left(\frac{\text{Total Sales Revenue}}{\text{Total Sales Revenue}} - \left(\frac{\text{Exempt Royalties}}{\text{Nonexempt Royalties}} \right) \right) \cdot \text{Direct Cost Ratio} + \left(\frac{\text{Nonexempt Royalties}}{\text{Production Taxes}} \right)$$

62. Because the denominator of the direct cost ratio includes the costs of transporting and processing, the higher the cost of transportation and processing relative to the cost of mining, the lower the direct cost ratio. Therefore, by characterizing costs as anything other than direct mining costs, the direct cost ratio is decreased and taxable value diminishes.

63. The Wyoming Constitution at article 15, section 11, 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;

....

⁷ An example of this formula applied to gas production is found in this Board’s decision at *BP Am. Prod. Co.*, Docket No. 2004-129, ¶¶ 9-22, 2005 WL 3126198 (Wyo. State Bd. of Equalization, Nov. 8, 2005).

(d) All taxation shall be equal and uniform within each class of property.

64. The Wyoming Supreme Court required that the Department “treat all similarly situated taxpayers uniformly and equally” to comply with the above constitutional provision. *Thunder Basin Coal Co. v. Wyo. State Bd. of Equalization*, 896 P.2d 1336, 1340 (Wyo. 1995). Uniformity of assessment requires that the method of appraisal be consistently applied. *State Bd. of Equalization v. Monolith Portland Midwest Co.*, 574 P.2d 757, 761 (Wyo. 1978).

CONCLUSIONS OF LAW: APPLICATION OF PRINCIPLES OF LAW

I. Did the Department correctly interpret Wyoming Statutes section 39-14-101(a)(vi), and related statutes referring to the “mouth of the mine,” in rejecting Wyodak’s amended 2009 through 2011 gross products returns?

65. Neither party argues that the statutes at issue are ambiguous, and the State Board has previously determined that the statutory definition of mine mouth is not ambiguous. *Triton Coal Co.*, Docket No. 99-64, ¶ 99, 2000 WL 1419651 (Wyo. State Bd. of Equalization, Aug. 30, 2000). However, the parties interpret the language of the statutes differently. It is the role of the State Board to interpret the statutes in line with the intent of the Wyoming Legislature. Wyo. Stat. Ann. § 39-11-102.1(c)(iv) (2009).

66. Even though Wyodak uses a conveyor system, it proposes to calculate a hypothetical mouth of the mine, specifically a hypothetical location that a truck ramp system would exit the “active pit” to reach the level surface of the ground. (Tr. vol. II, 222-24, 232). Wyodak’s engineering calculations begin at the physical point in the mine where coal is severed from the coal face. Wyodak argues this location is the “active pit” and that the word “pit” as used in Wyoming Statutes section 39-14-101(a)(vi) (2009) means only “active pit.” Wyodak asserts that since coal severed at the coal face and that the transportation corridor is only used to support the conveyor system, the mouth of the mine is located where the coal leaves the “active pit.” *Supra* ¶¶ 24-38.

67. The Department responds that the actual mine mouth is the point the conveyor enters the tunnel under I-90 because that is where the conveyor brings the mineral “to the surface of the ground” as required by the plain language of Wyoming Statutes section 39-14-101(a)(vi) (2009). (Tr. vol. III, 527-47). The Department further responds that Mr. Covert’s memo to calculate points of valuation is not consistent with the plain language of the statutes and that it creates a hypothetical point of valuation which results in hypothetical cost classifications. (Wyo. Dep’t of Revenue’s Response Br. 16-20).

A. “Pit” v. “Active Pit”

68. The State Board begins its analysis with Wyodak’s claim that the word “pit” in Wyoming Statutes section 39-14-101(a)(vi) means the “active pit,” where it claims coal is currently being mined, and that it does not include the surrounding excavations or the transportation corridor. *Supra* ¶¶ 36-37.

69. The statute provides that the “mouth of the mine” is defined as “the point at which a mineral is brought to the surface of the ground and is taken out of the pit” *Wyo. Stat. Ann. § 39-14-101(a)(vi) (2009) (emphasis added)*. Mr. Coovert defined the pit as the place where the coal is extracted, loaded into the crusher, then onto temporary or portable conveyors for transport to the permanent conveyor. He believes that at the point the coal is placed on the permanent conveyor in the transportation corridor, it leaves the pit, or the “active pit.” (Tr. vol. II, 263-65, 320, 357). *Supra* ¶¶ 36-37.

70. Neither Wyoming Statutes nor Department Rules define “pit.” The State Board has not had occasion, itself, to define the term “pit,” but has noted, and will again recognize in this case, that “the coal seam is part of the pit” and the “active pit” does move. *Triton Coal Co., Docket No. 99-64 at ¶¶ 7, 19. Supra* ¶ 65. In fact, it is typical for active pits to move frequently, even monthly. (Tr. vol. I, 86; vol. III, 553, 572-74). Further, in a traditional truck haul system, a mine may have more than one ramp within the same pit, which moves according to the location of the active mining. (Tr. vol. I, 86; vol. III, 553, 572-74).

71. However, the plain language of Wyoming Statutes section 39-14-101(a)(vi) (2009) does not contain the word “active,” instead referring only to the “pit.” From that, the State Board finds that although the “active pit” is a part of the “pit,” the “pit” is not limited to only that portion that can be said to be the “active pit.” Adopting Wyodak’s interpretation of pit, as constituting only the “active pit,” requires this Board to add words to the statute that the legislature did not include. The State Board must accept statutes as they are written, and may neither omit words that are included, nor include words that are omitted. *Supra* ¶¶ 48-51.

72. Courts consider words and phrases in their ordinary and usual sense. *Supra* ¶ 50. In doing so, they look to common dictionary definitions when words are not defined by the legislature. *Craft v. State*, 2012 WY 166, ¶ 14, 291 P.3d 306, 310 (Wyo. 2012). Specific to the area of mining, one dictionary defines the word “pit” as:

Mining.

- a. an excavation made in exploring for or removing a mineral deposit, as by open-cut methods.
- b. the shaft of a coal mine.

c. the mine itself.

Dictionary.com, <http://dictionary.reference.com/browse/pit>, last visited on Dec. 7, 2015. The Merriam-Webster Dictionary similarly defines the word pit as “a hole, shaft, or cavity in the ground[.]” Merriam-Webster’s Collegiate Dictionary (11th ed. 2014). Of note, these common definitions do not differentiate between the “pit” and the “active pit.”

73. Further, limiting the “pit” to only those areas of active mining conflicts with the definition of “mining or production” elsewhere in the tax statutes. *Supra* ¶ 56. Wyoming Statutes section 39-14-101(a)(v) (2009) defines “mining or production” as not only drilling and blasting, but also includes “transportation from the point of severance to the mouth of the mine,” which includes activities like in-pit conveyor activities from the coal face that Wyodak argues is the “active pit” to the mine mouth. Through this language, the legislature anticipated the whole range of in-pit activities not associated with the actual physical severing of the coal. Statutes should be construed to “operate consistently and harmoniously” and parts of the statute should not be considered in isolation. *Laramie Cty. Sch. Dist. No. 1*, 2015 WY 43, ___ P.3d at ¶ 10. *Supra* ¶ 49.

74. If the “pit” is limited to just this small area of “active” mining, as Wyodak contends, it becomes a very limited, ever moving area between the exposed coal seams and the equipment used to excavate. Wyodak improperly reclassifies all other in-pit areas, no matter the size or activity, as unrelated to the removal and production of the coal. For tax valuation purposes, Wyodak would have the State Board essentially redefine the point of valuation and production process for coal. The production process would, according to Wyodak, occur only from between the face of the coal seam to that theoretical distance necessary to move the coal to the edge of the excavation. Accordingly, all expenses incurred in the pit, but outside of this narrow range between the coal seam and hypothetical mouth of the mine, would be reclassified as either indirect expenses, or post-production transportation. Wyodak has offered insufficient authority for such an interpretation.

75. For these reasons, the State Board finds that “pit” is not limited to the “active pit” because that interpretation conflicts with the definition of mining, requires the State Board to add words not in the statute, and, leads to the possibility of absurd and/or unintended results in its application. *Supra* ¶¶ 48-51.

B. Calculated Mine Mouth

76. Wyodak’s calculated mine mouth uses engineering calculations to identify where a truck haul system would bring the coal to the surface of the ground from the “active pit” if Wyodak actually used such a system. Even if the State Board found that the legislature intended the word “pit” to only mean the “active pit” within the larger mining operation,

the State Board finds the legislature did not intend to allow for hypothetical operations in the application of Wyoming Statutes section 39-14-101(a)(vi) (2009).

77. As Mr. Covert explained, the typical mine removes the topsoil and overburden, digs the “active pit” to remove the coal, and then reclaims the backside of the pit after the coal is removed. “[Y]ou’re removing the dirt from the leading edge of the pit, bringing it around and dumping it on the trailing edge of the pit.” (Tr. vol. I, 171). In general, the mine mouth moves with the pit. (Tr. vol. I, 171-74; Ex. 127 at 0063). However, at the Clovis Pit, Wyodak chose to use an in-pit conveyor system to transport the majority of its coal to its adjacent power plant customers. To do so, it chose not to reclaim the backside of the pit so that it could run the conveyor through this transportation corridor to the tunnel at I-90. (Tr. vol. II, 259-60). Wyodak chose not to use a truck haul system because it was more expensive, “both in terms of ongoing operating expenses as well as up-front capital contribution.” (Tr. vol. II, 215-16, 221-22). *Supra* ¶ 23. Wyodak’s business choice resulted in a mine mouth that did not move.

78. There is no truck haul road out of the Clovis Pit to haul coal to the power plant complex south of I-90. Wyodak argues the Department should allow it, in valuing its coal production for tax purposes, to conceptually “construct” a hypothetical truck haul system using engineering calculations; it argues that the current statutory language does not contemplate its mine configuration. (Pet’r Wyodak Res. Dev. Corp.’s Post-Hrg. Br. 17-21). *Supra* ¶ 29. The Department responds that Wyodak’s proposed method of calculating the mouth of the mine is not consistent with the plain language of the statutes and would, if allowed, result in a hypothetical mine mouth and hypothetical cost classifications. (Wyo. Dep’t of Revenue’s Response Br. 16-20). The State Board agrees with the Department.

79. Mr. Covert’s proposed valuation approach, while suggesting a method to calculate a point of valuation for coal producers, finds no express or implicit support in statute or Department regulation. (Tr. vol. II, 243-44; vol. III, 549-50). While the Department has discretion to consider alternative valuation methodologies, it is not required to do so. Wyo. Stat. Ann. § 39-14-103(b)(x) (2009). The current statutory valuation methods do not envision hypothetical points of valuation or costs. If the State Board were to adopt Wyodak’s argument, such would require this Board to change defined terms and add words to the statutes, which it cannot do. *Supra* ¶ 50.

80. Mr. Covert, a lobbyist for the mineral industry, testified at some length about legislative intent in passing the proportionate profits methodology. (Tr. vol. I, 164-75; Exs. 124-125, 127). However, legislative intent is “ascertained initially and primarily from the words used in the statute.” *Allied-Signal, Inc. v. Wyo. State Bd. of Equalization*, 813 P.2d 214, 219 (Wyo. 1991). *Supra* ¶ 49.

81. In addition, the State Board notes that Wyodak's Exhibit 124, an overview of proposed legislation from the Joint Revenue Interim Committee, prepared for the legislature and the Governor, specifically disallows "arbitrary or hypothetical values." (Ex. 124 at 0039). Further, Wyodak's Exhibit 127, a summary of 1990 Wyoming House Bill 147 establishing a point of valuation/taxation for all solid minerals as the mouth of the mine, concludes that "[t]he primary objective of this Act is to eliminate the controversy surrounding the point of taxation for solid minerals by **precisely defining the physical point**. Enactment will restrict future alternative interpretations by taxpayers and administrators." *Id.* at 0062 (emphasis added). Allowing Wyodak to use engineering calculations to identify a hypothetical mine mouth instead of using the actual "physical point" at which the minerals are transported out of the pit and reach the surface of the ground, runs counter to the "primary objective" of the legislation to "precisely define[] the physical point" of taxation. *Id.* Wyodak's own exhibits do not support its effort to use hypothetical valuation methodologies.

82. It is also important to recognize that, based on the Department's previous and consistent application of the statute, Wyodak knew, or should have known, its business decisions could result in a fixed mine mouth location resulting in increased in-pit transportation costs using the proportionate profits methodology. The Department's consistent application of point of valuation principles, which has not been the subject of litigation since 2000, is entitled to deference in this proceeding unless clearly erroneous. (Tr. vol. III, 535-36, 549-50). *Supra* ¶ 51. The State Board finds that the Department's interpretation and subsequent application of the mineral valuation statutes at issue in this appeal are not clearly erroneous.

83. The State Board finds further support in several Wyoming Supreme Court cases, *State Board of Equalization v. Monolith Portland Midwest Co., Inc.*, 574 P.2d 757 (Wyo. 1978) and *Hillard v. Big Horn Coal Co.*, 549 P.2d 293 (Wyo. 1976). In both cases, the Wyoming Supreme Court found that the Department could not use hypothetical costs to determine taxable value. While these cases did not address the proportionate profits valuation methodology, the Court's underlying logic remains applicable.

84. Wyodak attempts to distinguish these two cases arguing that its "calculated mine mouth locations are not costs, they are actual points that can be located on maps and photos that are based on actual measurements that can be audited." (Pet'r Wyodak Res. Dev. Corp.'s Post-Hrg. Br. 25).

85. Although Wyodak's engineering calculations might theoretically determine a point on a map, this point of valuation is not based on an actual truck haul system Wyodak used to transport coal, or an actual point where the coal reached the surface of the ground. It is a hypothetical transportation system used to artificially reduce the in-pit haul distance of Wyodak's coal. *See* Wyo. Stat. Ann. § 39-14-101(a)(vi) (2009). *Supra* ¶ 55.

Wyodak does not argue for the inclusion of hypothetical costs as the Department did in both *Monolith* and *Hillard*; instead, it argues for the use of a hypothetical transportation system. However, the rationale for not allowing either is the same; the statute directs that the Department and taxpayers use actual mine configurations, including points of valuation, and actual costs. Nothing in the statute allows the use of hypothetical systems or hypothetical costs, and the Department properly rejected Wyodak's attempt to do so.

86. The Department also refers the State Board to its earlier decisions discussing somewhat similar issues: *Kerr McGee Coal Co.*, Docket No. 92-283, 1994 WL 76633 (Wyo. State Bd. of Equalization, March 9, 1994), *Amax Coal Co.*, Docket No. 92-198, 1994 WL 76631 (Wyo. State Bd. of Equalization, March 9, 1994), *aff'd*, 896 P.2d 1329 (Wyo. 1995), and *Triton Coal Co.*, Docket No. 99-64, 2000 WL 1419651 (Wyo. State Bd. of Equalization, Aug. 30, 2000). In *Kerr McGee Coal Co.*, the State Board found:

18. Petitioner initially reported as a deduction all transportation costs from the face of the coal seam. Following audit, the State segregated and revised transportation costs, allowing a deduction for the cost of transportation only after the point a coal truck reaches the same elevation as the coal crusher. The State argues this point constitutes the mouth of the mine, while Petitioner argues this "point of taxation" is unreasonable considering its unique mine plan and need to configure pits and haul roads to minimize disturbing reclaimed areas. Petitioner argues the transportation distance in the "slot" should be deductible as transportation costs, leaving as "pre-mine mouth transportation," the expense and distance from the coal seam to the lip of the active pit (or "Y"). This issue requires a determination of the location of the mine mouth.

19. At a minimum, transportation costs for solid minerals may not be deducted if similar costs for oil and gas are not deductible. While the mouth of the mine for oil and gas may not always be easily determined, we can say without exception, the vertical costs of transporting the oil and gas from the producing sand to the surface are not deductible. These costs are necessary to complete the production process and bring the mineral to a point at which it could be available for sale in the normal course of business. Utilizing this same reasoning process for solid minerals, we find the costs of transporting the coal vertically to the undisturbed elevation of the natural land surface are costs associated with mining process. As a result, such costs are not deductible as post-mine-mouth transportation. We cannot therefore support Petitioner in its arguments concerning the "Y" point. **As long as Petitioner is transporting the coal along the bottom of an unreclaimed, inactive pit (what is also referred to as the slot), such**

transportation is necessary to bring the coal to a point at which it could be available for sale in the normal course of business.

Kerr McGee Coal Co., Docket No. 92-283 ¶¶ 18 and 19 (underline in original) (emphasis added) (footnote omitted). Although the State Board decided this case under a previous statute, using the netback method for valuing production, the State Board recognized that the “slot” or an unreclaimed portion of the pit, is still a portion of the pit. Further, transporting coal along that pit does not bring it out of the pit to the surface of the ground. *Id.*

87. Citing to *Amax Coal Co.*, the Department points out the State Board found that “all transportation from the face of the coal seam to the elevation of the natural land surface constitutes pre-mine-mouth transportation, and is not deductible.” *Amax Coal Co.*, Docket No. 92-198 ¶ 35. *Amax Coal* recognizes that in-pit activity like transportation may occur in locations in the pit other than the coal face.

88. Finally, the Department refers to *Triton Coal Co.*, which is similar in that the parties disputed the mine mouth location where Triton Coal had a partial truck haul operation and a partial conveyor transportation system. The State Board found:

98. The configuration of the Buckskin Mine is such that Petitioner utilizes haul trucks to bring the coal from the lower coal seam (the Canyon seam) up an 8% grade haul road to a level bench. Then Petitioner utilizes another form of in-pit transportation, ie, [sic] the E-1 conveyor, to continue hauling the coal up to the secondary crusher which sits approximately at the “elevation of the natural land surface.” Wyo. Stat. § 39-2-202(b). **The SBOE believes that DOR/DOA have utilized their appraisal judgment and correctly relocated the mouth of the mine for the audit years in question to the point where the conveyor system reached the elevation of the natural land surface. To treat the E-1 conveyor system as out-of-pit transportation as Petitioner would have it, gives Petitioner a significant tax advantage simply because they chose to use a combination of trucks and conveyor system rather than simply haul trucks to bring coal out of the pit to the crusher.**

Triton Coal Co., Docket No. 99-64, ¶ 98 (emphasis added). *Triton Coal* considered production years 1993 through 1995, using the same “mouth of the mine” statute at issue in the present case.

89. Like Triton Coal Co., Wyodak chose the overland conveyor system it uses and chose not to reclaim the transportation corridor so that it could run the conveyor through it and return later to mine the remaining coal. *Supra* ¶¶ 23, 77-78. Allowing Wyodak the

tax advantage of using a calculated mine mouth to identify where that truck haul system would be if it had chosen that system, gives Wyodak a significant tax advantage based on a transportation system it does not use. *Triton Coal Co.*, Docket No. 99-64 at ¶ 98.

90. Given the plain and unambiguous language in Wyoming Statutes section 39-14-101(a)(vi), the Wyoming Supreme Court decisions in *Monolith* and *Hillard*, as well as the State Board's prior decisions in *Kerr McGee Coal Co.*, *Amax Coal Co.*, and *Triton Coal Co.*, the State Board finds that the Department correctly and appropriately rejected Wyodak's attempt to revise its mine mouth location.

91. Wyodak suggests several other alternatives for locating the mouth of the mine. (Tr. vol. II, 319-20). Wyodak did not rely on these alternatives in submitting its amended tax returns and thus, the Department has not issued a final determination relating to these alternatives. Because Wyodak has not been "aggrieved or adversely affected in fact by a final decision of an agency" as to its alternative mine mouth locations, the State Board cannot consider those alternatives in this appeal. *See* Wyo. Stat. Ann. § 16-3-114(a) (2009).

C. Summary

92. Wyodak failed to persuade the State Board by a preponderance of the evidence that the Department improperly rejected its amended returns relating to its calculated mine mouth. *Supra* ¶ 46. In so finding, the State Board concludes that the language of Wyoming Statutes section 39-14-101(a)(vi) defining the "mouth of the mine" is clear and unambiguous. *Supra* ¶ 65. The plain language of Wyoming Statutes section 39-14-101(a)(vi) provides that the "mouth of the mine" is the actual physical point the coal comes out of the pit and reaches the surface of the ground. This point is a physical point at which the coal actually reaches the surface of the ground, not an engineered point reached with mathematical calculations. The State Board also finds the legislature did not intend the term "pit" in the statute to mean only those areas where there is active mining as Wyodak suggests. Had this been the legislature's intent, it would have said as much in the statute. *Supra* ¶¶ 72-75.

93. A calculated mine mouth based on a hypothetical haul road system that only takes into account the "active pit" fails to comport with the plain language and intent of the coal valuation statutes. Thus, in compliance with the plain language of the statute, the State Board finds that the mouth of the mine for Wyodak's coal for the 2009 through 2011 production years was where the overland conveyor rose in elevation to the surface of the ground at the tunnel under I-90, as originally reported by Wyodak.

II. Did the Department properly reject Wyodak's reclassification of environmental, government-imposed, and conveyor costs upon which Wyodak based its amended 2009 through 2011 gross products returns?

94. Wyodak argues the Department erred in rejecting its 2009 through 2011 amended returns that revised its original designation of certain environmental, government-imposed, and conveyor costs. Wyodak claims the Department should accept its amendments reclassifying the environmental and government-imposed costs from direct mining costs to indirect costs, and reclassifying its conveyor repair and labor costs. *Supra* ¶¶ 39-40, 43.

A. Environmental and government-imposed costs

95. In its amended returns, Wyodak claimed that expenses for wildlife monitoring, air quality testing, weed control, and aerial photography were all indirect costs, not attributable to an operational function of the mine without allocation. Wyo. Stat. Ann. § 39-14-103(b)(vii)(D) (2009). Wyodak argues it is necessary to allocate the costs among the statutory classifications because Wyoming Statutes section 39-14-103(b)(vii)(B) and (C), identifying direct mining costs and total direct costs, do not specifically list these costs. Wyodak asserts that since it would have to allocate these costs between the different classifications in the statute, the Department should treat all of the costs as indirect costs under subsection (D). *Supra* ¶ 40.

96. The Department disagreed treating these costs as direct mining costs under Wyoming Statutes section 39-14-103(b)(vii)(B) (2009) unless a reasonable allocation to other functions was warranted. (Ex. 706). Mr. Grenvik testified that the mere fact that some costs are multi-functional, requiring an allocation of functions does not render those costs indirect costs under Wyoming Statutes section 39-14-103(b)(vii)(D) (2009). (Tr. vol. III, 512). If the Department can develop a reasonable method of allocation between cost classifications, it can properly split the expenses between cost categories. (Tr. vol. III, 508-12, 516-17).

97. Direct mining costs include:

mining labor including mine foremen and supervisory personnel whose primary responsibility is extraction of coal, supplies used for mining, mining equipment depreciation, fuel, power and other utilities used for mining, maintenance of mining equipment, coal transportation from the point of severance to the mouth of the mine, and **any other direct costs incurred prior to the mouth of the mine that are specifically attributable to the mining operation[.]**

Wyo. Stat. Ann. § 39–14–103(b)(vii)(B) (2009) (emphasis added). *Supra* ¶¶ 54, 60-62.

98. Total direct costs include a similar list of costs “attributable to the mining, processing or transportation of coal up to the point of loading for shipment to market[.]” Wyo. Stat. Ann. § 39–14–103(b)(vii)(C) (2009). *Supra* ¶¶ 54, 60-62.

99. Finally, “[i]ndirect costs include but are not limited to allocations of corporate overhead, data processing costs, accounting, legal and clerical costs, and other general and administrative costs which cannot be specifically attributed to an operational function without allocation.” Wyo. Stat. Ann. § 39–14–103(b)(vii)(D) (2009). *Supra* ¶¶ 54, 60-62.

100. In answering whether allocation was appropriate under the above statutes, the Wyoming Supreme Court concluded:

[W]hen all the provisions of the statute are read together, the legislature simply meant all costs, a portion of which are directly associated with a particular function, should be attributed to that function in some reasonable way. The indirect cost catch-all phrase in subsection 39-14-103(b)(vii)(D), . . . , simply means costs similar to those specifically listed which are not directly related to a function and, therefore, must be allocated by the direct cost formula. **The words “without allocation” in that section were not intended to prevent costs directly associated with a particular function from being considered as direct costs simply because they had to be allocated among the functions by some agreed upon formula, either because of the level of detail provided by the taxpayer’s accounting system or because of the nature of the cost. The more reasonable interpretation of that language suggests the catch-all phrase means other costs similar in nature to the listed indirect costs and for which no reasonable formula exists to allocate those costs among functions except the direct cost ratio.**

Powder River Coal Co. v. Wyo. Dep’t of Revenue, 2006 WY 137, ¶ 21, 145 P.3d 442, 450 (Wyo. 2006) (emphasis added). In other words, costs do not automatically default to an indirect cost classification simply because it becomes necessary to allocate costs among functions, as Wyodak argues. *Id.*

101. In addition, Wyodak’s argument “ignores legislative intent exhibited by the list of specific indirect costs. That list suggests that indirect costs, such as corporate overhead, legal, secretarial, etc., are those costs that by their nature are not directly associated with any particular operational function. That is what makes them ‘indirect’ and they must then be allocated to mining by the direct cost ratio.” *Powder River Coal Co.*, ¶ 19, 145 P.3d at 449.

102. The State Board finds that wildlife monitoring, air quality testing, weed control and aerial photography expenses are directly associated with various operational functions of the mine. That is, these costs relate closely to the various functions identified in the definition of mining or production, as “drilling, blasting, loading, roadwork, overburden removal, pre-mouth of the mine reclamation, transportation from the point of severance to the mouth of the mine, and maintenance of facilities and equipment directly relating to any of the functions stated in this paragraph[.]” Wyo. Stat. Ann. § 39–14–101(a)(v) (2009).

103. For instance, air quality monitoring is largely needed for testing air particulates related to Wyodak’s blasting and overburden removal operations, which are direct mining expenses. (Tr. vol. III, 465, 515-18). See Wyo. Stat. Ann. §§ 39-14-103(b)(vii)(B) & 39-14-101(a)(v) (2009). Water monitoring expenses are likewise largely associated with the water collecting in the pit. (Tr. vol. III, 518-19). Wildlife monitoring is more closely linked to the mine’s reclamation efforts, and aerial photography is primarily used for mine and overburden planning. (Tr. vol. III, 468, 521). Thus, whatever it costs Wyodak to perform the above functions are direct mining costs. *Powder River Coal Co.*, ¶ 14, 38 P.3d at 428.

104. The parties recognized during the hearing that the DOA was performing an audit to analyze the exact nature of the costs and their possible allocations. (Tr. vol. III, 513-14, 519-20). When the audit is complete, and the Department issues its final determination based on the DOA audit findings, Wyodak may appeal that final determination. If Wyodak and the Department cannot come to an agreement on the manner in which to treat these expenses following the results of the audit, Wyodak may come before the State Board again, and the State Board will explore those issues at that time with a more fully developed record. However, the Department properly rejected the returns based on Wyodak’s amendments reclassifying all these expenses as indirect costs.

B. Conveyor costs

105. As to the dispute over conveyor costs and their allocation, Mr. Covert testified that Wyodak’s amended returns grouped all of the conveyor costs, including depreciation, repair labor and costs, electricity, and insurance, and then split them one time based on the distance from the pit to the mine mouth and the distance from the mine mouth to the plant. (Tr. vol. I, 191). Mr. Covert’s limited testimony did not explain why Wyodak’s amended conveyor costs were appropriate, nor did he explain how the amendment was based on the proportionate profits costs classifications. There was no further evidence or discussion about this issue from either party, other than Wyodak’s closing argument indicating the parties could likely resolve the issue. (Tr. vol. III, 597).

106. Given the very limited evidence presented and Wyodak's failure to even precisely identify the issue for the State Board's decision, the State Board finds that Wyodak failed its burden of going forward and of persuading the State Board by a preponderance of the evidence that the Department erred in rejecting its amended returns relating to conveyor costs. *Supra* ¶ 46.

107. To the extent the amended returns reflected revised conveyor costs as those costs changed with the calculated mine mouth location and in-pit and out-of-pit transportation costs, the State Board refers to its discussion in Issue I, *supra*, and affirms the Department's rejection of the amended returns on that basis, as well.

III. In rejecting Wyodak's amended gross products returns, did the Department violate Wyoming Constitution article 15, section 11, requiring that it treat all taxpayers uniformly and equally?

108. Wyodak argues the Department's denial of its amended tax returns violates the Wyoming Constitution, claiming it results in "taxation that is not equal and uniform with other similarly situated tax payers, and is discriminatory against Wyodak." (Pet'r Wyodak Res. Dev. Corp.'s Post-Hrg. Br. 28). Wyodak claims that allowing it to locate its mine mouth "consistent with other Powder River Basin mines" using "accepted engineering practices" is necessary to treat it uniformly and equally under the Constitution. *Id.* at 29.

109. The Department generally responded that its rejection of the calculated mine mouth proposed by Wyodak was in line with its responsibility under the Wyoming Constitution to treat all taxpayers uniformly and equally. (Tr. vol. III, 532-36, 553-55).

110. If Wyodak is the only mine in the Powder River Basin with a permanent mine mouth location for the life of its pit, that is the result of its business choice to rely on a conveyor system through a transportation corridor it has not reclaimed. In other words, Wyodak's permanent mine mouth is a result of Wyodak's business decisions and mine plan, not a result of the Department's failure to consistently apply the tax valuation statutes. *Supra* ¶¶ 23, 77.

111. Mr. Grenvik's testimony identifies the difficulties the Department experiences with the various mine operations in Wyoming, making clear that the only real way to ensure uniformity and equality is by applying the statute in the same manner, to the actual mine operation systems in use:

Q. Okay. Speaking about other coal operations and taxpayers, is there a uniformity of operations amongst the coal taxpayers in the state of Wyoming?

A. I think we've already heard - - the Board's already heard testimony that every operation in the state of Wyoming is different. There's no question. You know, some mines, the pit might have three ramps and you have to determine what the weighted average is of all of the ramps. One mine has multiple pits and you have to determine the weighted average haul distance for all of those pits.

You have this mine that has its I-90 issues that have forced it to mine a certain configuration, and you have the old Chevron mine, which I'd referred to earlier, which is deeply in a hole, and they got to do switchbacks to come up out of that.

Every mine has its own quirks, uniqueness, but that doesn't mean we can't apply the statutes uniformly to all of them.

Q. . . . Is Wyodak unique in the ability to apply or not apply the statutes that we've been talking about?

A. No, they are not unique. Certainly this mine configuration of theirs is detrimental in their eyes relative to other operations in that they do have a different configuration of a pit. They aren't reclaiming as they're going per se, and that does have a - - that does increase their taxable value, their direct cost ratio, but it doesn't mean we're not applying the statutes uniformly.

Q. And would there be some concern that the Department would have with coming up with hypothetical points of valuation for coal producers in the state?

A. If we - - if we came up with a method, we would have to apply it to everybody else. And I don't know where our rule authority or much less our statutory authority to come up with a methodology, particularly on hypothetical costs, on costs that are not actual. I mean, why are we requiring the companies to have such detailed accounting records if we're just going to, you know, make up things as we go?

....

Q. And if you were to use calculated mouths of the mine, would everyone - - would there be a uniformity issue with that?

A. Yes, there would. Some mines have very, very deep pits. Some mines have very shallow pits. And that setback or the toe and all of these other concepts actually may be different for all of those, but we'd only be using one. Then we'd be effectively changing the variables on who is detrimentally impacted and who is positively impacted taxable value-wise by doing that.

(Tr. vol. III, 553-55).

112. The Department's denial of Wyodak's amended returns did not violate the Wyoming Constitution article 15, section 11. The Department's assessment of Wyodak's mine mouth location is the point of valuation that ensures Wyodak is treated the same as all other Powder River Basin mines. *Supra* ¶ 111.

113. Uniformity of assessment requires that the method of appraisal be consistently applied. *Monolith*, 574 P.2d at 761. The State Board finds that the Department complied with this requirement by applying the plain language of the statute to all producers in Wyoming, as consistently as possible.

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ORDER

IT IS THEREFORE ORDERED that the Department of Revenue's decision letter dated March 15, 2013, rejecting Wyodak's amended tax returns is **affirmed**.


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 18th day of December, 2015.

STATE BOARD OF EQUALIZATION




E. Jayne Mockler, Chairman



Robin Sessions Cooley, Board Member

ATTEST:



Jessica M. Brown

CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of December, 2015, I served the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER** 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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