

**BEFORE THE STATE BOARD OF EQUALIZATION**

**FOR THE STATE OF WYOMING**

IN THE MATTER OF THE APPEAL OF )  
**CONTANGO RESOURCES, LLC** ) **Docket No. 2022-31**  
FROM A DECISION BY THE FREMONT )  
COUNTY BOARD OF EQUALIZATION )

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**DECISION AND ORDER**

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**APPEARANCES**

Walter F. Eggers, III, P.C. and Kasey J. Schlueter, Holland & Hart LLP, representing Appellant Contango Resources, LLC (Contango).

Amanda F. Esch and Catherine M. Young, Davis and Cannon, LLP, representing Fremont County Assessor Tara Berg (Assessor).

**DIGEST**

[¶ 1] Following its purchase of Conoco’s oil and gas production and processing operations for \$67 million in 2021, Contango disputed Assessor’s 2022 assessed taxable valuation of those assets. Contango claimed that Assessor and her contract consultant failed to properly apply the purchase price as a source component of their cost-based valuations. Contango also challenged the manner in which Assessor and her consultant trended and depreciated the facilities and equipment, which it claimed resulted in their overvaluation. The Fremont County Board of Equalization (County Board) conducted a contested case hearing to consider Contango’s appeals, affirming in all respects Assessor’s tax assessments. Contango appealed to this Board, challenging the County Board’s Decision and Order, and it asks this Board to reverse and order a new valuation be performed.

[¶ 2] The Wyoming State Board of Equalization, Chairman, Martin L. Hardsocg, Vice-Chairman David L. Delicath, and Board Member E. Jayne Mockler, considered the evidentiary record before the County Board, briefs each party submitted on appeal to the County Board and this Board, and oral argument. Finding the County Board did not err in interpreting Wyoming tax law, and concluding the County Board’s decision is supported by substantial evidence, we shall **affirm** the County Board’s Decision and Order.

## ISSUES

[¶ 3] Contango identifies three issues:

- 1) Did the County Board commit reversible error when it affirmed the Assessor's decision to disqualify the purchase price in the 2021 transaction through which Contango acquired the property at issue in the assessments – especially when the Assessor's own expert decided the purchase price should be applied?
- 2) Whether the County Board's decision affirming the Assessor's expert witness's application of the purchase price conflicted with Wyoming law[?]
- 3) Did the County Board improperly affirm the Assessor's and her expert's application of trending and depreciation, which conflicted with the Department of Revenue's rules and guidelines?

(Contango's Br., pp. 5-6)

[¶ 4] Assessor identifies two issues:

- (1) Was the Fremont County Board of Equalization's decision affirming the Assessor's consideration of the 2021 purchase and sale agreement through which Contango acquired the property at issue arbitrary, capricious, an abuse of discretion, otherwise not in accordance with law, or without observance of procedure required by law?
- (2) Was the Fremont County Board of Equalization's decision affirming the Assessor's application of trending and depreciation to the property at issue arbitrary, capricious, an abuse of discretion, otherwise not in accordance with law, or without observance of procedure required by law?

(Assessor's Br., p. 4)

## JURISDICTION

[¶ 5] Contango appealed to this Board from the County Board's Decision and Order within thirty days of issuance, the prescribed deadline to appeal from a county board of equalization adjudicative decision. (County Board decision, dated Sept. 28, 2022, R. at 0166-86; Notice of Appeal, dated Oct. 25, 2022, R. at 0187-91); Rules, Wyo. Bd. of Equalization, Ch. 3 § 2 (2021). We have jurisdiction to hear Contango's timely appeal. Wyo. Stat. Ann. § 39-11-102.1(c) (2021).

## PROCEEDINGS AND EVIDENCE BEFORE THE COUNTY BOARD

[¶ 6] The properties under consideration were generally referred to as the “Madden” properties. (Tr. Vol. I, pp. 30-40; Exs. 1, A). The County Board grouped the property valuation challenges under two dockets, 2022-01 and 2022-02. (Tr. Vol. I, pp. 4-6, 17-18; Tr. Vol. II, pp. 162, 220, 222-24, 247; Ex. 1). The first docket, 2022-01, included only the property valued by Assessor’s contract consultant, T.Y. Pickett<sup>1</sup>, which appraised the larger, more complex industrial facilities and equipment that Contango purchased. *Id.*; *see infra* ¶¶ 29-36. The second docket, 2022-02, included the purchased land and related equipment that Assessor and her staff appraised without T.Y. Pickett’s consultation. *See infra* ¶¶ 18-28. Assessor prepared a one page exhibit breaking out each set of valuations and assessments.<sup>2</sup> (Ex. 5; Tr. Vol. II, pp. 244-228; *see also* Exs. J-2 and J-3 (assessments and underlying information)). We shall refer to the Assessor-appraised property as “Assessor-appraised” assets, and the more complex properties (Madden Deep Assets) that T.Y. Pickett appraised, as “Pickett-appraised” assets.

[¶ 7] Assessor assessed Contango’s acquired Madden Assets in Fremont County at approximately \$190 million: \$144.9 million for the Pickett-appraised assets, and \$45 million for Assessor-appraised assets. (Ex. 5; Confid. Ex. J-7; Confid. Tr. Vol. II, pp. 180-81; Tr. Vol. II, pp. 244-228; *see also* Exs. J-2 and J-3 (assessments and underlying information)). The parties consistently referenced the difference between Assessor’s total assessed valuation and Contango’s claim that the value *should have been tied* to its \$67 million purchase of the property from Conoco, as allocated. (Confid. Tr. Vol. II, pp. 180-81; Tr. Vol. II, pp. 186-87, 372; Contango’s Br., pp. 22-25). This difference set the stage for much of the evidence and arguments before the County Board. Contango did not present an appraisal to counter Assessor’s. Rather, it claimed reversible error and sought remand for a revised assessment driven by its acquisition costs, as well as adjustments to allowed depreciation. (Tr. Vol. I, pp. 21-22; Tr. Vol. II, pp. 186-87, 191-92, 372-377).

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<sup>1</sup> T.Y. Pickett consults with several of Wyoming’s assessors, annually appraising complex industrial properties. (Tr. Vol. II, pp. 247-48, 316-18; Ex. 6). As she had in past years, Assessor hired T.Y. Pickett to value the Lost Cabin Plant, Big Horn Wells, and associated equipment. (Tr. Vol. II, pp. 220-23, 247-48; Exs. 1, A).

<sup>2</sup> The parties don’t agree on the assessment total. Contango repeatedly totaled (and totals) the assessed values at \$214 million. (Contango’s Br., p. 12; Tr. Vol. II, p. 201; Confid. Tr. Vol. II, pp. 176-78). Assessor and the County Board refer to assessed values totaling approximately \$190 million. (Exs. 5, J-2 Tr. Vol. II, pp. 240-46). Confusing matters somewhat, the Madden Assets are located mostly in Fremont County, but also in Sweetwater County. (Exs. 1, A; Tr. Vol. I, pp. 138-39). Assessor also corrected her initial assessments to remove value of exempt property, which are valued, but not assessed. (Tr. Vol. I, p. 137; Tr. Vol. II, pp. 164, 245-46). And confusing matters even further, Assessor discovered previously unassessed property, adding it to the properties assessed. (Tr. Vol. II, pp. 229-30, 252-53, 270-71; Ex. J-1, p. 055-102). We encourage litigants to coordinate, stipulate to basic facts, and avoid exhibit duplication so that county boards can focus on the substance of disputed claims.

Purchase and Sale Agreement (PSA) price of \$67 million as evidence of taxable value

[¶ 8] In 2021, Contango agreed to pay \$67 million to Conoco in a confidential Purchase and Sale Agreement (PSA).<sup>3</sup> Effective on June 1, 2021, Contango acquired Conoco’s “Madden Assets” in Sweetwater and Fremont Counties, consisting of land, oil and gas reserves, and numerous wells, eight of which were named the “Big Horn” wells. (Exs. A, 1; Confid. Ex. J-5; Tr. Vol. I, pp. 31-40; Confid. Tr. Vol. I, pp. 67-76; Confid. Tr. II, pp. 178-79). Sour gas from these deep (25,000 feet or more) Big Horn wells entered the Lost Cabin Processing Plant<sup>4</sup>, a highly complex facility that removed hydrogen sulfide and carbon dioxide (which made the oil and gas “sour” as opposed to “sweet”) from the gas stream. *Id.* The Madden Assets also included approximately 230 less complex “shallow” wells. *Id.* The Madden Assets included gathering systems and other equipment used to handle the oil and gas, along with residential and other supporting property. *Id.*

[¶ 9] Critical to the County Board’s understanding, the parties agreed that the assessment concerned only the value of land, facilities, and equipment—not the leased oil and gas reserves. (Tr. Vol. I, pp. 112-13, 115-16, 119-20; Confid. Tr. Vol. II, pp. 180-82). Yet, Contango paid \$67 million for *all* of Conoco’s assets<sup>5</sup>, including the untaxable oil and gas reserves to be produced going forward. Contango witnesses stressed that the value and price of equipment and reserves were inextricably tied together. (Tr. Vol. I, pp. 115-16, 119-20, 122-25, 139-42; Confid. Tr. Vol. II, pp. 178-83). The County Board questioned how Assessor could isolate the value of the land, Lost Cabin Plant, and other equipment from the value of leased reserves. (Tr. Vol. II, pp. 199-201, 268-70; Confid. Tr. Vol. II, pp. 180-83, 268-70).

[¶ 10] Also, Contango purchased *less than 100%* of the gas reserves and equipment. Seller Conoco, as operator, owned approximately 48% of the shallow reserves and a higher percentage of the Madden Deep reserves and assets. (Tr. Vol. I, pp. 41-43, 51-52, 121-22; Confid. Tr. Vol. II, pp. 92-95, 262-63; 2; Confid. Exs. J-5, p. 537, J-7, p. 541). Contango stepped into Conoco’s role as part owner, and as operator of the wells and Lost Cabin Plant.

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<sup>3</sup> Because the PSA is confidential, our discussion of its contents will omit details.

<sup>4</sup> The County Board received a fair amount of evidence concerning the Lost Cabin Plant and its multi-faceted processing outputs, including details about the addition of a third processing “train,” as well as the shutdown of one of the original two trains. For the purposes of our review, it’s sufficient to know that Lost Cabin is a very large, sophisticated sour gas processing plant that, for decades, received sour gas production from the Madden Deep reservoir. (Tr. Vol. I, pp. 29-41, 45-48, 53-54; Ex. A). The prodigious Madden production had declined steeply before Conoco’s sale to Contango. *Id.*

<sup>5</sup> While we refer to just Conoco, Conoco and four other entities or affiliates sold the Madden assets to Contango. (Confid. Tr. Vol. I, pp. 67-69; Ex. A; Confid. Ex. J-5). However, the identity of other entities is unimportant to understanding the dispute, and their roles were not a point of contention before the County Board.

*Id.*; (Tr. Vol. I, pp. 41-43, 51-52, 62-64; Confid. Tr. Vol. I, pp. 78-79; Tr. Vol. II, pp. 184-85).

[¶ 11] To assist Assessor's and the County Board's consideration of Contango's ownership percentage from a valuation standpoint, Contango extrapolated (or "grossed up") from the \$67 million price, calculating a theoretical price paid for all assets, assuming terms similar to that of the PSA. Through its appraisal consultant, Daniel Kistler, it calculated that had Contango purchased 100% of all reserves, land, facilities and equipment, it would have paid \$122.3 million for everything. (Confid. Exs. J-5, p. 537, J-7, p. 541; Confid. Tr. Vol. I, pp. 90-94; Confid. Tr. Vol. II, pp. 173-81, 186-87, 199-201). Contango posited that the \$122 million extrapolation was further evidence that the total assessed value of \$214 million—for just the land, equipment and improvements—was too high. (Tr. Vol. II, pp. 186-87, 199-201, 372).

[¶ 12] The confidential PSA is hundreds of pages and included various procedures for transition of operations from Conoco to Contango. But especially important to Contango's claims on appeal was a price allocation schedule attached to the PSA. This "Allocated Values Schedule" was a simple table on one page with 15 line items, eight of which reflected the price allocated to each Big Horn well. (Confid. Tr. Vol. I, pp. 73-75, 90-94; Confid. Ex. J-5, p. 537). The remaining seven categories of property addressed broad groups, such as "other wells," or "gathering system." *Id.* The allocation offered no detail, other than the proportionate price allocated to each category, all of which totaled \$67 million. *Id.* The allocation offered no insight to how or when it was prepared, or by whom. *Id.*

[¶ 13] Contango, through its consultant KE Andrews, supplied Assessor with a second Purchase Price Allocation after Assessor valued the properties, breaking out the "grossed up" \$122.3 million price it estimated would have been paid had it purchased 100% of the Madden Assets. (Confid. Ex. J-7; Confid. Tr. Vol. II, p. 173-83). This second allocation, unlike the first, estimated a value for the reserves independent of the facilities. *Id.* As with the allocation included in the PSA, *supra* ¶¶ 11-12, Contango argued the tax assessment should not greatly exceed the value attributed to the "grossed up" 100% ownership of the land, facilities, and equipment. *Id.*

[¶ 14] As Conoco had in years past, Contango submitted "renditions" to Assessor, listing all Madden Assets owned in the county, along with specific cost and condition information required on the standard Department of Revenue property tax form. Contango's renditions revealed no changes from the previous year. (Ex. J-1; Tr. Vol. I, pp. 130-33; Tr. Vol. II, pp. 224-230, 374).

Assessor-appraised assets (land and less complex equipment, such as Madden Shallow wells and field gathering equipment)

[¶ 15] Assessor received a copy of the PSA in February of 2022 and was aware of the purchase transaction the year prior. (Confid. Tr. Vol. I, pp. 77-78, 114; Tr. Vol. II, pp. 231-32, 253-54, 263-65; Conf. Ex. J-5). Contango’s consulting valuation specialist, KE Andrews, inquired how Assessor intended to treat the purchase transaction in her assessment of the property even before her office initiated the valuation process, and it pressed Assessor to seize upon the PSA as the basis for her valuation. (Tr. Vol. I, pp. 128-34, Tr. Vol. II, pp. 225, 239-40, 248-49, 253-54; Ex. J-1).

[¶ 16] Challenging Assessor’s appraisal in the hearing, Contango relied primarily upon its expert<sup>6</sup> consultant, appraiser Daniel Kistler, of KE Andrews, to assert that the assessments were incorrect because Assessor did not rely sufficiently upon the PSA purchase price. (Tr. Vol. I, pp. 124-230, 141-48; Confid. Tr. Vol. II, pp. 173-83; Tr. Vol. II, pp. 184-87, 195-96; Confid. Ex. J-7). Generally referring to Uniform Standards of Professional Appraisal Practice, Mr. Kistler observed that an actual transaction is “very important” to the appraisal process because appraisals normally consist of a hypothetical estimate of a willing buyer’s purchase from a willing seller. (Tr. Vol. I, pp. 141-42; *see also* pp. 144-45); *see also* Wyo. Stat. Ann. § 39-11-101(a)(vi) (2021) (definition of fair market value). He agreed, however, that appraisers should try to “look at the details of the transaction” to the extent that they can. *Id.*

[¶ 17] When asked how Assessor and T.Y. Pickett should have used the PSA price to value, Mr. Kistler responded:

So Contango, in this case, has kind (unintelligible) to a lot of discussion back and forth with the assessor as in a value that has been higher than what they paid. They proposed that in the settlement. And so from the get-go, they have not proposed that the direct equipment value is the value they should be assessed. *What they are saying is there’s clearly an error here in our total value, just the equipment. It’s so much higher than what the hundred percent value of what we paid for it is.*

(Confid. Tr. Vol. II, p. 179) (emphasis added). Summarizing Contango’s claim that Assessor (in conjunction with T.Y. Pickett) overvalued the property by largely ignoring the PSA price, Mr. Kistler testified:

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<sup>6</sup> Neither party questioned whether the other’s expert qualified as such, so neither does the Board. (Tr. Vol. I, pp. 126-31, 134-35; Tr. Vol. II, pp. 193, 196-97, 202-04). And, both T. Y. Pickett and KE Andrews are based in Texas and were familiar with the other’s work, noting each other’s competence and expertise. *Id.* Each, on behalf of its client was in contact with the other regarding the anticipated tax valuation. *Id.*

Q. Well, let me do it this way. I think for purposes of the public record, it's important that we just give the absolute conclusion to the purchase and sale – the purchase price issue. And if I understand your testimony correctly, you noted that the assessor's assessment, which addresses just the tangible personal property, improvements to real property, resulted in a valuation of \$214 million for Contango's property; is that correct?

A. That is correct.

Q. And your analysis, based on the allocation of the purchase and sale agreement, would result in a total valuation, which includes both the equipment, tangible personal property, improvements to real property, and the oil and gas reserves, would be a total of 122 million; is that correct?

A. That is correct.

(Tr. Vol. II, pp. 186-87). Contango did not present an appraised value that the County Board should have accepted. *Supra* ¶ 7.

[¶ 18] In response to Contango's challenge, Assessor explained her process of considering transactional information: "we go back and look at the installed cost, what was reported to us, and we look at the factors the company's brought forward. . . . Certainly any information that was given to me regarding a purchase price or what went into that purchase price will be analyzed in direct relation to what the value of that property should be." (Tr. Vol. II, pp. 238-39). With that information, Assessor employed Wyoming's CAMA system (Computer Assisted Mass Appraisal). *Id.*; (Tr. Vol. II, pp. 214-16); *see infra* ¶¶ 46-47.

[¶ 19] Addressing the PSA transaction, and its potential applicability for valuation purposes, Assessor conceded that the PSA was fully executed, complete, and that she had an opportunity to review. (Tr. Vol. II, pp. 254-58). Assessor agreed that Conoco and Contango were unaffiliated. (Tr. Vol. II, p. 257). She agreed that property sales in general can be important when valuing the property sold. (Tr. Vol. II, p. 262). Assessor agreed that considerable communication occurred between Contango and Assessor's Office concerning the PSA and valuation of the Madden Assets. (Tr. Vol. II, pp. 252-54, 263-64, *but see infra* ¶ 22 (information sought, but not received)).

[¶ 20] But, when asked about the PSA price, Assessor answered that it was not a "reliable indicator of fair market value"; her staff did not use the PSA in any manner. (Tr. Vol. II, pp. 258, 262-63, 265-66, 275-76; *see also* 231-34). Assessor testified that the PSA's complexity made it difficult to use: "it's not just complex in its value. It's complex in getting to the heart of what the purchase price is and all the moving parts of that." (Tr. Vol. II, p. 255). Assessor noted her inability to learn of financing arrangements or motivations to enter the PSA. (Tr. Vol. II, pp. 236-37). Unable to learn about the "closed"

bidding process employed to market Conoco's Madden Assets, Assessor concluded that she did not know enough about the PSA. (Tr. Vol. II, pp. 231-34, 258-61). Assessor described the PSA as a transaction surrounded by a "cloud." *Id.*

[¶ 21] The private, confidential nature of the process and agreement concerned her. *Id.* The inability to question persons who negotiated the PSA, or understand all that went into the agreement, concerned her because she could not confirm whether the agreement was "open market." *Id.* Explaining her decision, she did not know what was listed, sold, or marketed, nor how long the Madden Assets were offered for sale. *Id.* Not until the hearing did Assessor learn that the PSA resulted from a "bid sale," nor did she learn how many bidders participated. *Id.* Assessor was unaware of the entity that orchestrated the bidding process.<sup>7</sup> *Id.*

[¶ 22] The PSA's allocations divided the total \$67 million (and \$122.3 million) prices into 15 property category prices. *Supra* ¶¶ 11-13. Assessor testified that she was unfamiliar with the allocations and did not believe they were helpful. (Confid. Ex. J-5, p. 537, J-7; Tr. Vol. II, pp. 234-38, 261-67, 270-74). She did not believe the allocations allowed her to value individual pieces of property through the CAMA system under the cost method of valuation. *Id.* She cited the Department of Revenue's guidance concerning the difference between market value and price, as a justification for disregarding the PSA. (Tr. Vol. II, pp. 236-37, 261-63, 273-74; Ex. J-4P, § 5.4). Assessor asked for additional information, including a breakout of the price allocation, and Contango informed her that one would be provided. Contango provided no additional information. *Id.*; (Tr. Vol. II, pp. 266-67, 273-75).

[¶ 23] Neither did Contango's witnesses offer detail concerning how the allocated price breakouts were prepared. Seth Houston, a reservoir and production engineer with Conoco, and later with Contango, testified about the PSA and aspects of the negotiation. He was not aware of how the price allocations were prepared. (Confid. Tr. Vol. I, pp. 90-93, 107-08, 113-14; Confid. Exs. J-5, p. 537, J-7, p. 541). He verified that the PSA transaction arose "through a closed bid process," and that the "bid process was run confidentially by like an investment company." (Confid. Tr. Vol. I, pp. 94-95). Neither did Contango know the identity of the other bidders. *Id.*

[¶ 24] Unrelated to the PSA claim, Contango's opposition to Assessor's selected depreciation schedule centered on the difference between two depreciation/trending calculations. (Tr. Vol. I, pp. 145-52; Tr. Vol. II, pp. 160-72; Exs. C-E). Contango argued

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<sup>7</sup> The parties, in their briefings and arguments, attributed some significance to language from a Contango press release in which a Contango official commented that it purchased the Madden Assets at a discount. (Confid. Tr. Vol. I, pp. 96-97; Tr. Vol. I, pp. 111-12; Tr. Vol. II, p. 381; Contango's Br., pp. 22-23; Assessor's Br., p. 18; Ex. 7). However, neither Assessor nor her staff testified about whether that press release comment played a role in the valuation decisions.



that Assessor failed to use Department-prescribed trending and depreciation guidance, particularly the schedule on Exhibit C. *Id.* Contango’s expert witness, Mr. Kistler, opined that Assessor overvalued the oil and gas equipment her staff (Deputy Mike Klaassen, *id at* pp. 216-17, 219) appraised because it failed to follow Department guidance. (Tr. Vol. II, pp. 160-165, 169-71, 185-88, 205-07; Exs. P, Q). Mr. Kistler calculated that Assessor overvalued her portion of the assessed property at \$41.5 million, approximately \$11 million more than the value had she used the Department’s guidance, which would have appraised the Assessor-appraised assets at \$30.7 million. *Id.*; (Exs. M & L). Contango presented Exhibit L, in which Contango compared the valuation results when applying the different trending and depreciation schedules.

[¶ 25] Assessor countered Contango’s objection, directing the County Board’s attention to the following language on the second page of Exhibit C:

The percent difference of depreciation in the above depreciation table can be considered when using the “M” approach in RealWare when a used purchase price is reported and is considered to be at market. The chart may estimate depreciation from the time the equipment was purchased as used to the time it reaches a residual value.

(Ex. C, p. 247). Mr. Kistler opined that the table nevertheless applied when employing the cost method as well, “by the principle [of] substitution.” (Tr. Vol. II, pp. 188-196).

[¶ 26] Mike Klaassen, the Assessor’s designated staff member who valued the Assessor-appraised property, explained how he appraised the equipment using the “trended cost approach” (as opposed to the “historic cost approach”), including his depreciation and obsolescence adjustments. (Tr. Vol. II, pp. 281-305; Ex. J-4). He explained that he began with the original reported costs, trended<sup>8</sup> those costs through the CAMA system, and multiplied by the “percentage good left in the equipment” to account for the condition and remaining life of the equipment (depreciation). *Id.* He walked the County Board through several examples of how he valued Contango’s equipment, addressing trending, depreciation, obsolescence, and the 20% residual value floor imposed by the Department. *Id.*

[¶ 27] Mr. Klaassen received information about Contango’s facilities and equipment through renditions Contango submitted, which indicated no change from Conoco’s previous year renditions. (Tr. Vol. II, pp. 226-28, 294-958; Ex. J-1); *supra* ¶ 14. He accepted Contango’s representation that the equipment’s condition was average, but sought additional information about the equipment from Occupational Safety and Health

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<sup>8</sup> “Trending,” Mr. Klaassen explained, entails multiplying the cost by a “trend factor” to adjust for the change in the value of that cost, or the “present day value” of the money paid in the past. (Tr. Vol. II, pp. 282-83).

Administration and other monitoring agencies. *Id.* Relying upon the renditions and quality ratings suggested by Contango, he allowed CAMA's prescribed depreciation and adjusted the values accordingly. For non-operating/shut-in wells, Mr. Klaassen applied additional obsolescence to reflect the property's dormant state. (Tr. Vol. II, pp. 304-05).

[¶ 28] Responding to Contango's position that Assessor should have used the Department's depreciation schedule, Exhibit C, Mr. Klaassen relied upon CAMA's depreciation schedule, found at Exhibit D. (Tr. Vol. II, pp. 309-13; Compare Exs. C and D). The Exhibit C schedule, Mr. Klaassen explained, applied to market approach valuations as indicated on the exhibit's second page, not cost valuation methods. *Id.*

T.Y. Pickett-appraised property (Lost Cabin, Big Horn wells, and Madden Deep-related assets)

[¶ 29] Robert Lehn, a T.Y. Pickett employee with extensive experience in the oil and gas industry, appraised the Lost Cabin Plant and assets related to the Madden Deep gas. Having valued or assisted in appraising the Madden Deep facilities from their installation in 1995, T.Y. Pickett tracked costs and changes from the beginning. (Tr. Vol. II, pp. 316-19; Exs. 6, J-3). His appraisal, as in the past, began with a site tour and meetings with facility personnel to update his information on facility changes or ongoing projects. (Tr. Vol. II, pp. 321-25).

[¶ 30] However, prior to touring the Lost Cabin Plant, Mr. Lehn became aware that a sale of the property occurred, and Contango's representative, KE Andrews, expressed "concern" that the seemingly low price paid was far less than previous tax valuations. (Tr. Vol. II, p. 325). Mr. Lehn reviewed the PSA and, in particular, the one-page price allocation. (Tr. Vol. II, pp. 328-29; Ex. J-5 (p. 537)). Mr. Lehn also received the renditions Contango submitted to the Assessor's Office, which showed no change to the property. (Tr. Vol. II, pp. 329-30); *supra* ¶ 14.

[¶ 31] Like the Assessor's Office, Mr. Lehn applied the cost valuation approach, but performed a "cursory" income appraisal on the Lost Creek Plant as well. (Tr. Vol. II, pp. 331-35, 337, 356-57, 366). He did so by surveying other plants to develop a pro forma income valuation estimate (he received no income information from Contango), which he used to formulate a valuation floor estimate. *Id.* The income valuation influenced the manner in which Mr. Lehn adjusted value: "the use of income approach by me as a thought work paper was to assist with the idea of a lower range of value." (Tr. Vol. II, p. 358). He added: "This facility, as I said hypothetically, would have been somewhere between 200 and 420 million without the benefit of obsolescence being a lot deeper." *Id.*

[¶ 32] Mr. Lehn considered the Lost Cabin Plant’s extensive history, including the addition of a third train, the “abandonment” of one of the original two trains, and other operational challenges. (Tr. Vol. II, pp. 331-36). He explained that he went through each of the plant’s three trains item by item, and the products generated through processing, to calculate obsolescence. *Id.*

[¶ 33] Mr. Lehn walked the County Board through his “Capitulation Report,” including the report’s data columns enumerating individual property items: each item’s description, installation date, original cost, life, and each item’s depreciation and consequent Replacement Cost New. (Ex. J-3 (beginning on p. 67); Tr. Vol. II, pp. 336-52). He specifically addressed T.Y. Pickett’s trending calculation (“indexing of original installed cost” to present value of money) and obsolescence calculations, derived from T.Y. Pickett’s internal schedules and the Marshall & Swift appraisal service publications. *Id.* Through depreciation deductions, and then obsolescence deductions, Mr. Lehn reduced some values well below T.Y. Pickett’s 30% depreciation floor to account for a particular property’s operational status. *Id.* Mr. Lehn explained that T.Y. Pickett’s elevated 30% depreciation floor (versus the Department’s 20% depreciation floor, *infra* ¶ 47) was a function of T.Y. Pickett’s careful examination of the oil and gas industry’s priority in maintaining or replacing equipment to prevent failure. (Tr. Vol. II, pp. 346-47, 361-63).

[¶ 34] Mr. Lehn considered the PSA price. (Tr. Vol. II, pp. 329-31, 351-55, 359-60, 364, 366; Confid. Ex. J-5). Declining to use the PSA price as a source cost of the equipment, he used the price as a “single data point” in his obsolescence adjustment, resulting in a steeper discount when valuing the Lost Cabin Plant. *Id.* The PSA did not influence the value of other equipment, such as the gathering system. Mr. Lehn did not rely upon the allocations, but rather the overall price as a factor influencing his appraisal of certain equipment. (Tr. Vol. II, pp. 353-55).

[¶ 35] T.Y. Pickett valued the Pickett-appraised properties at \$149,609,600. (Ex. J-3, p. 64; Tr. Vol. II, pp. 338-39, 364). Assessor, upon receipt of T.Y. Pickett’s appraisal, assessed the taxable properties.

[¶ 36] Contango also complained that T.Y. Pickett’s manner of depreciating and trending was incorrect. (Tr. Vol. II, pp. 160-69, 185-86, 206-08; Exs. C, E, L, M, N, O). Similar to this argument leveled against Assessor and her staff, Mr. Kistler opined that T.Y. Pickett’s depreciation and trending improperly deviated from the Department’s prescribed depreciation and trending—particularly its depreciation adjustment. *Id.* He testified that the difference between T.Y. Pickett’s depreciation and trending, versus the Department’s prescribed approach, increased the valuation of Madden property by \$36 million. *Id.* Mr. Kistler explained:

In terms of trend, they used the Marshall valuation often referred to Marshall – a lot of people know it’s a source document for cost, used, I believe in real estate appraisal. They develop national averages of cost indices for equipment. And it’s our understanding that was the trend used that gave us a slightly higher reproduction cost new than the Wyoming trend.

(Tr. Vol. II, p. 165; *see also* pp. 205-08). He offered possible reasons why T.Y. Pickett’s application of Marshall & Swift might vary from the Department’s. (Tr. Vol. II, pp. 165-67).

## **CONCLUSIONS OF LAW**

### **Standard of Review and burdens of proof below**

[¶ 37] 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 1155, 1159 (Wyo. 2002). In its appellate capacity, the State Board treats a county board as the finder of fact. *Id.*

[¶ 38] The State Board’s standard of review of a county board decision is, by rule, nearly identical to Wyoming Statutes section 16-3-114(c)(ii) (2021), the Wyoming Administrative Procedure Act standard that a district court must apply in reviewing agency decisions. 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) (2021).

[¶ 39] Because the State Board’s Rules defining its adjudicative role are patterned on the judicial review provisions of Wyo. Stat. section § 16-3-114 (2021), 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).

[¶ 40] 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)).

[¶ 41] “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. Dep’t of Transp.*, 2009 WY 137, ¶ 5, 220 P.3d 236, 238, (Wyo. 2009).

[¶ 42] “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. *Id.* at ¶¶ 28, 34, 126 P.3d at 126-27.

[¶ 43] If Petitioner 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 (citing *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.*

### Applicable Law

[¶ 44] 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) (2017).

[¶ 45] All property must be valued annually at fair market value. Wyo. Stat. Ann. § 39-13-103(b)(ii) (2021). 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) (2021); *see also* Wyo. Dep’t of Revenue Personal Property Valuation Manual, § 6.1 (2022) (same definition). (Ex. J-4P, p. 39).

[¶ 46] The Department identifies three valuation methods available to assessors, but the parties agreed that Assessor and her consultant properly settled on the cost valuation method:

#### Section 5. Appraisal Methods

...

(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 approach and could serve as the primary approach when sales data is unavailable or inadequate (such as special purpose properties). Market adjusted RCNLD plus land value is an accepted method of the cost approach. Sales prices shall be adjusted for time. Other factors influencing sale price should be considered. 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;

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

(II) 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(b)(ii) (2016); *see also* Wyo. Dep't of Revenue Personal Property Valuation Manual, § 6.4 (2022); Ex. J-4P, pp. 42-47)

[¶ 47] The Department directs that when valuing special purpose personal property (including oil and gas industry equipment):

(A) The cost, sales comparison, and income approaches should be considered as long as the market within the trade level is in equilibrium.

(B) The valuation methodology selected shall reflect the trade level at which personal property is found, and consider factors influencing the value in use including utility, usefulness to the owner or the actual income produced.

(C) References: Property appraisers may use any credible source to establish costs or sales or [sic] personal property, including, but not limited to “blue book on boats, airplanes, farm and construction equipment, Marshall and Swift Valuation Service and information developed by the Division.

(I) The Division shall annually conduct a study of information on personal property, using such source material as may be available, including but not limited to trade journals and publication, auction information, sales from dealers and manufacturers, industry associations, as well as comment from interested parties.

(II) The Division shall interpret the data collected in the study and make recommendation. The completed work product shall be published annually on the Department of Revenue website and be entitled the Wyoming Personal Property Valuation Manual.

(III) The Wyoming Personal Property Valuation Manual shall also include updated cost trend factor tables, economic life

tables, and depreciation tables. Said tables shall also be incorporated into the CAMA system.

(D) Depreciation in the valuation of Personal Property

(I) Depreciation shall be applied beginning at the first assessment date after the property is acquired.

(II) Depreciation shall continue to be applied until the residual value is reached. The residual value shall be considered to be no less than twenty percent (20%) for all personal property, unless the property tax appraiser has collected sufficient market information to indicate a different residual value.

(III) The Division shall provide tables of depreciation factors for use by property tax appraisers. Other rates of depreciation may be developed by the appraiser.

Rules, Wyo. Dep't of Revenue, ch. 9 § 5(c)(i) (2016).

Review of the County Board's Decision

[¶ 48] The County Board accurately summarized the material facts, the parties' respective positions, and basic Wyoming property tax law. The County Board determined that Wyoming law did not require Assessor to use the PSA under the facts and circumstances. (Decision and Order, R. at 0181). Assessor, the County Board concluded, properly considered the PSA and offered a reasoned explanation for its rejection. *Id.*, R at 0181-83. Finally, Contango did not prove that Assessor, or her consultant, incorrectly trended or depreciated the property, i.e. accounting for the drop in value caused by age, wear and tear, and other factors. *Id.*, R. at 0182-83. The County Board affirmed. *Id.*, R. at 0184. We review each of the County Board's ultimate findings in light of Contango's and Assessor's evidence.

i. Did the County Board err when it determined Assessor (and her consultant) properly exercised their discretion with respect to the PSA?

[¶ 49] We begin with a seemingly elemental query, but one that should preface our review of any County Board's decision, and through that decision, an assessor's challenged appraisal decisions: the standard of care for appraisers. Assessors (and their appraisal staff) are required to value property in accordance with the methodologies set forth in the Department's Chapter 9 rules. (Rules, Wyo. Dep't of Revenue, Ch. 9 (2016), Ex. G, R. at



253-72). Although an assessor's mass appraisal work relies extensively on Wyoming's CAMA system, the assessor still exercises discretion at various points throughout the process, especially when evaluating sales transaction data and property conditions. *See supra* ¶¶ 46-47; *see generally*, IAAO (International Association of Assessing Officers) advisories regarding mass appraisal. Contango's primary complaint that Assessor did not sufficiently rely upon the PSA was akin to claiming that Assessor and T.Y. Pickett abused their discretion as appraisers.

[¶ 50] As the parties note, we have recently considered to what degree an assessor *must* rely on the recent sale of property in valuing that very property for tax purposes? In 2018, we examined a Wyoming Supreme Court case, and law from throughout the country, that considered the question. *In re Carbon Creek Energy, LLC, and Powder River Midstream, LLC*, 2018 WL 3978750, ¶¶ 52-67, Doc. No. 2017-50, \*\* 14-19 (Wyo. Bd. of Equalization, Aug. 8, 2018) (discussing *Thunder Basin Coal Co. v. Campbell Cty.*, 2006 WY 44, 132 P.3d 801 (Wyo. 2006)). We said:

*Thunder Basin* does not conclusively answer that question. The Court merely suggested that assessor may have been required to use the transaction price, observing the Department rules "suggest, directly and indirectly" that an actual transaction price is a "proper starting point." *Id.*, ¶ 24, 132 P.3d at 809. The Court concluded only that the reviewing tribunal, the county board of equalization, did not rule arbitrarily or capriciously when it found the taxpayer failed to carry its burden. *Thunder Basin*, ¶ 26, 132 P.3d at 810. We are unwilling to extend *Thunder Basin* beyond its stated analysis and holding. Moreover, inferring a hard-and-fast rule from *Thunder Basin* risks collateral damage to well-established regulatory directives, specifically, that assessors possess ample discretion to evaluate and discard transaction if warranted.

*Id.* at ¶ 54, \* 15 (citing and quoting *Thunder Basin Coal*, ¶¶ 24-25, 132 P.3d at 809).

[¶ 51] After surveying numerous decisions from other states that considered the question, in conjunction with Department of Revenue guidance to Wyoming's assessors, we agreed that "a recent sale of the property is relevant evidence, and often strong ("best evidence") or conclusive evidence, of that property's value." *Carbon Creek Energy*, ¶ 67, \* 19. Wyoming follows the majority view. We determined that the assessor in that case was required to consider purchases of the equipment *to the extent she could*, but that she retained discretion to examine, question and reject the transactions purported to be evidence of market value. *Id.*

[¶ 52] It is axiomatic that evaluating a sale of property to determine whether the price is an indicator of market value depends upon verification of data and the ability to adjust for

non-typical conditions affecting the price. Rules, Wyo. Dep't of Revenue, Ch. 9 § 5(b)(i)-(ii) (2016); *see also* 2022 Personal Property Valuation Manual, §§ 5.1-6.5, pp. 34-47 (describing myriad factors to consider). In *Gray v. Wyo. Bd. of Equalization*, 896 P.2d 1347, 1352-53 (Wyo. 1995), the Wyoming Supreme Court rejected taxpayer's claim that accepted sealed bids for the purchase of property established fair market value, as such sales were not open market transactions. Years earlier, in *Union Pac. R. Co. v. Wyo. State Board of Equalization*, 802 P.2d 856, 861-62 (Wyo. 1990), the Wyoming Supreme Court cautioned that:

We are unwilling to say that no auction of a property could ever provide its fair value for tax assessment purposes. But where a property is only offered to dealers using sealed bids and the value paid by the successful bidder is grossly disproportionate to the assessed value (accounting for depreciation), we hold that fair value is not established by the sale, and the assessor may disregard the sale price in favor of other proper criteria used to determine fair value.

*Id.*

[¶ 53] Other courts have similarly focused on the manner and circumstances by which sales are entered. “For the recent sale of the subject property to be the best indication of full value, the sale must be made ‘under normal conditions’ so as to lead to the conclusion that the price paid was that which could ‘ordinarily’ be obtained for that property.” *Royal Terrace Partnership v. Wisconsin Dep't of Revenue*, 1996 WL 511204, Doc. No. 95-M-13, \* 12 (Wis. Tax App. Com., Sept. 4, 1996) (quoting *Flood v. Lomira Bd. of Rev.*, 451 N.W.2d 422, 426 (Wis. 1990)); *see also* *Northwestern Mutual Life Insurance v. Lloyd Hara, King Cty Assessor*, 2012 WL 12263584, Doc. Nos. 76386, 76387, 784879, 79679, 80043, 80044, \*\* 13-15 (Wash. Bd. Tax Appls., Dec. 26, 2012) (Conditions on bidding process raised doubt as to whether sale was open market sale.). In sum, we do not say that privately bid or atypical sales are automatically unreliable; but, prescribed mass appraisal valuation methods require that atypical sales be carefully vetted, and appraisers are permitted to evaluate a transaction's suitability for use in valuing the property.

[¶ 54] Substantial evidence supported the County Board's determination that Assessor carefully considered the PSA transaction price, including the allocation, and found too many unanswered questions and concerns. (Decision and Order, R. at 207-09). For example, Assessor testified to her inability to learn of the confidential marketing and bidding mechanism by which Conoco offered the Madden Assets for sale. *Supra* ¶¶ 20-21. She was unable to learn who conducted the private bidding, or how the process played out. *Id.* She was unaware of how many bids were received, or who submitted bids. *Id.* She knew little about how the Madden Assets were offered for sale. *Id.* With that compelling and uncontroverted evidence, the County Board's agreement with Assessor on

this point was entirely reasonable and supported by substantial evidence. *Supra* ¶¶ 38-39, 48.

[¶ 55] We next consider Contango’s argument that Assessor and Mr. Lehn should have relied more specifically on the allocation developed to break out the \$67 million purchase price into 15 prices for each item of property or category. *Supra* ¶¶ 11-13, 15-17. While the best evidence of value may be “the lump-sum purchase price” of the item sold, “the validity of using the allocated sales price depends upon the propriety of the allocation. If the [Board of Tax Appeals] finds that an allocation is not proper, or that a proper one is not possible based on the evidence before it, then the sale price is not determinative of value.” *Bedford Bd. of Educ. v. Cuyahoga Cty. Bd. of Revision*, 972 N.E.2d 559, 563 (Ohio, 2012) (cited cases omitted). The Ohio court added “ ‘the proponent of an allocation of sale price bears an initial burden of showing the propriety of the allocation.’ ” *Id.* (quoting *St. Bernard Self Storage, L.L.C. v. Hamilton Cty. Bd. of Revision*, 875 N.E.2d 85, 88-89 (Ohio, 2007)). The Ohio court stressed the importance of understanding the purpose for, and manner of, calculating an allocated price. *Id.* at 563-67.

[¶ 56] This Board addressed several allocated prices paid for mining equipment in *Carbon Creek Energy*, *supra* ¶¶ 50-52. For one set of allocations we determined that taxpayer offered insufficient supporting information, but for a separate breakout of the price paid for different equipment in that case, taxpayer offered sufficient explanation, requiring assessor’s consideration. *Carbon Creek Energy* at ¶¶ 80-99, \*\* 21-26. We arrived at those divergent conclusions after considering in detail the quality of evidence offered before the county board to explain how the taxpayer derived its different allocations.<sup>9</sup> *Id.*

[¶ 57] Contango, in the present case, offered no direct evidence to help Assessor or Mr. Lehn understand the allocated prices, distilled from the overall purchase price of \$67 million. Indeed, witnesses conceded that they were unaware of who prepared the \$67

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<sup>9</sup> The requirement that assessors first understand and be comfortable with the method of allocating is found in the Department’s 2022 Personal Property Valuation Manual. The Department directed that “Trending an allocation of purchase price (original used cost) would not be appropriate unless the appraiser has sufficient information to determine this type of cost reported is a **true representation of a current cost.**” (R. at 158) (emphasis added). The notion that appraisers may rely upon purchase prices and price allocations, if able to verify their origin and purpose, is also pervasive in guidance from the International Association of Assessing Officers (IAAO). See *Standard on Verification and Adjustment of Sales*, IAAO, §§ 4.2, 5 (Rev. April 2020). When sales transactions are atypical or multi-faceted, appraisers have greater ability to decline their application. For example, the IAAO cautions that divestments by large corporations, involving multiple parcels, typically are not analyzed. *Id.* at § 5.5.2. Multiple-parcel sales also require additional consideration before use in a valuation. *Id.* at § 5.6.2. “[A]ny multiple-parcel sale that involves multiple economic units generally should not be used in valuation or ratio studies.” *Id.* Finally, “if the value of personal property appears to be substantial (10 percent for residential, 25 percent for commercial/industrial), the sale should be excluded as a potential valid transaction unless the sample sizes are small.” *Id.* at § 6.2.2. In each instance, an appraiser’s discretion is implicit.

million allocation attached to the agreement, and the PSA itself is silent. (*Supra* ¶ 23; Confid. Ex. J-5). Assessor sought additional information, but received none. *Supra* ¶ 22. From our reading of the PSA and allocations, it seems as if they were an afterthought, and we, like Assessor, are unclear as to how 15 allocated category prices would be disassembled to reflect a value on each piece of equipment. *Supra* ¶ 22. Also, the difference between previously assessed values and the PSA price, *supra* ¶¶ 15, 30, suggested that Conoco's primary focus was divestment of assets as production rapidly declined, rather than getting market value. *Supra* n. 9 (divestments by large corporations should be avoided). And, so, we find no error in the County Board's agreement with Assessor's decision to disregard the allocations.

[¶ 58] Neither do we find T.Y. Pickett's adjustment of economic obsolescence to be evidence that Assessor, by contrast, erred because she did not. Each appraiser's decision to use, or not rely upon, the PSA transaction was a discretionary call and must be considered in light of what that appraiser knew or did not know. Without evidence that Assessor (or her staff) clearly violated an appraisal precept or standard, we view each decision as a judgment call informed by each's appraiser's efforts to understand and value the property.

[¶ 59] Second, Assessor sought T.Y. Pickett's expertise *because* the Lost Cabin Plant and associated wells were relatively complex properties when compared to the Madden Shallow equipment (less complex well site field equipment). *Supra* ¶ 6. The Madden Deep assets (Lost Cabin and Big Horn wells) comprised the vast majority of the Madden Assets' value, and operation of those assets (processing trains within the plant) had significantly changed as Madden deep production significantly decreased. *Supra* ¶ 8, n. 4. We therefore do not agree that Mr. Lehn's specialized knowledge and history with the T.Y. Pickett-appraised assets set a standard that Assessor's staff was bound to follow. Moreover, Mr. Klaassen, like Mr. Lehn, deducted for obsolescence on select equipment as he deemed appropriate. *Supra* ¶¶ 27, 33-34. As such, T.Y. Pickett's handling of the PSA did not prove that Assessor and her staff erred to the extent they did not rely upon the PSA.

[¶ 60] In sum, we agree that Assessor (including T.Y. Pickett's contribution to the overall assessment) was not required to rely upon the PSA. Contango offered insufficient evidence of error, and substantial evidence supported the County Board's determination with respect to Assessor's disregard, and T.Y. Pickett's partial disregard, of the PSA.

ii. Did the County Board err when it held that Assessor's trending and depreciation of the Assessor-appraised assets did not violate Wyoming law?

[¶ 61] Contango's disagreement with Assessor's trending and depreciation adjustments stemmed from two sources of Department of Revenue depreciation guidance. Contango

claimed that Assessor's staff used an incorrect depreciation schedule. *Supra* ¶¶ 24-28. The interesting twist—Assessor relied upon Department of Revenue guidance, but a different depreciation schedule within the Department's 2022 Personal Property Valuation Manual. *Id.* Contango asserts that Assessor overvalued the Assessor-appraised assets by approximately \$11 million as a result. *Id.* The County Board agreed with Assessor's explanation: that Contango's preferred depreciation schedule applied to a different valuation method. *Supra* ¶ 48.

[¶ 62] Setting the two depreciation advisories side-by-side offers no indisputable answer. Each schedule, though they contain oil and gas equipment life expectancy percentages on an "effective age" basis, differ in appearance and the way they work. *Supra* ¶¶ 24-28. But Assessor pointed to one key difference between the two: the depreciation chart Contango preferred suggested that it applied when valuing under the "Sales Comparison" valuation approach. That guidance did not definitively state such, but implied as much in an example of how the schedule is applied. *Id.* Assessor and staff member, Mr. Klaassen, testified that this instruction was the reason they used the other depreciation chart in their cost valuation appraisal. *Id.* That schedule offered no specific instruction on its application. Contango, in response, relied upon only its expert's opinion to the contrary, but cited to nothing in the record to add weight to his opinion. *Id.* Neither party sought clarification from the Department of Revenue as to which schedule was correct.

[¶ 63] The burden was first Contango's to demonstrate error. *Supra* ¶¶ 41-42. Given Assessor's and Mr. Klaassen's mass appraisal experience and training with the CAMA system (27 years for Assessor, 15 years for Mr. Klaassen, Tr. Vol. II, pp. 211, 276), and, in particular, their experience with oil and gas equipment valuation over the years, the County Board reasonably presumed that Assessor's staff properly applied that system's trending and depreciation adjustments under the cost method. *Supra* ¶ 42. Mr. Klaassen testified in some depth as to how he evaluated the Assessor-appraised Madden assets, that he accepted Contango's stated equipment condition, and that he selected the appropriate depreciation schedule for the cost valuation method. *Supra* ¶¶ 27-28. Even had the burden of production shifted to Assessor, which it did not, the legal presumption favoring Assessor, along with a preponderance of evidence, justified the County Board's conclusion in Assessor's favor. We shall affirm the County Board's decision with respect to Assessor's trending and depreciation of the Assessor-appraised assets.

iii. Did the County Board err when it affirmed Assessor's accepted trending and depreciation as applied by her consulting appraiser, T.Y. Pickett, to the Pickett-appraised assets?

[¶ 64] Contango also disputed T.Y. Pickett's trending and depreciation applied to the Pickett-appraised assets, asserting that Mr. Lehn deviated from Department of Revenue guidance to Contango's detriment. *Supra* ¶ 36. That detriment, Contango calculated, amounted to a \$36 million overvaluation of the Pickett-appraised assets. *Id.* Contango claims that T.Y. Pickett's departure from the Department's depreciation guidance, without sufficient justification, was legally impermissible. (Contango's Br., pp. 27-28).

[¶ 65] As both parties' witnesses explained in detail, the cost valuation method largely focuses on an initial cost, followed by calculations of trending, depreciation, and obsolescence, i.e. accounting for the changing purchasing power of money, the drop in property value due to age and condition of equipment, and external forces affecting a property's value, such as economic obsolescence. The Department of Revenue's rules, specific to oil and gas field equipment, direct that:

(D) Depreciation in the valuation of Personal Property

(I) Depreciation shall be applied beginning at the first assessment date after the property is acquired.

(II) Depreciation shall continue to be applied until the residual value is reached. The residual value shall be considered to be no less than twenty percent (20%) for all personal property, unless the property tax appraiser has collected sufficient market information to indicate a different residual value.

(III) The Division shall provide tables of depreciation factors for use by property tax appraisers. Other rates of depreciation may be developed by the appraiser.

Rules, Wyo. Dep't of Revenue, ch. 9 § 5(c)(i) (2016), *supra* ¶¶ 46-47.

[¶ 66] As the rule plainly states, the Department has not mandated that appraisers always use the Department's depreciation guidance, and "other rates of depreciation may be developed by the appraiser." *Id.* Mr. Lehn explained in some detail his annual review and appraisal of the Madden Deep assets dating back years, and the basis for his firm's trending and depreciation approach. He noted his firm's extensive investigation into oil and gas industry maintenance practices and effective age assessments. *Supra* ¶¶ 29-30, 32-33. Contango's expert witness, Mr. Kistler, acknowledged that both his firm and T.Y. Pickett were specialists in the field of complex industrial and oil and gas industry appraisal, and that the firms often crossed paths as disputes arose. *Supra* n. 6. Mr. Kistler's

characterization of T.Y. Pickett arguably lent credibility to T.Y. Pickett's work product before the County Board, especially in the field of complex oil and gas industry appraisal.

[¶ 67] In the absence of specific evidence pinpointing how T.Y. Pickett/Mr. Lehn erred in how they trended and depreciated the property valued, Contango did not overcome the presumption favoring Assessor's assessment of the Pickett-appraised assets. *See In re Appeal of Merit Energy Co., LLC*, 2018 WL 8062052, ¶¶ 47-59, Doc. No. 2017-62, \*\* 12-15 (Wyo. Bd. of Equalization, Sept. 25, 2018) (Taxpayer offered insufficient evidence challenging assessor's institution of a higher effect age for well-maintained equipment). Mr. Kistler merely testified that T.Y. Pickett's depreciation calculation generated a higher value than had he applied the Department's depreciation rate. *Supra* ¶ 36. This was not sufficient evidence of error, and substantial evidence supported the County Board's affirmance on this claim.

## **CONCLUSION**

[¶ 68] The County Board correctly applied Wyoming property tax law, which did not require Assessor or her consultant to use the PSA price under the facts presented, or the allocated prices, to value Contango's property under the cost valuation method. Assessor and her consultant offered sound reasoning for rejection of the PSA transaction as a component of their appraisals. Assessor's consulting appraiser justified its limited reliance on the PSA transaction. Substantial evidence supported the County Board's conclusion that neither Assessor nor her consulting appraiser erred.

[¶ 69] The County Board correctly determined that neither Assessor nor her consulting appraiser erred in how they trended and depreciated Contango's Madden Assets to arrive at taxable value.

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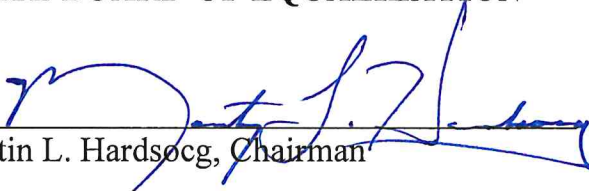
**ORDER**

[¶ 70] **IT IS, THEREFORE, ORDERED** that the decision of the Fremont County Board of Equalization is **AFFIRMED**.

[¶ 71] Pursuant to Wyoming Statutes section 16-3-114 (2021) and Rule 12, Wyoming Rules of Appellate Procedure, any taxpayer 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 after the date of this decision.

DATED this 20 day of June 2023.

**STATE BOARD OF EQUALIZATION**

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

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

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

**ATTEST:**

  
\_\_\_\_\_  
Jennifer Fujinami, Executive Assistant

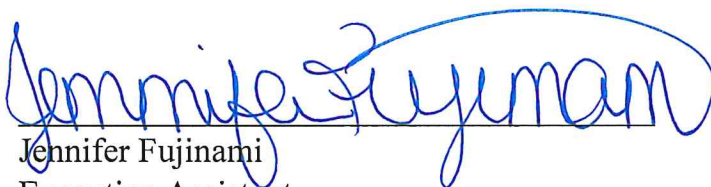


**CERTIFICATE OF SERVICE**

I certify that on the 20 day of June 2023, 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:

Walter F. Eggers, III, P.C.  
Kasey J. Schlueter  
Holland & Hart LLP  
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