

BEFORE THE STATE BOARD OF EQUALIZATION

FOR THE STATE OF WYOMING

IN THE MATTER OF THE APPEAL OF)	
WASHAKIE COUNTY ASSESSOR)	
FROM A DECISION OF THE WASHAKIE)	
COUNTY BOARD OF EQUALIZATION)	Docket No. 2014-74
- 2014 PROPERTY VALUATIONS)	
(MATUSCHKA, MUELLER, GLUNZ &)	
& CHICAGO PROPERTIES))	

DECISION AND ORDER

APPEARANCES

Marcy Argeris, Washakie County Attorney (through January 5, 2015), filed a brief on behalf of Petitioner, Kathryn Treanor, Washakie County Assessor (Assessor or Petitioner). Oral argument by Ms. Treanor.

David M. Clark, Greear Clark King, P.C., filed a brief on behalf of Helmut J. Mueller Limited Partnership; Josef Matuschka; Chicago Properties, Limited Partnership; and Jerome P. Glunz and John P. Glunz (Taxpayers or Respondents). Oral argument by Mr. Clark.

DIGEST

Assessor appealed the Washakie County Board of Equalization's (County Board) reversal of Assessor's decision to value four properties as vacant residential, rather than agricultural, with the exception of a small portion of one of the parcels, which the Parties agreed was properly valued as residential. Assessor asserts that she properly classified the properties as non-agricultural. After briefing from the parties, the State Board heard oral argument on December 22, 2014.

The State Board,¹ Chairman E. Jayne Mockler, Vice Chairman Martin L. Hardsocg, and Board Member Robin Sessions Cooley, considered the County Board Record, Assessor's Notice of Appeal, and the Parties' briefs and oral arguments.

¹ Paul Thomas Glause and Steven D. Olmstead were members of the State Board when the appeal was filed. Mr. Glause resigned from the Board, effective January 2, 2015. Mr. Olmstead's term on the State Board expired on March 1, 2015. Governor Matthew Mead appointed Robin Sessions Cooley and Martin L. Hardsocg to the Board effective March 16, 2015.

When reviewing a County Board's decision, the State Board determines whether the decision is arbitrary, capricious, unsupported by substantial evidence, and/or contrary to law. Rules, Wyo. State Bd. of Equalization, ch. 3 § 9 (2006). We reverse the Washakie County Board of Equalization's decision.

ISSUE

The Assessor identified one issue in her appeal:

Was the Washakie County Board of Equalization's decision that the Washakie County Assessor should re-assess the taxpayers' property using the agricultural classification unsupported by substantial evidence, and/or arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law?

(Opening Br. of Pet'r, p. 4).

Taxpayers stated the issue as follows:

The County Board of Equalization found the Taxpayers to have demonstrated by a preponderance of the evidence that the properties' use is consistent with the land size, location and particularly its capability to produce as an agricultural operation in realizing rental income as grazing land. The County Board of Equalization accordingly ordered that the land be assessed as agricultural land. Was this determination unsupported by substantial evidence, or was it arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law?

(Br. of Resp'ts, p. 1).

PROCEEDINGS BEFORE THE COUNTY BOARD

The County Board heard Taxpayers' protests on July 9, 2014. Each taxpayer asserted that his/its 160 acre property, with the exception of a small portion of the Chicago Properties, Limited Partnership parcel on which a cabin and associated structures stood, should be valued as agricultural land. Taxpayers claim that the parcels were subject to a grazing lease and were used for grazing cattle. The Assessor denied the Taxpayers' earlier formal requests that the properties be valued as agricultural land and assessed the property as residential or vacant residential, consistent with past assessment of the properties. The County Board issued Findings of Fact, Conclusions of Law and Order on July 21, 2014, reversing the Assessor's classifications and remanding the assessments for revaluation as

agricultural land, with the exception of the portion of the Chicago Properties parcel containing the cabin and associated structures. (R. at 42).

STANDARD OF REVIEW

When the State Board hears appeals from a county board, it acts as an intermediate level of appellate review. *Washakie Cty. Bd. of Equalization v. Wyo. State Bd. of Equalization*, 915 P.2d 1184, 1188 (Wyo. 1996); *Union Pac. R.R. Co. v. Wyo. State Bd. of Equalization*, 802 P.2d 856, 859 (Wyo. 1990). In its appellate capacity, the State Board treats the County Board as the finder of fact. *Id.* By contrast, the State Board acts as the finder of fact when it hears contested cases on appeal from final decisions of the Wyoming Department of Revenue (Department). Wyo. Stat. Ann. § 39-11-102.1(c) (2013). This sharp distinction in roles is reflected in the State Board Rules governing the two different types of proceedings. *Compare* Rules, Wyo. State Bd. of Equalization, ch. 2 (2006) *with* Rules, Wyo. State Bd. of Equalization, ch. 3 (2006).

The State Board's standards of review of a county board's decision are nearly identical to that of a district court's review under the Wyoming Administrative Procedure Act: it shall hold unlawful and set aside agency action, findings of fact, and conclusions of law when certain omissions and/or mistakes occur. Wyo. Stat. Ann. § 16-3-114(c)(ii) (2013). Mirroring the statute, the State Board reviews county board decisions to determine whether they are:

- (a) Arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law;
- (b) In excess of statutory jurisdiction, authority or limitations or lacking statutory right;
- (c) Without observance of procedure required by law; or
- (d) Unsupported by substantial evidence.

Rules, Wyo. State Bd. of Equalization, ch. 3 § 9 (2006).

Since the State Board Rules are patterned on the judicial review provision of the Wyoming Administrative Procedure Act, the State Board looks to precedent under Wyoming Statutes section 16-3-114(c) (2013) for guidance. Accordingly, it must apply the substantial evidence standard, as follows:

When an appellant challenges an agency's findings of fact and both parties submitted evidence at the contested case hearing, we examine the entire record to determine if the agency's findings are supported by substantial

evidence. *Colorado Interstate Gas Co. v. Wyoming Department of Revenue*, 2001 WY 34, ¶ 8, 20 P.3d 528, 530 (Wyo. 2001); *RT Commc'ns, Inc. v. State Bd. of Equalization*, 11 P.3d 915, 920 (Wyo. 2000). If the agency's findings of fact are supported by substantial evidence, we will not substitute our judgment for that of the agency and will uphold the factual findings on appeal. "Substantial evidence is more than a scintilla of evidence; it is evidence that a reasonable mind might accept in support of the conclusions of the agency." *Id.*

Chevron U.S.A., Inc. v. Dep't of Revenue, 2007 WY 79, ¶ 9, 158 P.3d 131, 134 (Wyo. 2007). However, "[t]he arbitrary and capricious standard remains a 'safety net' to catch agency action which prejudices a party's substantial rights or which may be contrary to the other W.A.P.A. review standards yet is not easily categorized or fit to any one particular standard." *Dale v. S&S Builders, LLC*, 2008 WY 84, ¶ 23, 188 P.3d 554, 561 (Wyo. 2008).

When reviewing conclusions of law, the State Board applies the following standard of review:

Questions of law are reviewed *de novo*, and "[c]onclusions of law made by an administrative agency are affirmed only if they are in accord with the law. We do not afford any deference to the agency's determination, and we will correct any error made by the agency in either interpreting or applying the law." *Bowen v. State, Dep't of Transp.*, 2011 WY 1, ¶ 7, 245 P.3d 827, 829 (Wyo. 2011) (quoting *State ex rel. Workers' Safety & Comp. Div. v. Garl*, 2001 WY 59, ¶ 9, 26 P.3d 1029, 1032 (Wyo. 2001)).

Maverick Motorsports Grp., LLC v. Dep't of Revenue, 2011 WY 76, ¶ 12, 253 P.3d 125, 128 (Wyo. 2011).

The State Board reviews a county board's findings of "ultimate facts" as follows:

When an agency's determinations contain elements of law and fact, we will not treat them as findings of fact. We extend deference only to agency findings of "basic fact." When reviewing a finding of "ultimate fact," we divide the factual and legal aspects of the finding to determine whether the correct rule of law has been properly applied to the facts. If the correct rule of law has not been properly applied, we do not defer to the agency's finding but correct the agency's error in either stating or applying the law.

Union Pac. R.R. Co. v. Wyo. State Bd. of Equalization, 802 P.2d 856, 860-61 (Wyo. 1990).

FACTS PRESENTED TO THE COUNTY BOARD

1. Four property owners, each holding title to approximately 160 acres of generally undeveloped land in Washakie County, sought to classify their lands as agricultural land for tax purposes. (R. at 52, 55, 58, 61). The property owners and their property at issue are as follows:

a. Helmut J. Mueller Limited Partnership owns approximately 160 acres of land (Mueller Land) in Section 10, T44N, R86W, 6th P.M., in Washakie County, Wyoming;

b. Josef Matuschka owns approximately 162.07 acres of land (Matuschka Land) in Sections 10, 14 and 15, T44N, R86W, 6th P.M., in Washakie County, Wyoming;

c. Chicago Properties, Limited Partnership owns approximately 160 acres of land (Chicago Properties Land) in Section 9, T44N, R86W, 6th P.M., in Washakie County, Wyoming; and

d. Jerome P. Glunz and John P. Glunz jointly own approximately 160 acres of land (Glunz Land) in Section 10, T44N, R86W, 6th P.M., in Washakie County, Wyoming.

(R. at 2-12, 46-49).

2. Assessor issued 2014 Notices of Assessment to each Taxpayer on March 28, 2014, classifying and valuing their property as Vacant Residential or Residential Land, as she had in years previous. (R. at 46-49; Disk 1, Tracks 12-13). The Assessor valued the Mueller Property at \$270,350, the Matuschka Land at \$273,352, the Chicago Properties Land (which included a cabin and associated property) at \$362,629, and the Glunz Land at \$270,350. *Id.*

3. In response, Taxpayers each submitted a completed “Affidavit for Agricultural Land Classification,” in which they identified their mailing address, their land to be classified and a hand-initialed verification that their land satisfied four statutory criteria for classification as agricultural land. (R. at 3, 6, 9, 12, 52, 55, 58, 61); *See* Wyo. Stat. Ann. § 39-13-103(b)(x)(B)(I-IV). Each affidavit, a completed form prescribed by the Wyoming Department of Revenue, was executed and notarized. *Id.*

4. In their affidavits, Taxpayers attested: 1) that their property is presently used or employed for an agricultural purpose, specifically the “Rearing, feeding, grazing or management of livestock”; 2) that their land is not part of a platted subdivision; 3) that their land is leased to a lessee that has derived gross revenue of not less than \$1,000 from the marketing of agricultural products, and the lessee is identified as Otter Creek Grazing Association, Inc.; and 4) that their land “has been used consistent with the land’s size,

location and capability to produce as an agricultural operation as defined by Department of Revenue Rules and the Mapping & Agricultural Manual as published by the Department of Revenue[.]” (R. at 52, 55, 58, 61).

5. In response, Assessor sent Taxpayers a written request for financial records to support Taxpayers’ claims that their property was put to agricultural use. (R. at 62). She specifically requested “any and all financial records for all four taxpayers that reflect the income and expenses (stock ponds, fencing etc.) for the agricultural use of the land.” *Id.* She cited Wyoming Statutes section 39-13-101(a)(iii) (in effect prior to January 1, 2003), noting the statutory requirement that “ ‘the primary purpose of obtaining a monetary profit’ must be applicable to the land.” *Id.* Taxpayers provided no information in response to the request and first submitted information in their prehearing disclosures. (Disk 2, Track 4).

6. Not satisfied that Taxpayers used their property for agricultural purposes in accordance with Wyoming Statutes section 39-13-103(b)(x)(B) (2013) and the Department of Revenue’s Rules, the Assessor continued in her position that the lands in question were properly valued as residential or vacant residential. Taxpayer Chicago Properties, Limited Partnership did agree that a small portion of its land, consisting of approximately one acre on which a 39-foot by 24-foot cabin, shed, and other “curtilage” was located, was properly classified as residential. (Disk 2, Track 7).

7. The Taxpayers did not testify and appeared by phone merely to attend the hearing. (Disk 1, Track 1).

8. The Parties agreed none of the properties were subdivided. (Disk 1, Track 5).

9. Each of the Taxpayers offered into evidence a Grazing Lease with “Otter Creek Grazing Association, Inc.,” (Otter Creek) through which Otter Creek would pay rent of \$8 per acre per year (approximately \$1,280 per year) for the exclusive right to use the land for “pasturage and grazing of cattle.” (R. at 187-204). Mr. Mike Reilly, President of the Board of Directors of Otter Creek, testified that the lease amount was actually \$14 per acre per year, of which \$6 per acre was retained by Otter Creek to maintain fences. (Reilly Testimony, Disk 1, Tracks 11-12). The lease documents contain no such provision, but do require Otter Creek to maintain fences. (R. at 188, 194, 200).²

10. The Taxpayers’ first witness, Mr. Bryan O’Donnell, a rancher, testified regarding another Pasture Lease Agreement that he apparently entered with Chicago Properties. (R. at 44-45; O’Donnell Testimony, Disk 1, Track 7). The lease term commenced on June 15, 2014, and would extend three years; it was not in effect during 2013. *Id.* Mr. O’Donnell

² The Matuschka and Chicago properties are included within one lease because Josef Matuschka executed the lease on behalf of two of the properties, including the Chicago Properties Land, of which he was a general partner. (R. 187-192).

testified that he grazed a bull and 20 pairs of cattle on the Chicago Properties Land and that he grazed them from July until “the snow flies,” at which point he moves the cattle to a summer pasture. (O’Donnell Testimony, Disk 1, Track 7). He further testified that he sells calves every year for more than \$1,000 each. *Id.* He explained that he grazes 20 cattle per quarter square mile and that he avoids overgrazing or abusing the leased rangeland. *Id.*

11. The Taxpayers did not explain the relevance of Mr. O’Donnell’s lease to the disputed tax year, 2013, and it appears that discussion of Mr. O’Donnell’s lease of the Chicago Properties Land was to show that the property is being used for agricultural purposes. The County Board drew no written legal conclusions from the O’Donnell lease. (R. at 38-42).

12. Taxpayers’ second witness, Mr. Mike Reilly, is a farmer/rancher, and served as the President of the Board of Directors of Otter Creek Grazing Association, Inc., a post he held for six to seven years. (Reilly Testimony, Disk 1, Track 8). Otter Creek is a subchapter-S corporation which serves its shareholders’ grazing needs. It is in the business of selling grass for, and to, its members. Otter Creek’s shareholders run their livestock on the Association’s land or leased lands within Washakie County, and Otter Creek sells grass or forage to its members and other customers. (Reilly Testimony, Disk 1, Track 8).

13. Mr. Reilly testified that Otter Creek leases the Taxpayers’ lands, four 160 acre parcels, but that the fourth, Chicago Properties Land, contained terrain not suitable for grazing. He stated that he was familiar with the properties but that he had not been to the property in seven or eight years.³ Otter Creek owns 105 bulls, according to Mr. Reilly, and it sells bull calves for sums exceeding \$1,000. He testified that Otter Creek receives income of more than \$1,000 annually from each 160 acre parcel, but offered no specific financial data regarding that income stream. (Reilly Testimony, Disk 1, Tracks 8-11). Otter Creek, it was explained, generates more than \$1,000 from both the sale of grass and forage to its members, and sometimes to nonmembers. Mr. Reilly did not relate those income streams to the individual properties in question and only generally testified that Otter Creek generates more than \$1,000 a year. (Reilly Testimony, Disk 1, Tracks 9-11).

14. When asked how Otter Creek determines how many cattle to run on the property, he explained that Otter Creek leases the Taxpayers’ land by the acre, not the AUM,⁴ and employs “common sense” when determining how many cattle to graze. He explained that the four parcels are “well utilized,” but are not overgrazed. He opined that Otter Creek uses the leased property to “the fullest extent of its productive capacity in terms of grazing livestock.” (Reilly Testimony, Disk 1, Track 9). He testified that the properties were best

³ The Witness identified the leases on a map during the hearing, but the map was not admitted as an exhibit, nor does the record contain that demonstrative resource.

⁴ AUM stands for “animal unit month” and refers to “the amount of forage required to maintain a 1,000 lb. cow, with or without calf, for one month.” Rules, Wyo. Dep’t of Revenue, ch. 11 § 3(b) (2003).

used as rangeland. (Reilly Testimony, Disk 1, Track 10). Otter Creek's "bull battery" may graze on any of the four parcels. (Reilly Testimony, Disk 1, Track 12).

15. Kathy Treanor, Washakie County Assessor, testified that she classified Mueller, Glunz and Matuschka Lands as residential vacant and the Chicago Properties Land as Residential, as she had in the past. (Treanor Testimony, Disk 1, Track 12).

16. Assessor discussed her duties and emphasized that she is required to follow Wyoming's tax statutes, the Department of Revenue's rules, court decisions and the State Board's decisions. (Treanor Testimony, Disk 1, Tracks 13-14). When she has a property tax question, she often refers to court and State Board decisions to resolve the question. She referred the County Board to three State Board decisions that she specifically relied upon in denying Taxpayers' requested property classification change, all three of which were admitted as exhibits over the Taxpayers' objections. *Id.*

17. The Assessor first discussed the State Board decision in *H & A, LLC (Crook Cty. - 2006 Property Valuation)*, Wyo. State Bd. of Equalization Doc. No. 2006-106 (April 26, 2007), 2007 WL 1302718. (R. at 145-61; Treanor Testimony, Disk 1, Tracks 13-14). Acknowledging that the facts of that case were different from the facts presented before the County Board, Assessor pointed out that under the ruling, taxpayers must tie agricultural production revenue to the land in question. She specifically noted paragraphs 45-47 of the decision and, in particular, paragraph 47 which provides: "The issue is, therefore, what the Lessee earned from the marketing of agricultural products, not what the Lessee paid the Taxpayer for the use of the land." (R. at 157; Treanor Testimony, Disk 1, Tracks 13-14).

18. The second State Board decision, which the Assessor discussed in support of her decision, was *Richard & Glenda Hlavnicka (Fremont Cty. - 2005 Property Valuation)*, Wyo. State Bd. of Equalization Doc. No. 2006-87 (Sept. 7, 2006), 2006 WL 3327972. (R. at 162-75; Treanor Testimony, Disk 1, Tracks 14-15). Assessor argues that this State Board decision stands for the proposition that in ascertaining a land's full productive capacity under the Constitution and Wyoming Statutes section 39-13-103(b)(x)(B)(IV) (2013), the Assessor is to use the Department's Agricultural Land Valuation Study and other objectively verifiable measures. (R. at 173-74; Treanor Testimony, Disk 1, Tracks 14-15). Based upon that ruling, she testified the Taxpayers had not demonstrated their properties generated an income (or reflected a value) equal to the lowest valued property ("wasteland") in Wyoming pursuant to the Department of Revenue's Agricultural Land Valuation Study. (Treanor Testimony, Disk 1, Track 15).

19. The third State Board Decision, according to the Assessor, requires that county assessors follow Department of Revenue valuation formulae. *Fremont Cty. Assessor (2004 Property Valuation -Dechert Property)*, Wyo. State Bd. of Equalization Doc. No. 2004-

125 (Feb. 4, 2005), 2005 WL 301141. (R. at 177-86; Treanor Testimony, Disk 1, Track 15). Asserting that she is bound to follow the Department's regulations and Agricultural Land Study, she quoted the following decisional language: "The Department's annual Agricultural Land Valuation Study, as an order, procedure, and formula, is binding on an assessor. Neither the Fremont County Assessor, nor the County Board have the authority to deviate from the valuation ranges established by the Department." *Id.* at ¶ 33. (R. at 185; Treanor Testimony, Disk 1, Track 15).

20. Referring to the Department of Revenue's 2014 Agricultural Land Valuation Study, Assessor explained that the Department prescribes a valuation benchmark for agricultural land using the value of certain crop or animal production, such as the price of hay, price of wheat, and for rangeland, an AUM. (R. at 130-43; Treanor Testimony, Disk 2, Track 1). She explained that in valuing agricultural land, the Otter Creek Lease rental rates are not relevant because they do not use the AUM criteria; rather the leases use a per acre rental rate. (Treanor Testimony, Disk 2, Track 1).

21. While the Assessor did not value the land as agricultural land, she did perform a hypothetical valuation of the land as agricultural land using the Department's prescribed formula and geographically-driven variables ("Land Resource Area" or LRA, range class, soil quality, AUM, an income benchmark, and a capitalization rate) for the purpose of evaluating whether the Taxpayers' lease rates generated a revenue stream commensurate with the productive value of the land. She prepared an Agricultural Land Worksheet identifying an imputed value for each of the four properties. (R. at 205-208; Treanor Testimony, Disk 2, Tracks 2-3). She explained that while the Department's formula allows assessors to arrive at a specific value for agricultural land, it also allows assessors to adjust value up or down within a range. Had she valued the Taxpayers' lands as agricultural property as required by the Department, she would have calculated the productive values as follows: Chicago Properties Land, \$8,948.70; Matuschka Land, \$8,042.37; Glunz Land, \$8,655.22; and Mueller Land, \$7,607.45. *Id.* Assessor found the rental rates generated an income far less than the productive capacity of each property based upon the Department's valuation formula and the Agricultural Land Valuation Study. (R. at 205-08, Treanor Testimony, Disk 2, Tracks 2-3, 13-14). She concluded that the productive capacity values were more than four times the rents received. *Id.* She opined, based upon her hypothetical valuations of each property, that Taxpayers' properties were not used to their productive capability as required by Wyoming Statutes section 39-13-103(b)(x)(B)(IV) (2013) and the Department's rules. *Id.* Assessor further explained the process of performing an agricultural valuation, referring to a Department-issued step process for classifying agricultural lands. (R. at 144; Treanor Testimony, Disk 2, Track 3).

22. Further explaining her denial of Taxpayers' classification change request, she saw no indication the properties were used for agricultural production consistent with their capability and, upon asking for more information from Taxpayers, received none. She

noted that none of the Taxpayers owned cattle or agricultural equipment, and they generated no revenue stream from the sale of agricultural products. (Treanor Testimony, Disk 2, Tracks 3-4).

23. With respect to the Chicago Properties Land containing a cabin and associated property, sitting on approximately one acre, she noted that pursuant to the Department's Rules, Chapter 10, Section 3(c)(viii): "Resort or recreational lands, including dude ranch facilities, summer homes or mountain cabins" are designated "Non-agricultural lands." (R. at 117-18; Treanor Testimony, Disk 2, Tracks 4, 7).

24. Assessor testified she consistently valued other properties, similar to Taxpayers' properties, as residential property. (Treanor Testimony, Disk 2, Track 5). She further testified she valued the Taxpayers' properties using the same criteria and resources available as she applied to all other properties in Washakie County. *Id.*

25. Taxpayers' counsel questioned the Assessor with respect to a valuation spreadsheet that he created. (R. at 265; Treanor Testimony, Disk 2, Tracks 10-13). Taxpayers' counsel argued his spreadsheet demonstrated that the lease revenues exceeded the productive values prescribed under the Department's guidelines. (R. at 265; Treanor Testimony, Disk 2, Tracks 10-13). The spreadsheet was not offered or admitted into evidence and no witness testified in support of the calculations contained therein. To the contrary, Assessor disputed the accuracy and viability of the calculations and did not agree that the calculations of Taxpayers' Counsel demonstrated the lease payment revenues exceeded the production value of the properties in question. (Treanor Testimony, Disk 2, Tracks 10-13).

APPLICABLE LAW

26. The Wyoming Constitution, article 15, section 11(a), requires that all property "shall be uniformly valued at its full value as defined by the legislature." "The legislature shall prescribe such regulations as shall secure a just valuation of taxation of all property, real and personal." Wyo. Const. art. 15, § 11(d).

27. Broken into its component parts, the Wyoming Constitution requires that property valuations consist of: (1) a rational method of valuation; (2) that is equally applied to all property; and (3) which provides essential fairness. *Britt v. Fremont Cty. Assessor*, 2006 WY 10, ¶ 18, 126 P.3d 117, 124 (Wyo. 2006); *Holly Sugar v. State Bd. of Equalization*, 839 P.2d 959, 964 (Wyo. 1992); see *Teton Valley Ranch v. State Bd. of Equalization*, 735 P.2d. 107, 115 (Wyo. 1987) (Justice Urbikit concurring opinion). It is the burden of one challenging an assessment to prove by a preponderance of the evidence that at least one of these elements has not been fulfilled. *Teton Valley Ranch*, 735 P.2d at 113.

28. Land may be classified as agricultural land only if it satisfies four statutory requirements:

(x) The following shall apply to agricultural land:

(A) The department shall determine the taxable value of agricultural land and prescribe the form of the sworn statement to be used by the property owner to declare that the property meets the requirements of subparagraph (B) of this paragraph. In determining the taxable value for assessment purposes under this paragraph, the value of agricultural land shall be based on the current use of the land, and the capability of the land to produce agricultural products, including grazing and forage, based on average yields of lands of the same classification under normal conditions;

(B) Contiguous or noncontiguous parcels of land under one (1) operation owned or leased shall qualify for classification as agricultural land if the land meets each of the following qualifications:

(I) The land is presently being used and employed for an agricultural purpose;

(II) The land is not part of a platted subdivision, except for a parcel of thirty-five (35) acres or more which otherwise qualifies as agricultural land;

(III) If the land is not leased land, the owner of the land has derived annual gross revenues of not less than five hundred dollars (\$500.00) from the marketing of agricultural products, or if the land is leased land the lessee has derived annual gross revenues of not less than one thousand dollars (\$1,000.00) from the marketing of agricultural products; and

(IV) The land has been used or employed, consistent with the land's size, location and capability to produce as defined by department rules and the mapping and agricultural manual published by the department, primarily in an agricultural operation, or the land does not meet this requirement and the requirement of subdivision (III) of this subparagraph because the producer:

(1) Experiences an intervening cause of production failure beyond its control;

(2) Causes a marketing delay for economic advantage;

(3) Participates in a bona fide conservation program, in which case proof by an affidavit showing qualification in a previous year shall suffice; or

(4) Has planted a crop that will not yield an income in the tax year.

(C) If needed, the county assessor may require the producer to provide a sworn affidavit affirming that the land meets the requirements of this paragraph. When deemed necessary, the county assessor may further require supporting documentation.

Wyo. Stat. Ann. § 39-13-103(b)(x)(2013); *See also* Wyo. Stat. Ann. § 39-13-101(a)(iii) (2013) (defining “Agricultural land” by reference to Wyo. Stat. Ann. § 39-13-103(b)(x) (2013)).

29. The Department is required to confer with, advise, and give necessary instructions and directions to the county assessors as to their duties, and to promulgate rules and regulations necessary for the enforcement of all tax measures. Wyo. Stat. Ann. § 39-11-102(c)(xvi), (xix) (2013). “Except as otherwise provided by law for specific property, the department shall prescribe by rule and regulation the appraisal methods and systems for determining fair market value using generally accepted appraisal standards.” Wyo. Stat. Ann. § 39-13-103(b)(ii) (2013).

30. County assessors, for their part, must “[f]aithfully and diligently follow and apply the orders, procedures and formulae of the department of revenue . . . for the appraisal and assessment of all taxable property.” Wyo. Stat. Ann. § 18-3-204(a)(ix) (2013).

31. The Department defines “agricultural lands” as follows:

Section 3. Definitions.

For the purposes of these rules, the definitions set forth in Wyoming Statutes Title 39, as amended, are incorporated by reference. In addition, the following definitions shall apply:

(a.) "Agricultural land" means contiguous or noncontiguous parcels of land presently being used and employed for the primary purpose of providing gross revenue from agricultural or horticultural use or any combination thereof unless part of a platted subdivision. Individual parcels of thirty five (35) acres or more within a subdivision may be considered for agricultural classification pursuant to W.S. 39-13-103 (b)(x)(B)(II). Agricultural land shall generally include land that is actively farmed, ranched or is used to raise timber for timber products (firewood will not be considered a timber product for agricultural classification purposes) to obtain a fair rate of return.

(i.) "Agricultural" means cultivation of the soil, the production of forage or crops, production of timber products; or the rearing, feeding, or management of livestock in domestic or captive environments consistent with the land’s capability to produce.

(ii.) "Primary purpose of obtaining a monetary incentive" means during the year preceding the assessment year the owner of non-leased land has derived annual gross revenues of not less than five hundred dollars (\$500.00) from the marketing of agricultural products from the

agricultural operation that includes the subject land and for leased land, the lessee has derived annual gross revenues of not less than one thousand dollars (\$1,000.00) from marketing of agricultural products when conducted consistent with the lands capability to produce.

Rules, Wyo. Dep't of Revenue, ch. 10 § 3(a.) (2011).

32. The Department in its rules also identifies a non-exclusive list of “non-agricultural lands”:

(c.) "Non-agricultural lands" shall include but not be limited to lands as described in the State of Wyoming market valuation of Residential, Commercial and Industrial Lands as published by the Department of Revenue, Ad Valorem Tax Division:

- (i.) Lands classified within neighborhood boundaries as residential, commercial, industrial or rural, whether vacant or improved;
- (ii.) Lands in active transition from agricultural use to residential, commercial or industrial use, which includes creation or division of a tract, parcel or other unit of land for the purpose of sale or development for such use.
- (iii.) Farmsteads with lands occupied by buildings which constitute the home site including one or more acres (as determined by the County Assessor) of land used in direct connection with the home site;
- (iv.) Condominium complexes with proportionate interests in ownership of the land;
- (v.) Commercial land used for retail stores and shops, commercial parking, high-rise structures, shopping centers, offices, apartment houses, warehouses, commercial feed lots, dude ranch facilities, and other commercial or income purposes;
- (vi.) Land or land and improvements altered to accommodate industrial uses for assembling, processing or manufacturing a product or in providing a service;
- (vii.) Topsoil is removed or topography is disturbed to the extent that the property cannot be used to raise crops, timber or to graze livestock.
- (viii.) **Resort or recreational lands, including dude ranch facilities, summer homes or mountain cabins;** and
- (ix.) Parcels of land thirty five (35) acres or less unless the landowner provides proof that such land should otherwise be classified as agricultural land.
- (x.) Land zoned for purposes, which exclude agricultural uses

Rules, Wyo. Dep't of Revenue, ch. 10 § 3(c.) (2011) (emphasis added).

33. For property owners seeking agricultural valuation for property tax purposes, the Department of Revenue prescribes a form affidavit to be executed and delivered by the owner:

The following form is prescribed as the sworn affidavit for use by all county assessors pursuant to Wyoming Statute 39-13-103(b)(x)(A). The sworn affidavit shall be available in the county assessor's office upon request. Any producer wishing to receive agricultural classification of his/her land shall provide the prescribed sworn affidavit, as well as supporting documentation, to the county assessor.

Rules, Wyo. Dep't of Revenue, ch. 10 § 5 (2011).

34. Administrative rules have the force and effect of law. *Wyo. Dep't of Revenue v. Union Pac. R.R. Co.*, 2003 WY 54, ¶ 18, 67 P.3d 1176, 1184 (Wyo. 2003).

35. An assessor's valuation is presumed valid, accurate, and correct. This presumption survives until overturned by credible evidence. *Teton Valley Ranch v. State Bd. of Equalization*, 735 P.2d 107, 113 (Wyo. 1987). "The burden is on the Taxpayer to establish any overvaluation." *Hillard v. Big Horn Coal Co.*, 549 P.2d 294, 294 (Wyo. 1976).

36. A mere difference of opinion as to value is not sufficient to overcome the presumption in favor of an assessor's valuation. *J. Ray McDermott & Co. v. Hudson*, 370 P.2d 364, 370 (Wyo. 1962).

37. With respect to appeals of property tax matters, the Wyoming Supreme Court has stated:

The Department's valuations for state-assessed property are presumed valid, accurate, and correct. This presumption can only be overcome by credible evidence to the contrary. 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.

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. 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. Once the

presumption is successfully overcome, the burden of going forward shifts to the DOR to defend its valuation. 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.

Colo. Interstate Gas Co. v. Wyo. Dep't of Revenue, 2001 WY 34, ¶¶ 10-11, 20 P.3d 528, 531 (Wyo. 2001), *quoted in Airtouch Commc'ns, Inc. v. Dep't of Revenue*, 2003 WY 114, ¶ 12, 76 P.3d 342, 348 (Wyo. 2003); *Thunder Basin Coal Co. v. Campbell Cty.*, 2006 WY 44, 132 P.3d 801, 806 (Wyo. 2006). The presumption applies equally to an assessor's valuation of locally assessed property. *Id.* at 806 n.1.

38. “The burden of proof is upon the party asserting an improper valuation.” *Amoco Prod. Co. v. Wyo. State Bd. of Equalization*, 899 P.2d 855, 858 (Wyo. 1995).

ANALYSIS OF ISSUES AND APPLICATION OF LAW

39. The County Board determined that the Taxpayers offered substantial evidence to demonstrate that the Assessor should properly classify their properties as “agricultural land” pursuant to Wyoming Statutes section 39-13-103(b)(x)(B) (2013). (R. at 41-42). Accordingly, the County Board was satisfied that Taxpayers property was: 1) presently used and employed for an agricultural purpose; 2) was not part of a platted subdivision; 3) that Taxpayers’ lessee derived annual gross revenues of not less than \$1,000 from the marketing of agricultural products; and 4) that Taxpayers’ lands were put to an agricultural purpose “consistent with the land size, location and particularly the capability to produce as an agricultural operation in realizing the rental income it does as grazing land.” *Id.*; *supra* ¶ 28.

40. This appeal turns on whether the County Board’s decision was supported by substantial evidence that Taxpayers’ satisfied all four statutory and regulatory criteria necessary to change classification of their land to “agricultural.” *See* Wyo. Stat. Ann. § 39-13-103(b)(x)(B)(I)-(IV) (2013); *supra* ¶¶ 28, 31. In determining whether there is substantial evidence in the record, the State Board will not substitute its judgment for findings reasonably supported by evidence in the County Board Record. *Washakie Cty. Bd. of Equalization v. State Bd. of Equalization*, 915 P.2d 1184, 1188-1189 (Wyo. 1996); *Holly Sugar Corp. v. Wyo. State Bd. of Equalization*, 839 P.2d 959 (Wyo. 1992); *Sage Club, Inc. v. Emp't Sec. Comm'n.*, 601 P.2d 1306, 1310 (Wyo. 1979). While substantial evidence may be less than the weight of the evidence, it cannot be clearly contrary to the overwhelming weight of the evidence. The Wyoming Supreme Court has stated “[s]ubstantial evidence is a term of art best described as relevant evidence that a reasonable

mind can accept as adequate support for an agency's conclusion." *Sidwell v. State Workers' Comp. Div.*, 977 P.2d 60, 63 (Wyo. 1999).

41. The State Board will address each of the four statutory requirements in turn.

A. Present Use for Agricultural Purpose

42. The State Board finds that the County Board correctly determined that Taxpayers' properties were put to an agricultural purpose, which includes "land uses when conducted consistent with the land's capability to produce: . . . (B) Production of timber products or grasses for forage; or (C) Rearing, feeding, grazing or management of livestock." (R. at 41); *see* Wyo. Stat. Ann. § 39-13-101(a)(viii) (2013).

43. The Taxpayers entered grazing leases that permitted lessee, Otter Creek, to graze and pasture cattle on Taxpayers' properties in 2013. Mr. Mike Reilly, President of the Board of Directors of Otter Creek, testified that Otter Creek used all four properties to graze and pasture its bulls in 2013. *Supra* ¶ 9. Otter Creek's activity on Taxpayers' lands meets the first requirement of Wyo. Stat. Ann. § 39-13-103(b)(x)(B)(I) (2013), *supra* ¶ 28, and the Department's interpretive rules. *Supra* ¶ 31. Assessor does not contest whether Taxpayers satisfied this prerequisite.

B. Not Part of Platted Subdivision

44. The Parties agreed that Taxpayers' properties were not part of a platted subdivision. Wyo. Stat. Ann. § 39-13-103(b)(x)(B)(II) (2013); *supra* ¶¶ 8, 28, 31. The County Board correctly determined that this requirement was satisfied. (R. at 41).

C. Minimum Annual Gross Revenues

45. The third requirement to qualify as agricultural property is that the owners each demonstrate at least \$500 from the marketing of agricultural products or, if the land is leased, that the lessee has "derived annual gross revenues of not less than one thousand dollars (\$1,000.00) from the marketing of agricultural products" Wyo. Stat. Ann. § 39-13-103(b)(x)(B)(III) (2013); *supra* ¶¶ 28, 31.

46. The County Board, relying upon Mr. Reilly's testimony that Otter Creek sold culled bulls from its herd for more than \$1,000, found that this requirement was satisfied. (R. at 41; *supra* ¶ 13). The evidence supporting the County Board's finding as to this requirement is marginal because Mr. Reilly only testified that Otter Creek sells bulls each year and that it earns well over \$1,000 for those sales. He also testified that Otter Creek derives more than \$1,000 from its sale of forage/grass to its members, and also to nonmembers. *Supra*

¶¶ 12-13. Finally, he stated that Otter Creek would presumably profit from its lease rights, rather than lose money. (Reilly Testimony, Disk 1, Track 12). In other words, Mr. Reilly explained that since Otter Creek paid rent of \$1,280 per year to each Taxpayer, it likely profited from each lease and generated revenues greater than the rent paid. *Id.*

47. Yet, Mr. Reilly did not tie a specific revenue total to any of the individual taxpayer properties or offer evidence that allowed the County Board to verify \$1,000 of revenue from the sale of agricultural products tied to use of the properties in question. Like the County Board, we are asked to infer from Mr. Reilly's general statements that Otter Creek's use of the Taxpayers' lands for grazing and pasturage generated the requisite revenue on each parcel.

48. Nevertheless, Mr. Reilly's testimony that Otter Creek generated at least \$1,000 from its sale of bulls, which Otter Creek grazed and pastured on Taxpayers' properties, is substantial evidence in support of the County Board's finding on this point. "Substantial evidence is more than a scintilla of evidence; it is evidence that a reasonable mind might accept in support of the conclusions of the agency." *Chevron U.S.A., Inc. v. Dep't of Revenue*, 2007 WY 79, ¶ 9, 158 P.3d 131, 134 (Wyo. 2007). "The weight to be given the evidence and the credibility of witnesses is to be determined by the finder of fact (the County Board in this case) and not the reviewing court." *Palmer v. Bd. of Trustees of Crook Cty. School Dist. No. 1*, 785 P.2d 1160, 1163 (Wyo. 1990). While Mr. Reilly's testimony lacked specificity and logically raised questions in the Assessor's mind as to whether each property generated \$1,000 in revenues from the sale of agricultural products, Taxpayers offered more than a scintilla of evidence that Otter Creek generated no less than \$1,000 from the sale of agricultural products tied to grazing on each of Taxpayers' properties.

D. Use of land consistent with size, location and capability to produce primarily in an agricultural operation

49. Agricultural and grazing lands enjoy preferential status under Wyoming's Constitution in that they are classified and taxed not as other properties, but according to "the capability of the land to produce agricultural products under normal conditions." Wyo. Const. art. 15, § 11(b). The legislature is constitutionally tasked with creating regulations to secure a just valuation for taxation of all property. Wyo. Const. art. 15, § 11(d). The legislature has directed that land qualifies as agricultural only if it is "used or employed, consistent with the land's size, location and capability to produce as defined by department rules and the mapping and agricultural manual published by the department, primarily in an agricultural operation" Wyo. Stat. Ann. § 39-13-103(b)(x)(B)(IV) (2013); *supra* ¶ 28.

50. Assessor's refusal to reclassify Taxpayers' land as agricultural stemmed primarily from a lack of information demonstrating that each property in question was used consistent with its size, location and capability. *Supra* ¶¶ 20-25; Wyo. Stat. Ann. § 39-13-103(b)(x)(B)(IV) (2013); *supra* ¶ 28. She asserts that using the Department of Revenue's valuation guidelines and the 2014 Agricultural Land Valuation Study, she could not casually approve Taxpayers' application to classify their properties as agricultural because they offered no information demonstrating that Otter Creek used the properties consistent with their productive capabilities. Further, Taxpayers' affidavits in support of their requests for reclassification as agricultural property required their personal knowledge of Otter Creek's marketing of agricultural products and revenues earned from lease of Taxpayers' lands. (R. at 52, 55, 58, 61). Notwithstanding Taxpayers' sworn statements that Otter Creek generated not less than \$1,000 from the grazing of cattle on each parcel, the Assessor reasonably sought information to verify such. Taxpayers did not respond to her request. *Supra* ¶ 5.

51. Taxpayers' evidence offered to demonstrate compliance with this requirement consisted of Mr. Reilly's general statements that the properties were "well utilized" and were used to their fullest capacity. He stated that Otter Creek took a "common sense" approach to determine how heavily to graze the properties and that it avoided overgrazing. *Supra* ¶¶ 13-14. He opined that Otter Creek used each property to "the fullest extent of its productive capacity in terms of grazing livestock." *Supra* ¶ 14.

52. Unfortunately, Otter Creek's leases with the Taxpayers offer little if any direct insight to whether Otter Creek utilized the lands' consistent with their size, location and productive capacity. While Mr. Reilly's testimony sufficed to establish that Taxpayers' property satisfied the threshold criteria for classification as agricultural property (each generating at least \$1,000 agricultural products), he offered no evidence as to how many cattle were grazed upon any of the four properties, the duration during which grazing occurred, or, in any event, a given property's grazing capability. Taxpayers offered no evidence concerning the actual marketing of agricultural products tied to a specific property. We can discern from the record only that Otter Creek sold an undefined number of cattle that were fed on one or more of Taxpayers' parcels during 2013. *Supra* ¶¶ 12-14.

53. The Assessor maintains that her classification of lands as agricultural must align with the Department of Revenue's valuation guidelines and that Taxpayers' lease of lands for grazing does not necessarily mean that the lands were used consistent with their size, location, and productive capability. *Supra* ¶¶ 17-19, 20-22. She directed the County Board to Chapter 11 of the Department's Rules which set forth guidelines for ad valorem classification, valuation, method and assessment of designated agricultural lands. (R. at 120-29). Relying upon the Department's rules and this Board's rulings, she defended her refusal to reclassify, asserting that each Taxpayer's lease income of \$1,280 fell far short of

each property's productive capability, which she concluded exceeded \$8,000 per parcel. *Supra* ¶ 20-21.

54. Of course, Assessor's comparison of Taxpayers' property values based on the Department's prescribed productive capacity valuation calculations, which follow the income approach to appraisal, and Taxpayers' rental income from their leases with Otter Creek, was not a valid comparison. Still, Assessor received no information from Taxpayers and performed the comparative analysis simply to illustrate that Taxpayers' rental proceeds were far less than the productive capacity of their lands. *Supra* ¶¶ 20-22. Missing from the analysis was any specific data outlining Otter Creek's agricultural output tied to Taxpayers' properties. Without this critical information, or information otherwise revealing the scope of Otter Creek's operations on Taxpayers' lands, the County Board lacked sufficient information to evaluate whether Taxpayers satisfied the fourth requirement for attaining agricultural land status, that the land was used consistent with its size, location and capability to produce as defined by the Department's rules. Wyo. Stat. Ann. § 39-13-103(b)(x)(B)(IV) (2013); *supra* ¶ 28.

55. Assessor's position in this case is similar to that taken by the Fremont County Assessor in *Richard & Glenda Hlavnicka*. *Supra* ¶ 18. In that case, the assessor refuted taxpayers' efforts to reclassify their property as agricultural by calculating the property's expected agricultural output based upon the Department's valuation criteria and comparing that to taxpayers' documented revenue. *Hlavnicka*, *supra* ¶ 18. (R. at 166-67; *supra* ¶¶ 25-26, 52). Referring to assessor's argument in that case, we said:

The Assessor's calculation may not be the only approach to determining whether the use of a particular property is consistent with its capability to produce, but her approach has obvious virtues. It relies on measurable criteria. The criteria tie to the Assessor's uniformly enforced policy concerning the size of the residential portion of agricultural lands in her county. The criteria also tie to the same measures of productivity that the Department uses to determine taxable value. They also tie to revenues a taxpayer can readily document. These objectively verifiable measures should enable a county assessor and a taxpayer to readily reach a common understanding about whether a taxpayer's lands qualify for agricultural classification.

Hlavnicka, *supra* ¶ 18 at ¶ 53. (R. at 174). While that case is factually distinguishable from the present case, Assessor's reliance upon that case is well placed, and she correctly referred to the Department's valuation standards as a viable benchmark to evaluate the productive capacity of Taxpayers' lands.

56. The County Board, however, neither relied upon Mr. Reilly's conclusory testimony concerning Otter Creek's utilization of the properties, nor agreed with Assessor that the land was not used consistent with its productive capacity. The County Board instead accepted as evidence a demonstrative document prepared by Taxpayers' counsel which was neither entered into evidence nor supported by the testimony of any witness. *Supra* ¶ 25. The County Board was apparently untroubled by Assessor's cross-examination during which she maintained that counsel's demonstrative was incorrect and did not show that the lease payments were greater than a valuation based upon each property's productive capacity. *Id.*

57. The State Board disagrees with the County Board's conclusion that "these Taxpayers are realizing rental payments substantially in excess of that which is calculated pursuant to the *Department of Revenue's Rules* for a private forage lease rate." (R. at 42). Absolutely no evidence in the record supports the County Board's conclusion on this critical point. Counsel's arguments were just that, arguments, and did not sufficiently establish that the lease rental proceeds to the Taxpayers exceeded the productive value of the properties as calculated by Assessor in accordance with the Department's prescribed formula and standards. *Supra* ¶ 25. *See Boyd v. State*, 528 P.2d 287, 291 (Wyo. 1974) (Jury properly instructed that arguments, statements and remarks of counsel are not evidence). Counsel's demonstrative submission certainly does not overcome the presumption in favor of Assessor's initial classification or suffice to carry Taxpayers' burden of proof. *Supra* ¶¶ 34-37.

58. Without a reasonable exposition of Otter Creek's agricultural output and revenues tied to each of the four properties, or some other reliable indication of the properties' use consistent with their size, location and productive capability, we cannot conclude from the record that Taxpayers' properties satisfied all requirements for classification as agricultural property. *See Wyo. Stat. Ann. § 39-13-103(b)(x)(B)(I-IV)* (2013); *supra* ¶ 28. Consequently, Taxpayers did not satisfy their burden of proof or ultimate burden of persuasion that the properties qualified for agricultural status per Wyoming statutory and regulatory law.

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ORDER

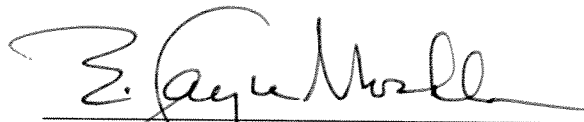
IT IS THEREFORE ORDERED the Washakie County Board of Equalization's Order reversing the Assessor's valuation and assessment of the Mueller Land, the Matuschka Land, and Glunz Land, is **reversed; and,**

IT IS FURTHER ORDERED the Washakie County Board of Equalization's Order reversing and modifying the Assessor's valuation and assessment of the Chicago Properties Land, with the exception of land containing the cabin and associated facilities, is **reversed.**

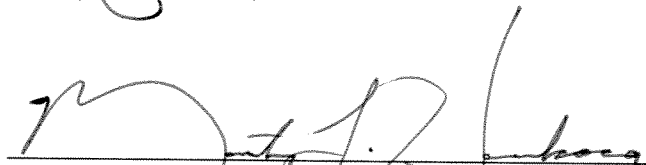
Pursuant to Wyo. Stat. Ann. §16-3-114 (2013) and Rule 12, Wyoming Rules of Appellate Procedure, any person aggrieved or adversely affected in fact by this decision may seek judicial review in the appropriate district court by filing a petition for review within 30 days of the date of this decision.

Dated this 19th day of June, 2015.

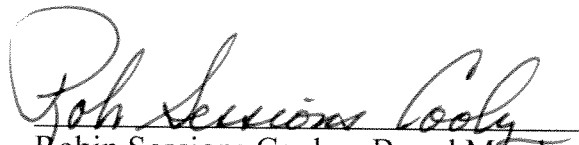
STATE BOARD OF EQUALIZATION



E. Jayne Mockler, Chairman

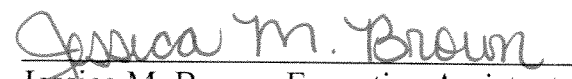


Martin L. Hardsocg, Vice-Chairman



Robin Sessions Cooley, Board Member

ATTEST:



Jessica M. Brown, Executive Assistant

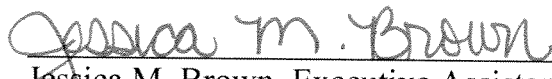
CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of June, 2015, I served the foregoing **DECISION 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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