

**BEFORE THE STATE BOARD OF EQUALIZATION**

**FOR THE STATE OF WYOMING**

IN THE MATTER OF THE APPEAL OF )  
TROY D. CLEMENTS, CAMPBELL )  
COUNTY ASSESSOR, ) Docket No. **2017-48**  
FROM A DECISION BY THE CAMPBELL )  
COUNTY BOARD OF EQUALIZATION )  
(2016 Property Tax Assessments) )

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**DECISION AND ORDER**

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**APPEARANCES**

Nicholas H. Carter, The Nick Carter Law Firm, PC, and Derek A. Thrall, The RT Cox Law Firm, appeared on behalf of the Campbell County Assessor, Troy D. Clements (Petitioner or Assessor).

Walter F. Eggers, III, Holland & Hart LLP, appeared on behalf of Carbon Creek Energy, LLC, and Powder River Midstream, LLC (Collectively Respondents, or individually, Carbon Creek and Powder River).

**DIGEST**

Carbon Creek and Powder River, owners of equipment used to produce, gather, and transport coal bed methane in Campbell County, challenged the Assessor’s valuation of their gas production equipment and gathering system equipment. They argued that pursuant to Wyoming law, the prices they paid to acquire the used equipment in 2015 should serve as the “starting point” in applying the cost method of valuation, rather than the Assessor’s historic reliance on the original purchase prices. They asserted the total value should be approximately \$156 million lower than the value assessed. The Campbell County Board of Equalization (County Board) disagreed that Assessor was required to use the recent purchase prices in the valuation of Respondents’ production and gathering system

equipment, and it generally upheld Assessor's valuation methodology. However, the County Board faulted Assessor for failing to recognize and fully consider the oil and gas market's dramatic 2015 downturn and its effect on valuations. The County Board ordered Assessor to consider the effect of the 2015 oil and gas market downturn, in particular the Department of Revenue's advisory concerning that market downturn. Only Assessor appealed.

The Wyoming State Board of Equalization (State Board), Chairman Martin L. Hardsocg, Vice-Chairman David L. Delicath, and Board Member E. Jayne Mockler, reviewed the parties' briefs and the record to determine whether the County Board's decision was arbitrary, capricious, unsupported by substantial evidence, and/or contrary to law. Rules, Wyo. State Bd. of Equalization, ch. 3 § 9 (2006). The State Board affirms.

## ISSUES

Noting the substantial difference between the parties' respective valuation positions, the County Board disagreed with both parties' values, stating: "The Board believes neither party is correct and the truth lies somewhere in the middle." (Cty. Bd. Decision, Conclusions of Law, ¶ 25, R. at 0000169). The County Board determined that Assessor valued the property in accordance with law and regulatory guidance "apart from a failure to recognize the declining market conditions in the oil and gas industry and resulting reduction in value of oil and gas field equipment." (Cty. Bd. Decision, R. at 0000170).

Assessor identifies the issues<sup>1</sup> before the State Board as:

1. Whether the County Board erred by concluding that Assessor failed "to recognize the declining market conditions in the oil and gas industry and resulting reduction in value of oil and gas field equipment, when Taxpayers failed to produce substantial evidence that market conditions affected equipment values?["].
2. Whether the County Board erred by concluding that Assessor failed "to recognize the declining market conditions in the oil and gas industry and resulting reduction in value of oil and gas field equipment, when there was evidence that Assessor did consider market conditions?["].

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<sup>1</sup> While the County Board joined and heard Carbon Creek's and Powder River's separate appeals in a single hearing, resulting in a single record and County Board Decision, Assessor separately appealed each docketed case to the State Board, and the parties submitted separate briefs addressing the decision as it impacted each Respondent. To avoid confusion, we will identify the State Board Docket Number for ease of reference to the source brief, Carbon Creek, Docket No. 2016-49, or Powder River, Docket No. 2016-48.

3. Whether the County Board abused its discretion by setting aside the strong presumption in favor of Assessor and the evidence did not warrant setting aside Assessor's valuation?
4. Whether the Board erred by ordering that the DOR's economic advisement should apply to compressor sites[?].

(Pet'r's Br., Docket No. 2017-48 at 7; Pet'r's Br., Docket No. 2017-49 at 7).

Respondents couch the issue more broadly: "Was the County Board's Order consistent with law and supported by substantial evidence?" (Powder River's Resp. Br., Docket No. 2017-48 at 6; Carbon Creek's Resp. Br., Docket No. 2017-49 at 6).

## **JURISDICTION**

The County Board issued Findings of Fact, Conclusions of Law, Order on May 10, 2017. (R. at 0000160-71). Assessor appealed the decision in each County Board Docket on June 8, 2017. (Notice of Appeal, State Bd. Docket 2017-48; Notice of Appeal, State Bd. Docket No. 2017-49). As Assessor timely appealed from a final action of the County Board, the State Board has jurisdiction to hear these appeals. Rules, Wyo. State Bd. of Equalization, ch. 3 § 2 (2006); Wyo. Stat. Ann. § 39-13-109(b)(ii) (2017).

## **FACTS PRESENTED TO THE COUNTY BOARD**

1. The parties stipulated to the 2016 valuation differences in controversy. Assessor valued Carbon Creek's gas production equipment at \$124,616,359, while Carbon Creek claimed Assessor should value it at \$4,968,421. Assessor valued Powder River's gathering system equipment at \$61,858,160, while Powder River argued the equipment was worth \$25,262,493. (Jt. Stip., R. at 0000090). Thus, Carbon Creek disputed approximately \$120 million in taxable value, and Powder River disputed approximately \$36 million in taxable value. (Tr. 193-95).

A. Overview of Respondents' formation and acquisition of coal bed methane production and gathering equipment in the Powder River Basin

2. Respondents' Chief Executive Officer, Alan Brown, who negotiated Respondents' acquisition of the properties in question, testified. He explained that Anadarko and WPX, which had jointly owned coal bed methane (CBM) wells in the Powder River Basin—specifically Campbell, Johnson, and Sheridan Counties, had unsuccessfully attempted three times to sell their CBM interests. Learning that these assets were on the market, a family-owned company called Moriah Group initiated separate negotiations in 2015 with Anadarko and WPX to acquire their CBM interests in the Powder River Basin. Moriah

Group simultaneously entered negotiations to purchase the CBM midstream gathering and transportation facilities (primarily compressors, dehydrators and pipeline) from Western Gas Resources (WGR), an Anadarko affiliate. Moriah Group entered separate purchase-and-sale agreements with Anadarko, WPX and WGR on July 28, 2015. (Tr. 64-72, 120, 134-38, 145, 147, 458-61, 467-68; Confidential Exs. T1-T8).

3. To hold and operate the assets, Moriah Group's officials formed two Wyoming Limited Liability Companies in 2015. Carbon Creek Energy LLC (Carbon Creek) would own and operate all CBM production facilities<sup>2</sup>, while Powder River Midstream LLC (Powder River) would own and operate the gathering system assets which receive and transport the CBM downstream. (Tr. 73-76, 193).

4. Mr. Brown testified that all assets were offered on the market and that neither Moriah Group or Respondents Carbon Creek and Powder River were affiliated with the sellers. (Tr. 145). He believed the sellers were under no compulsion to sell and were well-informed. (Tr. 145-46). Respondents' witness Kelly Stewart likewise testified that the transactions qualified as fair market value transactions. (Tr. 200, 219-20).

5. Referring to a graph depicting the natural gas decline in 2015, Mr. Brown described how the price of natural gas dropped from approximately \$3.20 per MCF<sup>3</sup> to around \$1.60 per MCF during Respondents' negotiation and purchase of the assets in 2015, and the impact of those market conditions on the transaction. (Tr. 76-81; Ex. T-9). On cross examination, Mr. Brown admitted he had no like document demonstrating a similar value decrease in the equipment at issue; he opined that the value of equipment generally moved in conjunction with the price of natural gas, but that there would be a lag. (Tr. 126-30; Ex. T-9).

6. Respondents offered into evidence separate purchase-and-sale agreements with each former owner, along with supporting attachments identifying assets and interests conveyed, as confidential exhibits.<sup>4</sup> (Confidential Tr. 88-99; Confidential Exs. T-1 to T-8). Mr. Brown explained that although the exhibits were offered into evidence as confidential, Respondents redacted or omitted portions of the confidential exhibits in accordance with the former owners' demands. Assessor and the County Board were given access only to the redacted and otherwise incomplete version of the confidential documents. (Confidential Tr. 92-93).

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<sup>2</sup> Moriah Group retained ownership of the CBM reserves. (Tr. 75).

<sup>3</sup> An MCF of natural gas equals 1,000 cubic feet of gas, and gas volumes are often described in such units. See 8 Howard R. Williams & Charles J. Meyers, *Oil and Gas Law: Manual of Oil and Gas Terms*, at 596 (2007); See also definitions, Natural Gas Policy Act of 1978, 15 U.S.C. § 3301(29).

<sup>4</sup> The individual contract purchase prices were and are confidential.

B. Respondents' equipment costs and claimed equipment values

7. Moriah Group's purchase-and-sale agreements with Anadarko and WPX to acquire the production facilities did not identify a specific price paid for the equipment. (Tr. 118, 221, 241, 453). The purchase included no appraisal of the production equipment. (Tr. 201, 210). Rather, Moriah Group calculated a purchase price of WPX's and Anadarko's total assets based on the value of the CBM reserves alone (a "reserve analysis"), which took into consideration the cost to extract.<sup>5</sup> Moriah Group attributed zero value to the equipment. (Tr. 160-61, 168, 190-91, 203, 221).

8. By comparison, Moriah Group's purchase-and-sale agreement to purchase the gathering system equipment, primarily large compressors and dehydrators (Ex. T-11), identified a price paid for most of the equipment. (Tr. 118; Confidential Ex. T-7). An employee with 35 years of experience in the compressor business examined the compressors and recommended prices for the equipment as part of the negotiation to purchase WGR's assets. Moriah Group used those recommended prices to negotiate an acquisition price with WGR. (Tr. 461-63).

9. Respondents hired Merit Advisors to assist with property tax compliance; Merit had previously consulted with WPX to assist with tax reporting responsibilities. In particular, Respondents hired Kelly Stewart of Merit Advisors to prepare tax information and report an appropriate value of the equipment for tax purposes. (Tr. 156-59). Ms. Stewart and her staff prepared and filed "renditions," property tax forms used by taxpayers to describe property, with the County Assessor's office and otherwise gathered information in support of Respondents' cost method-based valuations. (Tr. 125-26, 154-56, 164, 183-86; Ex. T-10).

10. Applying the cost method to value Respondents' gas production and gathering system equipment for tax purposes, Ms. Stewart intended to use Respondents' 2015 purchases of the equipment as the "starting point" to determine the equipment's value. (Tr. 165-66). Respondents claimed the recent open-market purchases were the best indicators of the property's market value. It would be improper, Ms. Stewart opined, to rely on WPX's and Anadarko's historic acquisition or estimated and trended costs, because those were neither Carbon Creek's nor Powder River's acquisition costs, nor were they superior to the recent open market purchases of the equipment. (Tr. 166, 187-90).

11. However, because Moriah Group's purchase of the CBM reserves and production equipment did not identify a price paid for just the production equipment, *supra* ¶ 7, Carbon Creek needed to identify a purchase price to support its cost valuation method claim. Ms.

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<sup>5</sup> Mr. Brown explained that financing objectives drove Moriah Group's decision to allocate zero value to the equipment and to structure the purchase prices based solely upon reserve values. (Tr. 452-56).

Stewart, therefore, devised an allocation formula to impute a price paid for the equipment alone. She relied on a Marshall & Swift Valuation Service publication, an appraisal industry reference which the Department of Revenue generally cited as a valid appraisal authority. (R. at 160). Referring to that publication, Ms. Stewart seized upon the depreciation “salvage” rate for oil and gas refinery equipment, seven percent. She multiplied the seven percent salvage rate to the total purchase price Moriah Group paid to WPX and Anadarko for all assets to derive an allocated total price/value of equipment under the purchase-and-sale agreements. *Id.* In other words, Ms. Stewart calculated the total value/price of the production equipment to be seven percent of the total contract payments to WPX and Anadarko. *Id.*

12. Carbon Creek paid a total of \$180 million to WPX and Anadarko to acquire their interests in the CBM reserves, along with all associated facilities and equipment. Applying the seven percent salvage rate, Ms. Stewart derived a total price of \$12.6 million paid for the equipment (0.07 X \$180 million), which she then allocated back to the individual equipment based on location (among the various counties).<sup>6</sup> (Tr. 162, 165-66, 172-76, 230-32, 480-81).

13. To value the gathering system equipment that Powder River acquired from WGR (primarily compressors and dehydrators), Ms. Stewart used the actual designated or “booked” prices attributed to the equipment in the purchase transaction with WGR. She explained that for any “associated” equipment not individually priced or without a “booked” value, Powder River accepted Assessor’s value. (Tr. 167-72, 176, 211-12).

14. Ms. Stewart submitted her calculated values to Assessor in the form of a master spreadsheet identifying the adjusted values for all production equipment, along with the claimed values of all gathering system facilities. (Tr. 177-84; Ex. T-10). Ms. Stewart and her staff communicated with Assessor’s Office, or T.Y. Pickett (an independent firm Assessor hired to value the compressors), to discuss Ms. Stewart’s revised valuations. (Tr. 183-86, 213).

C. Assessor’s rejection of the purchase transactions in valuing Respondents’ gas production equipment and gathering system equipment

15. Assessor testified that he followed state statutes and the Department of Revenue’s rules and guidelines, in particular the Department’s Personal Property Valuation Manual. (Tr. 330-33; Ex. 65). Applying the cost valuation method, Assessor started with the original reported equipment costs (dating back in some cases to owners preceding WPX and

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<sup>6</sup> Ms. Stewart’s process of allocating the total prices paid for the equipment to the individual properties in each county is not fully explained in the record. Because the issues on appeal do not concern these facts, this summary explanation of that evidence is sufficient.

Anadarko). (Tr. 187, 195-97, 334-35, 349-50, 380, 405). He then applied his standard “trended cost” valuation approach to value the equipment. (Tr. 380; Ex. 65, at 43).

16. However, Assessor did not rely on Carbon Creek’s 2015 acquisitions of production equipment from WPX and Anadarko because the transactions included various property components and offered a limited ability to identify a price paid for the equipment. (Tr. at 337-40, 347-48, 377). Addressing whether he believed the transactions satisfied fair market value criteria, Assessor explained: “I never saw any documents whatsoever that would validate that this was on the open market. As you can see here, we don’t have any witness to testify to the fact that, from Anadarko or WPX or WGR, that it was on the open market.” (Tr. 339). With only the information contained in Petitioners’ submitted renditions, Assessor emphasized that he received no other information, no appraisal of the equipment, no indication that the property was placed on the open market. (Tr. 339-40, 430).

17. Assessor opined the 2015 acquisition transactions did not qualify as “fair market value” transactions as defined in statute. (Tr. 391-95, 406).

18. Assessor struggled with Ms. Stewart’s allocation in both concept and application, including her use of a seven percent salvage value rate to infer a cost paid for the production equipment. (Tr. 341-46, 407-09). He explained, “I have a hard time pinning that down, because it’s – especially the approach, because it doesn’t really fit the comparable. It really doesn’t fit the cost. And the fact that it was so low, there again, they could have turned in an average condition or a good condition, and it certainly would have raised the value.” (Tr. 408-09).

19. As to the value of Powder River’s compressors, Assessor relied on the valuations performed by contractor T.Y. Pickett, who the County Assessor’s Office hired. (Tr. 355-56, 417-18). Assessor preferred the T.Y. Pickett appraisal of the compressors to Powder River’s claimed valuations because the T.Y. Pickett appraiser had considerable experience valuing the equipment, actually appraised the compressors, viewed the equipment’s condition, and gathered sales information on the equipment. (Tr. 368-672).

20. Responding to whether he considered the 2015 oil and gas market drop and how it affected his valuation of the equipment, Assessor testified:

[W]hen oil and gas prices were at their peak – we’re talking \$100-barrel oil, and were talking \$8 an MCF gas – our values didn’t increase. They stayed the same as what they had been reported, and they still depreciated and costed out from that value. Likewise, when things dropped a little bit, we still keep it that same value because we feel the equipment has the capacity to still produce as of when it was first put in.

(Tr. 375). He added, “[i]t doesn’t impact the equipment’s ability to function, regardless whether the economy is up or down.” (Tr. 382; *see also* Tr. 375, 382-83, 438-39).

21. Assessor, however, acknowledged the Department’s advisory that in 2015, the year in which the acquisitions occurred, demand for equipment decreased due to fluctuating oil and gas prices and that “oilfield machinery and equipment has experienced decreasing price trend which has resulted in an overall decrease of approximately 30% to 35% in equipment values, as compared to 2014.” (Tr. 384-85; Ex. T-14). He testified that he considered the advisory, but had already depreciated the equipment 36% from its original installed cost. *Id.* (Tr. 410, 436-37).

22. Don Owens, a T.Y. Pickett Senior Appraiser who specialized in the appraisal of industrial and oil and gas related properties and had appraised such equipment since 1986, testified to his valuation of Powder River’s compressors for the Assessor’s Office. (Tr. 249-51, 322, 324-25). Mr. Owens visited some of the compressor sites to assess the operating condition of the equipment, and had viewed all of them at some point over the years. (Tr. 252, 261). In his appraisal process, Mr. Owens obtained the compressors’ original installation cost (equipment cost, transported and installed at site) from WGR, trended<sup>7</sup> the cost to the current value (through industry and Department of Revenue guidance), and then applied prescribed depreciation to identify the current market value. (Tr. 252-56). Other than minor adjustments, Powder River’s 2015 purchase of the compressors from WGR did not impact Mr. Owen’s valuations. (Tr. 266-67).

23. Referring to exhibit T10 (containing Ms. Stewart’s claimed values of all equipment), Mr. Owens opined that Ms. Stewart’s submitted values for the compressors were not their market value. He explained, “I have no rationale to figure out how – their methodology to get the 21,000 because there’s nothing in the market that would substantiate a 400-horsepower 3408 that’s year 2000 being 21,000.”<sup>8</sup> (Tr. 256-57; Ex. T-10 at 01198; *see also* Tr. 272-74). He added that Ms. Stewart’s valuations conflicted with information he received from dealers of compressors, as well as with his personal experience. *Id.* He further disagreed that booked values shouldn’t be used without knowing how those values were figured. *Id.*

#### D. County Board decision

24. The County Board accurately summarized the parties’ respective legal positions:

In this case, the Taxpayer argues that the allocated sales price should be the cost used as the starting point in calculating the fair market value of

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<sup>7</sup> Trending, he explained, may require adjustment of the value up or down to, for example, account for inflation. (Tr. 277-79).

<sup>8</sup> These numbers refer to Ms. Stewart’s re-valuation of a particular compressor.



its assets. The Assessor's position is that the original install costs he had in his historical files is the cost that should be used as the starting point in calculating fair market value. Actual sales costs and a trended original cost are both acceptable under the Department's rules and Wyoming law.

(Cty. Bd. Decision, Conclusions of Law ¶ 14, R. at 0000168).

25. The County Board generally upheld Assessor's cost trending approach through which Assessor relied on the equipment's original purchase and installation costs (rather than Respondents' 2015 acquisition prices). Assessor then trended and depreciated those costs to calculate values as of January 1, 2016, in accordance with Department guidelines. In rejecting Respondents' allocated equipment costs and the values they claimed should apply as the "starting point," the County Board reasoned: "using the allocated sales cost as suggested by the Taxpayer would result in an arbitrary determination of fair market value that is not allowed." (Cty. Bd. Decision, Conclusions of Law ¶ 18, R. at 0000169).

26. The County Board, however, narrowly faulted the Assessor for his failure to fully "consider" the oil and gas market downturn, in particular his failure to consider the Department's advisory that the value of oil and gas field equipment had dropped between 30% and 35%.<sup>9</sup> (Cty. Bd. Decision, Conclusions of Law ¶¶ 19-25, R. at 0000169). The County Board remanded the assessments, directed Assessor to "consider" the Department's market conditions guidance, and ordered Assessor to reassess. *Id.* The County Board implied that Assessor overvalued the equipment, finding that the appropriate values lie "somewhere in the middle" between Respondents' claimed values and Assessor's assessed values. (Cty. Bd. Decision, Conclusions of Law ¶ 25, R. at 0000169). The Assessor alone appealed the County Board's Decision.<sup>10</sup>

## CONCLUSIONS OF LAW

### A. Standard of Review

27. When the State Board hears appeals from a county board, it sits as an intermediate level of appellate review. *Town of Thermopolis v. Deromedi*, 2002 WY 70, ¶ 11, 45 P.3d

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<sup>9</sup> The County Board does not limit its finding of error to Assessor's valuation of either Carbon Creek's or Powder River's property, notwithstanding Assessor's reliance on contractor T.Y. Picket to value Powder River's compressors.

<sup>10</sup> Assessor also interprets the County Board's Decision as requiring a "discount [of] Taxpayer property by thirty to thirty five percent (30-35%)." (Assessor Br., Docket No. 2017-48 at 11; Docket No. 2017-49 at 10). The County Board's Decision does not expressly order a reduction in value of 30 to 35% and merely requires Assessor to "consider" the Department's advisory. (Cty. Bd. Decision, R. at 0000170); *See also infra* ¶ 62.

1155, 1159 (Wyo. 2002). In its appellate capacity, the State Board treats a county board as the finder of fact. *Id.*

28. The State Board's standard of review of a county board decision is, by rule, nearly identical the Wyoming Administrative Procedure Act standard that a district court must apply in reviewing such decisions. Wyo. Stat. Ann. § 16-3-114(c)(ii) (2015). The State Board's review is limited to determining whether a county board's action is:

- (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(a)-(d) (2006).

29. Because the State Board Rules are patterned on the judicial review provisions of Wyoming Statutes section 16-3-114, judicial rulings interpreting that section offer guidance:

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. 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."

*Chevron U.S.A., Inc. v. Dep't of Revenue*, 2001 WY 79, ¶ 9, 158 P.3d 131, 134 (Wyo. 2001) (citations omitted).

30. The State Board reviews conclusions of law *de novo*:

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.’ ”

*Maverick Motorsports Grp., LLC v. Dep’t of Revenue*, 2011 WY 76, ¶ 12, 253 P.3d 125, 128 (Wyo. 2011) (quoting *Bowen v. State, Dep’t of Transp.*, 2011 WY 1, ¶ 7, 245 P.3d 827, 829 (Wyo. 2011)).

31. Likewise, the State Board reviews a county board’s ultimate findings of fact de novo:

When an agency’s determinations contain elements of law and fact, we do not treat them with the deference we reserve for findings of basic fact. When reviewing an “ultimate fact,” we separate the factual and legal aspects of the finding to determine whether the correct rule of law has been properly applied to the facts. We do not defer to the agency’s ultimate factual finding if there is an error in either stating or applying the law.

*Mtn. Vista Ret. Residence v. Fremont Cty. Assessor*, 2015 WY 117, ¶ 4, 356 P.3d 269, 272 (Wyo. 2015) (citations omitted).

32. “The party challenging the sufficiency of the evidence has the burden of showing the lack of substantial evidence to support the agency’s findings.” *Faber v. Wyo. Dep’t of Transp.*, 2009 WY 137, ¶ 5, 220 P.3d 236, 238, (Wyo. 2009).

33. “A strong presumption favors the Assessor’s valuation. ‘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.’ ” *Britt v. Fremont Cty. Assessor*, 2006 WY 10, ¶ 23, 126 P.3d 117, 125 (Wyo. 2006) (quoting *Amoco Prod. Co. v. Dep’t of Revenue*, 2004 WY 89, ¶ 7, 94 P.3d 430, 435 (Wyo. 2004)). A mere difference of opinion as to value is not sufficient to overcome the presumption. *J. Ray McDermott & Co. v. Hudson*, 370 P.2d 364, 370 (Wyo. 1962).

34. If Petitioners successfully overcame the presumption, the “county board was ‘required to equally weigh the evidence of all parties and measure it against the appropriate burden of proof.’ ” *Britt*, ¶ 23, 126 P.3d at 125 (quoting *CIG v. Wyo. Dep’t of Revenue*, 2001 WY 34, ¶ 10, 20 P.3d 528, 531 (Wyo. 2001)). The Court explained the shifting of burdens upon overcoming the presumption: “The burden of going forward would then have shifted to the Assessor to defend her valuation[,]” but the ultimate burden of persuasion remained with the taxpayer “to prove by a preponderance of evidence that the valuation was not derived in accordance with constitutional or statutory requirements[.]” *Id.*

B. Applicable Law

35. The Wyoming Constitution requires that all property be uniformly valued at full value for taxation, and that the Legislature prescribe regulations to secure a just valuation for the taxation of all property. Wyo. Const. art. 15, § 11(a), (d).

36. Broken into its component parts, the Wyoming Constitution requires: (1) a rational method of valuation; (2) that is equally applied to all property; and (3) provides essential fairness. *Basin Elec. Power Coop.*, 970 P.2d at 852. It is the burden of the party challenging an assessment to prove by a preponderance of the evidence that at least one of these elements has not been fulfilled. *Id.*

37. County assessors are required to “[f]aithfully and diligently follow and apply the orders, procedures and formulae of the department of revenue or orders of the state board of equalization for the appraisal and assessment of all taxable property[.]” Wyo. Stat. Ann. § 18-3-204(a)(ix) (2015).

38. All property must be valued annually at fair market value. Wyo. Stat. Ann. § 39-13-103(b)(vii) (2015). Fair market value is defined as:

[T]he amount in cash, or terms reasonably equivalent to cash, a well informed buyer is justified in paying for a property and a well informed seller is justified in accepting, assuming neither party to the transaction is acting under undue compulsion, and assuming the property has been offered in the open market for a reasonable time[.]

Wyo. Stat. Ann. § 39-11-101(a)(vi) (2015); *See also* Rules, Wyo. Dep’t of Revenue, ch. 9 § 4(xxii) (2011); Dep’t Pers. Prop. Valuation Manual 2016 § 6.1 at 39, Ex. 65 at 39.

39. One of the acceptable methods is the cost approach. Rules, Wyo. Dep’t of Revenue, ch. 9 § 5(ii) (2011). The cost valuation method applies as follows:

Section 5. Appraisal Methods.

The appraisal techniques which may be used by the County Assessor include the approaches described in this section. Each approach used shall be an appropriate method for the type of property being valued; that is, the property shall fit the assumptions inherent in the appraisal method in order to calculate or estimate the fair market value of the property. Each approach used shall also consider the nature of the property and the regulatory and economic environment within which the property operates. All methods used by the

Assessor shall be consistent with the applicable IAAO and USPAP standards including, but not limited to, the following (except where standards conflict with Wyoming Statute or Rule): IAAO Standard on Mass Appraisal (2008), IAAO Standard on Automated Valuation Models (AVMs) (2003), IAAO Standard on Ratio Studies (part A) (2010), Uniform Standards of Professional Appraisal Practice (USPAP) Standard 6 (2010-2011), IAAO Standard on Property Tax Policy (210) and IAAO Standard on Valuation of Personal Property (2014).

...

(ii.) The Cost Approach. The cost approach is a method of estimating value by summing the land value, where applicable, with the depreciated value of improvements. In the CAMA system, RCNLD is calculated using Marshall and Swift cost tables. The cost approach is an accepted supplemental approach and could serve as the primary approach when sales data is unavailable or inadequate (such as special purpose properties). The cost approach relies on the principle of substitution in which an informed buyer will not pay more for a property than its comparable replacement. The approach requires:

(A.) Accurate, current land values in the case of real property;

(B.) Accurate, pertinent physical data regarding the property to which cost data may be applied;

(C.) Current cost data which considers appreciation in the case of real and personal property;

(1.) Costs may be estimated on the basis of typical replacement or reproduction costs.

(2.) Typical replacement or reproduction costs may be estimated by the quantity survey method, the unit-in-place method, the comparative unit method, or the trended original cost method.

Rules, Wyo. Dep't of Revenue, ch. 9 § 5(ii.) (2011).

40. Under the Department's rules, an assessor has discretion and shall rely most heavily "on the value indicator which, in his professional judgment, best approximates the value of the subject property," and shall also "evaluate all alternative conclusions and reconcile the value indicators to arrive at a final estimate of [fair market] value." Rules, Wyo. Dep't of Revenue, ch. 9 § 9 (2011).

41. “The fair market value of all taxable property shall be determined by applying the methods of valuation outlined above. In all cases, additions, deletions and changes in use will be recognized by appraisers and appropriate adjustments will be made to the valuation of the property.” Rules, Wyo. Dep’t of Revenue, ch. 9 § 10(a.) (2011).

42. The Department directs that personal property valuations “shall account for factors influencing the value in place including utility, usefulness to the owner or the actual income produced.” Rules, Wyo. Dep’t of Revenue, ch. 9 § 13(b.) (2011). The Department promulgates depreciation guidelines and tables and directs that the value of personal property shall not be depreciated below 20% unless the appraiser “has collected sufficient market information to indicate a different residual value.” *Id.* at § 13(d.) (iv.).

43. The Department’s 2016 Personal Property Valuation Manual, with respect to the cost approach, advises:

Trended Cost Approach (C) -- This variation begins with the reported cost of a specific piece of equipment provided by the taxpayer on the annual rendition forms submitted to the assessor’s office. This cost is then trended from the date of purchase (acquisition date), or in some instances the date of refurbish or rebuilding of an original piece of equipment, to current day dollars in order to derive an estimate of replacement cost new (RCN).

Once the reported costs have been trended, and an estimate of (RCN) is derived, an estimate of the total loss in value is made, which is the result of all forms of depreciation (physical, functional, and economic) on the subject property. The resulting value is determined to be the subject property’s market value.

Care should be taken by the taxpayer and the appraiser to ensure an appropriate cost is trended based on the circumstances of ownership for the property.

If property is purchased new, and is used under normal conditions by a single owner, then the original date of purchase, along with the total original cost, represents the data points by which trending should occur.

Alternatively, if a used piece of property was acquired at some point after its original date of manufacturing; then the date of acquisition, along with the total acquisition cost, represents the data points by which trending should occur.

Additionally, if a piece of equipment is purchased new and used under normal conditions by a single owner, and is refurbished or rebuilt as that

equipment reaches the end of its original useful life (changing the effective age of the property). The year of rebuild, along with the cost to refurbish the property should be reported, and would represent the data points by which trending should occur.

Dep't Pers. Prop. Valuation Manual 2016 § 6.4 at 43-44 (Ex. 65 at 43-44). The Department further advised:

The 2015 market for oil and gas production and exploration materials, machinery, and equipment is experiencing a period of severely declining demand due to external market factors.

In 2015, new drilling and production of oil and gas has dramatically declined in many areas of the United States. Demand for additional equipment has been decreasing as a result of fluctuating oil and gas prices and the absence of sources for financing. Oilfield machinery and equipment has experienced decreasing price trend which has resulted in an overall decrease of approximately 30% to 35% in equipment values, as compared to 2014.

Dep't Pers. Prop. Valuation Manual 2016, Appendix 1, § A-1.0, at 48 (Ex. T-14 at 48).

### C. Review of County Board decision

44. The County Board rejected Respondents' claims that Assessor was required to rely upon the 2015 acquisition transactions to value the property under the cost method. The County Board drew no legal conclusion as to whether the Assessor was generally required to use a recent sale price of property to value that property as Respondents claimed. Rather, the County Board disagreed with Respondents' process of identifying the price they paid for the property to be valued. The County Board observed that Respondents' method would generate arbitrary equipment values. (Cty. Bd. Decision, Conclusions of Law ¶ 18, R. at 0000169).

45. The County Board affirmed Assessor's application of the cost method to value Respondents' property in all respects but one, holding Assessor failed to fully recognize and consider the effect of the 2015 oil and gas market downturn. It more specifically ruled that Assessor failed to consider the 2015 oil and gas market decline in accordance with the Department's advisory addressing that oil and gas market condition. (Cty. Bd. Decision, R. at 0000170; *supra* ¶ 26). Our review is, accordingly, limited to whether the County Board's ruling, on this point alone, was consistent with law and supported by substantial evidence. *Supra* ¶¶ 27-34.

- i. Whether the County Board correctly determined Assessor was required to consider the oil and gas market downturn and Department of Revenue's advisory concerning the effect of the oil and gas market downturn on the value of field equipment and machinery.

46. Challenging the County Board's Decision, Assessor argues "the Manual is not a rule, regulation, or statute. It is not state law. The Manual is a guide and a tool that does not 'substitute the required appraisal knowledge and training required during the valuation of personal property.'" (Assessor Br., Docket No. 2017-48 at 9; Assessor Br., Docket No. 2017-49 at 10). Assessor, however, offers no authority for his position that the Personal Property Valuation Manual established criteria he could ignore. Nor does Assessor contend the Department's 2016 Personal Property Valuation Manual conflicts with statute or rule.

47. The Department's and assessor's respective responsibilities concerning property taxation, are statutorily prescribed. The Legislature empowered the Department to "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) (2015). Assessors must, for their part, follow the Department's guidance and directives. Wyo. Stat. Ann. § 18-3-204(a)(ix) (2015), *supra* ¶ 37; *see also Amoco Prod. Co.*, ¶¶ 17-25, 94 P.3d at 438-41 (Counties must abide by Department's mineral valuation methodology decisions). While assessors often exercise appraisal discretion in the normal course of their valuation function, they must by statute adhere to departmental guidance.

48. Chapter 9 of the Department's rules establish a comprehensive framework for the assessors' valuation of property, as well as for the Department's oversight function. Rules, Wyo. Dep't of Revenue, ch. 9 § 5(ii.) (2011), *supra* ¶ 39. The Department, by rule, conducts an annual "study of information on personal property, using such source material as may be available, including but not limited to trade journals and publications, auction information, sales from dealers and manufacturers, industry associations, as well as comment from interested parties." Rules, Wyo. Dep't of Revenue, ch. 9 § 13(c.)(i.) (2011). The Department communicates the findings of its annual studies, including interpretations and recommendations, in an annual "Wyoming Personal Property Valuation Manual." Rules, Wyo. Dep't of Revenue, ch. 9 § 13(c.)(ii.) (2011).

49. Although the 2016 Personal Property Valuation Manual (Exs. 65-66, T-14) is not a formally promulgated statute or rule, the Department published it in accordance with its rules. Through the manual, the Department's guidance extends beyond that which statutes or rules may practically offer, such as to inform assessors of the most current changing market conditions and industry practices. Most helpful to assessors, the manual specified "replacement cost new" trending schedules, depreciation schedules, definitional guidance, and situation-specific valuation advice. *Id.* The "Market Comments" in Appendix 1, the



effect of which Assessor questions, served a similar practical function: the Department timely informed assessors of a recent oil and gas market downturn to ensure assessors were aware of the most current sales trend data. (Ex. T-14).

50. In sum, while the Department manual's "Market Comments" may not have the same legal effect as a rule, *see Matter of GP*, 679 P.2d 976, 996-97 (Wyo. 1984), the Legislature clearly intended that assessors generally adhere to departmental guidance, regardless of the Department's chosen form of communication. *Supra* ¶ 37. "It is the court's obligation to make sense out of a statute and give full force and effect to the legislative production[.]" *In re Hasser*, 647 P.2d 66, 69 (Wyo. 1982). The 2016 Personal Property Valuation Manual and its relevant appendices (Exs. 65-66, T-14) set forth guidance the Assessor was required to consider and, depending on the circumstances, apply.

51. Nor is Assessor's argument consistent with his testimony before the County Board. Assessor testified that he was bound by the Department's 2016 Personal Property Valuation Manual and that he valued the property as the manual directed. (Tr. 331- 34, 378-89). Indeed, in challenging the County Board decision, Assessor argues he should prevail because he generally complied with the Department's guidance. *Supra* ¶ 15.

52. The County Board correctly interpreted the Department's manual, along with the "Market Comments" appendix, as binding upon the Assessor. (Cty. Bd. Decision, R. at 0000170).

ii. Whether the County Board Decision was supported by substantial evidence?

52. From an evidentiary standpoint we must uphold the County Board's Decision if it is supported by substantial evidence — "more than a scintilla of evidence; it is evidence that a reasonable mind might accept in support of the conclusions of the agency." *Chevron*, ¶ 9, 158 P.3d at 134, *supra* ¶ 29.<sup>11</sup> Further, "[f]indings of fact are supported by substantial evidence if, from the evidence in the record, this Court can discern a rational premise for the agency's findings." *Jacobs v. State, ex rel., Wyo. Workers' Safety & Comp. Div.*, 2014 WY 62, ¶ 8, 301 P.3d 137, 141 (Wyo. 2013).

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<sup>11</sup> We note that, contrary to Assessor's argument, it was not Respondents' burden to produce substantial evidence. (Assessor's Br., Docket No. 2016-48 at 9, Assessor's Br., Docket No. 2016-49 at 9). Respondents, as the taxpayers challenging Assessor's valuation before the County Board, had the burden of going forward, ultimate burden of proof, and were required to overcome the strong presumption that Assessor's valuation was correct. *Supra* ¶¶ 27-34. Substantial evidence is an evidentiary standard which we, as a reviewing court, apply, and evidence satisfying that standard may arise from different sources, including evidence offered by Assessor or third parties. *See e.g. In re Gorski*, 2017 WL 1041926, Docket No. 2015-52, ¶¶ 54-55 (Wyo. State Bd. of Equalization, March 10, 2017) (Because the County Board of Equalization ignored Assessor's concession supporting taxpayer's valuation claim, its affirmance of the valuation was not supported by substantial evidence.).

53. In its decision, the County Board critically noted: “Assessor does not believe the general market of the oil and gas industry impacts the value of the equipment. [Clements, Vol. II, Tr. 355, lines 1-9; Owens, Vol. I, Tr. 257, lines 5-8.]” (Cty. Bd. Decision, Conclusions of Law ¶ 19, R. at 0000169). Six paragraphs later, the County Board determined that neither party correctly estimated the property’s value, and that the appropriate value was somewhere between the Assessor’s valuations and Respondents’ valuation claims. (Cty. Bd. Decision, Conclusions of Law ¶ 25, R. at 0000169). Following on these determinations, the County Board concluded that Assessor failed to “recognize the declining market conditions in the oil and gas industry and resulting reduction in value of the oil and gas equipment.” (Cty. Bd. Decision, R. at 0000170). The County Board ordered Assessor to consider the market downturn and to revalue the equipment. *Id.*

54. To ascertain whether the County Board reasonably reached those conclusions in light of all evidence in the record, we scrutinize in detail evidence surrounding Assessor’s consideration of the market downturn. Assessor, on cross-examination, explained his view that the market price (demand) for oil and gas did not impact the value of field equipment because the market for oil and gas did not change the purpose, function, operation, or effectiveness of the equipment. *Supra* ¶ 20. Questioned at length on this point, Assessor was somewhat indifferent to Respondents’ suggestion that the overall oil and gas market downturn might affect the demand for field equipment or the price vendors could charge, and he repeated that the market for oil and gas generally had no effect on equipment values. *Id.*

55. Countering Assessor’s position, Respondents then questioned Assessor regarding a Department advisory specifically apprising assessors that the dramatic oil and gas market decline had decreased the value of oilfield machinery and equipment. *Supra* ¶¶ 21, 43. The Department advised that as a result of the 2015 oil and gas market downturn, along with diminished financing options, prices of equipment trended down approximately 30%-35%. *Supra* ¶ 43.

56. Assessor casually acknowledged the Department’s advisory, but testified that due to cumulative depreciation applied, he had already discounted the property’s value more than 35%. He believed that allowing standard depreciation simultaneously satisfied the Department’s recommended market downturn adjustment. *Supra* ¶ 21. Assessor, however, did not explain in concept or application his position on this point, and we are left with Assessor’s facile explanation that no additional adjustment was necessary. From the County Board’s order, we infer the County Board was not persuaded.

57. We find the County Board reasonably questioned Assessor’s explanation and broad indifference to the claimed effect of the overall oil and gas market performance in 2014-2015, including his preferred focus on the equipment’s functionality rather than the

equipment's market demand. Most compelling, the County Board could not reconcile the Assessor's position with the Department's clear advisory that the oil and gas market downturn significantly impacted the value of equipment used in the oil and gas industry. *Supra* ¶¶ 21, 43. Coupled with this evidence, Respondents offered unrefuted evidence that there is comparatively less demand for coal bed methane production and gathering equipment because the equipment generally has no particular applicability in the production or transportation of conventional gas production, or use in most other mining applications. (Tr. 36, 38-39, 52-53, 59-60, 480-85).

58. The County Board reasonably construed Assessor's testimony and opinion, in which he stated the market for oil and gas has no effect on the fair market value of oil and gas equipment, as an ill-conceived disagreement with specific departmental guidance. And while Assessor testified that he considered the market downturn in valuing the equipment, *supra* ¶ 21, his unequivocal denial that the oil and gas market price decline had any effect on the equipment's value, seemingly undermined the credibility of those assurances.

59. From a burden of proof standpoint, Respondents satisfied their burden of going forward when Assessor denied that the oil and gas market downturn had any effect on the value of equipment, contrary to the Department's declaration to the contrary. Respondents had at that point in the hearing overcome the presumption of correctness favoring Assessor's valuation on this narrow aspect of Respondents' appeals. The burden then shifted to Assessor to explain why the County Board should sustain the valuation. *Supra* ¶¶ 33-34. We agree with the County Board that Assessor did not adequately explain whether he properly considered the market downturn and, in particular, the Department's estimation of an approximate 30-35% decrease in equipment values. *Supra* ¶¶ 21, 43.

60. The question then was whether Assessor's failure to properly consider the market downturn was an error of such magnitude that Respondents necessarily carried their ultimate burden of proving Assessor's valuation to be incorrect. In other words, having also rejected Respondents' valuation totals as impermissibly arbitrary, could Respondents rely solely on Assessor's erroneous explanation to carry their ultimate burdens of proof? We hold that under the circumstances, the County Board justifiably refused to affirm valuations prepared in a manner at apparent odds with the Department's oil and gas market downturn advisory. While the County Board justifiably rejected Respondents' valuation totals, neither could the presumption in favor of Assessor's valuation withstand Assessor's inadequate explanation as to how he accounted for the Department's market guidance.

61. Another troubling aspect of Assessor's valuation, he attributed disproportionate weight to the equipment's functionality and operational status, seemingly to the exclusion of other key factors. *Supra* ¶ 20. While the equipment's condition and operational capacity undoubtedly affected the equipment's value, specific valuation considerations and conventions already captured the effect of those characteristics on the properties' values,

such as the properties' "condition." Moreover, the statutory definition of "fair market value," which required consideration of basic supply and demand dynamics, among other market forces, does not narrowly focus on whether equipment is operational or whether it is performing as intended. *See* Wyo. Stat. Ann. § 39-11-101(a)(vi) (2015), *Supra* ¶ 38.

62. After review of the entire record, we conclude substantial evidence supported the County Board's decision regarding Assessor's failure to account for the 2015 market downturn. We further conclude the County Board's Order, remanding and directing Assessor "to consider market conditions in valuing the Taxpayer's property consistent with the market conditions as reflected in the Department of Revenue 'Market Condition' comments to the property tax manual[.]" is not contrary to law. (Cty. Bd. Decision, R. at 0000170).

63. We note, however, that the County Board's ruling does not require a reduction in value, only that Assessor "consider the market conditions[.]" *Id.* Yet, we find that following consideration of the market downturn, the County Board's order implicitly requires that Assessor be able to explain and detail his efforts to justify his reassessment.

## **CONCLUSION**

64. Substantial evidence supported the County Board's conclusion that Assessor failed to fully consider the oil and gas market downturn and, in particular, the Department's specific direction concerning the oil and gas market decline. The County Board's order, directing Assessor to "consider" the market information and departmental advisory, is consistent with law.

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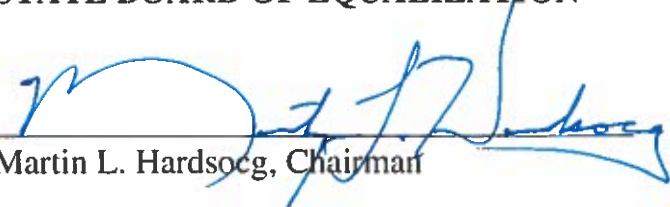
**ORDER**

**IT IS HEREBY ORDERED** that the decisions of the Campbell County Board of Equalization are 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 8<sup>th</sup> day of August, 2018.

**STATE BOARD OF EQUALIZATION**

  
\_\_\_\_\_  
Martin L. Hardsocg, Chairman

  
\_\_\_\_\_  
David L. Delicath, Vice-Chairman

  
\_\_\_\_\_  
E. Jayne Mockler, Board Member

ATTEST:

  
\_\_\_\_\_  
Nadia Broome, Executive Assistant

## CERTIFICATE OF SERVICE

I hereby certify that on the 8<sup>th</sup> day of August, 2018, 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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