

BEFORE THE STATE BOARD OF EQUALIZATION

FOR THE STATE OF WYOMING

IN THE MATTER OF THE APPEAL OF)	
WPX ENERGY ROCKY MOUNTAIN, LLC)	Docket No. 2022-36
FROM A DECISION BY THE DEPARTMENT)	
OF REVENUE (Mineral Tax Division))	

FINDINGS OF FACT, CONCLUSIONS OF LAW, DECISION, AND ORDER

APPEARANCES

Walter F. Eggers, III, P.C., and Kasey J. Schlueter, Holland & Hart LLP, appeared on behalf of Petitioner WPX Energy Rocky Mountain, LLC (Petitioner or WPX).

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

SUMMARY

[¶ 1] Following the Wyoming Supreme Court's ruling and remand in *WPX Energy Rocky Mt., LLC v. Wyo. Dep't of Revenue*, 2022 WY 104, 516 P.3d 449 (Wyo. 2022), the Department revalued and re-issued its 2013-15 natural gas tax audit assessment, adjusting the assessment to conform with what it believed the Wyoming Supreme Court ordered on remand. The Department allowed WPX to deduct firm pipeline transportation expenses in determining the gas's taxable value under the "netback" valuation method, regardless of whether WPX used all of its reserved pipeline capacity. In some months during the audit, the transportation deduction reduced the taxable value for that month's production to zero.

[¶ 2] WPX asserts that for months during which firm transportation expenses reduced taxable value to zero, it was thereafter entitled to apply remaining un-deducted transportation expenses as deductions in the taxable valuations calculated *in other months within the audit*. Doing so, WPX claims, would allow it to "fully deduct" transportation expenses consistent with the Court's *WPX Energy Rocky Mt., LLC* decision. *See infra* ¶¶ 5, 7, 23-24. The Department disagrees responding that upon a zero valuation, remaining un-deducted expenses are not thereafter deductible in determining the taxable value of other gas production. *Infra* ¶¶ 6-7. The Department reassessed WPX's 2013-15 gas production accordingly. *Infra* ¶ 24. WPX appealed the Department's reassessment,

claiming the Department erred. The State Board conducted an expedited hearing, wherein the parties submitted documentary evidence and briefs, and presented oral argument.

[¶ 3] The Wyoming State Board of Equalization, Chairman Martin L. Hardsocg, Vice-Chairman David L. Delicath, and Board Member E. Jayne Mockler, reviewed and considered the evidence, written briefs, and oral arguments. The Board shall **affirm** the Department's re-assessment following remand, finding the Department's interpretation of the Court's decision to be correct.

JURISDICTION

[¶ 4] The State Board shall review final decisions of the Department upon timely application of those adversely affected. *See* Wyo. Stat. Ann. § 39-11-102.1(c) (2023); *See* Rules, Wyo. State Bd. of Equalization, Ch. 2 § 5(e) (2021). WPX appealed the Department's October 25, 2022 audit assessment on November 21, 2022, within 30 days of the Department's final decision. (WPX Not. of Appeal, with Assessment attached as exhibit). The State Board has jurisdiction.

ISSUES

[¶ 5] WPX challenges "the Department's decision to limit the deduction to zero in months where the deduction would have resulted in negative taxable value." (WPX Not. of Appeal; Jt. Stip., ¶ 12). WPX argues that the Department's allowed firm transportation fee deduction violates the Wyoming Supreme Court's recent decision *WPX Energy Rocky Mt., LLC v. Wyo. Dep't of Revenue*, 2022 WY 104, ¶ 14, 516 P.3d 449 (Wyo. 2022). (WPX Opening Br., 6-9; Not. of Appeal). WPX explained its desired outcome during oral argument:

Mr. Hardsocg: Mr. Eggers, just to make sure I understand.

So you're saying, in effect, that the period upon which an assessment is based defines the scope and breadth of the deduction? If it were six years in the audit, then the entire six-year period during which transportation deductions arose would be applicable to the entire six years of assessed value? Is that a fair statement?

Mr. Eggers: Correct.

...

So if the Departments of Revenue and Audit issue an audit assessment for unpaid taxes, it's taking into account transportation that occurred for the

entire, to use your example, six-year period, even if the transportation issue only applies in one year.

(Argument Tr., 14-15).

[¶ 6] The Department responded: “The fundamental issue in this case [is] whether the Department properly considered the taxable value to be zero dollars for months in which the ‘fair market value’ of natural gas, as determined by the netback valuation, resulted in negative value.” (Dep’t’s Opening Br., 5).

[¶ 7] With the foregoing in mind, we restate the issue, and each party’s position, for ease of reference: In months that WPX’s deductible firm pipeline transportation costs reduced taxable value to zero under the netback method, may WPX deduct remaining un-deducted pipeline costs incurred in those months in the taxable value calculations for other production months within the audit period? WPX argues that the Wyoming Supreme Court’s use of the term “fully” requires this additional step be taken to “fully deduct” transportation expenses.¹ (Not. of Appeal; WPX’s Opening Br., 1, 6-9; WPX Resp. Br., 2-3; WPX Reply Br., 3-4, all citing *WPX Energy Rocky Mountain, LLC*). The Department responds that upon reducing taxable value in a month to zero under the netback method, no further deduction or application of that month’s transportation fees to other months may occur. (Dep’t’s Opening Br., 5-6).

Case and procedural history

- i. Previous WPX tax appeals addressing deduction of firm pipeline transportation expenses under netback method

[¶ 8] This is WPX’s third appeal challenging the Department’s application of the “netback” valuation method to WPX’s natural gas production and, in particular, the Department’s permitted deduction of “firm” pipeline transportation expenses. *See In re Appeal of WPX Energy, Inc.*, 2017 WL 6276019, Doc. No. 2016-31 (Wyo. State Bd. of Equalization, Dec. 1, 2017) (hereafter *WPX I*); *In re Appeal of WPX Energy Rocky Mountain, LLC*, 2021 WL 4238112, Doc. No. 2020-08 (Wyo. St. Bd. of Equalization, Sept. 13, 2021) (*WPX II*). “Firm” or non-interruptible pipeline transportation services ensure pipeline capacity to transport a set quantity of a producer’s natural gas production to

¹ WPX does not claim that the Department erred in how it applied the Department’s understanding of the Court’s ruling, i.e. the underlying audit valuation calculations and resulting re-assessment, which are rather complex. (Confid. Ex. A). It challenges only the *interpretation itself*: the Department’s subsequent denial of un-deducted transportation expenses after a zero taxable valuation occurs in a given timeframe. In the absence of claims or evidence to the contrary, we assume the Department, through the underlying audit work, accurately applied its interpretation of the deduction in re-assessing WPX’s tax liability for 2013-15.

market. For this service, WPX paid a “demand” or “reservation” charge each month whether it used the pipeline capacity or not. *WPX I*, ¶¶ 3-6, ** 2-3; *WPX Energy Rocky Mt., LLC*, ¶¶ 4-5, 516 P.3d at 451.

[¶ 9] WPX’s first appeal arose upon the Department’s denial of WPX’s request for a refund of mineral taxes generated from its 2012 natural gas production. *WPX I*, ¶ 2, * 2. WPX sought to deduct its entire “reservation” charge paid each month for firm transportation service that year, arguing that it could deduct the entire reservation fee under the statutory “netback” valuation method, whether or not it used all of its reserved pipeline capacity each month. *Id.* at ¶ 11, * 4. The Department denied the additional deduction, allowing WPX to deduct only a percentage of its pipeline service expense, equal to the fraction of capacity actually used. *Id.* at ¶ 13, * 4. WPX had valued, reported, and paid its mineral taxes in that manner, but sought to lower its mineral taxes through additional deductions. *Id.*

[¶ 10] We held in *WPX I* that, in the absence of rules addressing administration of the deduction, the statutory language setting forth the netback method did not align with the Department’s inference that WPX could claim only a fraction of the reservation fees paid each month. *Id.* at ¶¶ 37-42, ** 9-11. Rather, the plain language of the statute permitted WPX to deduct its “expenses incurred ... for transporting,” in that case its entire reservation fee because it incurred that entire expense. *WPX I* at ¶¶ 38-40, * 10. Consequently, the transportation deduction would rise or fall per unit transported depending upon how much of the capacity WPX used, reducing its monthly taxable value for a production stream to zero in some instances.² *Id.*

[¶ 11] The Department did not appeal the Board’s decision in *WPX I*. But, the same question arose in the Department’s audit assessment of taxes for the following 2013-15 production years. *WPX II*. The Department again argued that it could limit WPX’s deduction to the fee’s lowest fractional unit-based rate, citing contract language with the two pipelines that carried WPX’s gas production. *Id.* at ¶¶ 12-19, ** 3-4. WPX asserted an additional claim: not only could WPX deduct the entire firm transportation expense each month, but it could do so during months that *it transported no gas*. *WPX II* at ¶¶ 16-17, * 4.

[¶ 12] The Board rejected WPX’s new claim that it could deduct its pipeline fees for months during which it transported no gas. *WPX II* at ¶¶ 26-36, ** 6-9. We observed that the legislature’s prescribed valuation methodology required tracking of a gas volume’s

² In response to the Department’s concern that WPX’s position might result in zero taxable valuations in low-production months when gas prices were low, the Board noted that such was an anticipated outcome of the netback method, discussing previous litigations and legislative responses. *See WPX I*, at ¶ 43, * 15 n. 4.

movement up through the well bore, through gathering functions, through processing and transportation activities, and each individual product's path to the point of sale. *Id.* at ¶¶ 29-31, ** 9-10. The statutory netback method, we concluded, required a direct tying of expenses with each unit sold to account for non-deductible (production) and deductible (post-production) expenses, to calculate the final taxable value. *Id.* at ¶¶ 32-34, ** 10-11. Expenses incurred without corresponding production, we held, are not deductible, as there is no mineral product value to begin with. *Id.* We roundly rejected the notion of non-specific, generic, or indirect expense deductions. *Id.* at ¶¶ 34-36, ** 8-9.

[¶ 13] As for the second iteration of WPX's original claim, that it could deduct its entire transportation fee when it used only a portion of the capacity secured, the Board looked to the contract fees paid. *WPX II* at ¶¶ 37-50, ** 9-13. The Board decided that although WPX could deduct its entire firm transportation expense when it used only a portion of its capacity, the parties must ensure that the deduction included only actual transportation expenses, and not bundled ancillary expenses subsumed within the fee. *Id.*

[¶ 14] The Wyoming Supreme Court affirmed our decision in part, and reversed in part. *WPX Energy Rocky Mt., LLC v. Wyo. Dep't of Revenue*, 2022 WY 104, 516 P.3d 449 (Wyo. 2022). The Court agreed with our disposition of the new issue, adopting in large part the Board's analysis. *Id.* at ¶¶ 21, 31-33, 516 P.3d at 455, 457. It agreed that WPX was not entitled to deduct fees incurred when it transported no gas on a pipeline. *Id.*

[¶ 15] For the recurring issue of whether WPX was entitled to deduct its entire pipeline reservation charge for a month when it used less than full capacity, the Court agreed with the Board's original decision. Like the Board, the Court held that the statutory "netback" language did not implicitly limit deductions to the lowest fractional unit rate. The Court disagreed with the Board's observation that the Department and taxpayers should distinguish between transportation and non-transportation expenses subsumed within a fee. That is, the Court held that the entire fee was deductible even if reservation charges included expenses unrelated to the transportation function, such as the recoupment of construction costs. *Id.* ¶¶ 35-43.

ii. Procedural history and posture of present appeal

[¶ 16] WPX's current appeal arises from the Department's revaluation following the Court's remand. The parties jointly requested the Board to resolve the dispute on its expedited docket pursuant to Chapter 2, Section 15 of the Board's Rules. In accordance with the Board's expedited procedure, the parties submitted a joint stipulation of facts, exhibits including all relevant contracts and data supporting each party's position, and legal

briefs. The Board heard oral argument as well, the transcript of which is part of the record in this appeal.

Conclusions of Law

A. Burden of proof

[¶ 17] The role of the State Board in this matter is to adjudicate the dispute between the parties.

It is only by either approving the determination of the Department, or by disapproving the determination and remanding the matter to the Department, that the issues brought before the Board for review can be resolved successfully without invading the statutory prerogatives of the Department. The statutory mandate to the Board is not to maximize revenue or to punish nettlesome taxpayers, but to assure the equality of taxation and fairly adjudicate disputes brought before it.

Amoco Prod. Co. v. Wyo. State Bd. of Equalization, 12 P.3d 668, 674 (Wyo. 2000).

[¶ 18] “[T]he burden of proof with respect to tax valuation is on the party asserting an improper valuation.” *Williams Prod. RMT Co. v. State Dep’t of Revenue*, 2005 WY 28, ¶ 7, 107 P.3d 179, 183 (Wyo. 2005). More specifically, the State Board Rules provide:

Except as specifically provided by law or in this section, the Petitioner shall have the burden of going forward and the ultimate burden of persuasion, which burden shall be met by a preponderance of the evidence. If Petitioner provides sufficient evidence to suggest the Department determination is incorrect, the burden shifts to the Department to defend its action.

Rules, Wyo. State Bd. of Equalization, Ch. 2 § 20 (2021).

B. Legal review principles

[¶ 19] The State Board is required to “[d]ecide all questions that may arise with reference to the construction of any statute affecting the assessment, levy and collection of taxes, in accordance with the rules, regulations, orders and instructions prescribed by the department ... [u]pon application of any person adversely affected[.]” Wyo. Stat. Ann. § 39-11-102.1(c)(iv)(A) (2007).

[¶ 20] The State Board must interpret various statutory provisions to determine if the Department correctly applied those provisions to the facts. Statutory interpretation is a question of law that is reviewed *de novo*. *Powder River Coal Co. v. Wyo. State Bd. of Equalization*, 2002 WY 5, ¶ 6, 38 P.3d 423, 426 (Wyo. 2002).

[¶ 21] When interpreting statutes, the State Board will give deference to the statutory interpretation of an agency charged with the administration of those statutes unless that interpretation is clearly erroneous. *Parker Land & Cattle Co. v. Wyo. Game & Fish Comm’n*, 845 P.2d 1040, 1045 (Wyo. 1993).

C. Application of law to the facts

[¶ 22] As it did in *WPXI* and *WPXII*, WPX again challenges the Department’s application of the “netback” valuation method: “Netback – The fair market value is the sales price **minus expenses incurred by the producer for transporting** produced minerals to the point of sale and third party processing fees.” Wyo. Stat. Ann. § 39-14-203(b)(vi)(C) (2023) (Emphasis added). Yet, WPX’s disagreement with the Department more precisely stems from how to interpret the Wyoming Supreme Court’s recent decision in *WPX Energy Rocky Mt., LLC*.

[¶ 23] The catalyst for WPX’s revised claim is the phrase “fully deduct” in paragraph 24 of the Court’s decision. *Id.* at ¶¶ 22-25, 516 P.3d at 455-56. After discussing the words “transport,” “transporting,” and “transportation” within the natural gas valuation statute and definitions, the Court reasoned:

. . . In other words, the legislature reasonably acknowledged that both go hand in hand, and so long as gas and a pipeline system are present, transportation occurs. Nowhere did the legislature use these terms in a manner that required full utilization of the system necessary to move the gas from point A to point B. Thus, we conclude the legislature intended the netback valuation statute to allow producers to **fully deduct** their pipeline reservation fees so long as they move gas on the pipeline system.

Id. (Emphasis added). WPX seizes upon the phrase “fully deduct” to argue that the Department has not gone far enough with the deductions it allows after remand. *See infra* ¶ 24; *supra* ¶¶ 5, 7.

[¶ 24] Following WPX’s theory of the case, “fully deduct” requires that for months when transportation expense deductions under the netback method zero out taxable value, *remaining* un-deducted transportation expenses are thereafter deductible outside of the timeframes for which they were paid. *Supra* ¶¶ 5, 7. Those expenses not deducted after

reaching a zero valuation, WPX contends, apply to other taxable value calculations within an audit, i.e. the taxable value calculations for other production months. *Id.* The Department disallowed the application of any un-deducted transportation expense in other months, and a zero valuation for a given month finalizes deduction of that period's transportation expenses. *Supra* ¶ 6; (Stip. Facts, ¶¶ 9-11). The Department issued a revised audit assessment for WPX's 2013-15 mineral tax liability, allowing each month's transportation deductions to reduce taxable values *for that month only*, in some instances resulting in a zero taxable value for that month. (Stip. of Facts, ¶¶ 9-11; Sealed Confid. Ex. A: *see* "Transp. Rate Calculation" spread sheet (page unnumbered)).

[¶ 25] For the following reasons, we cannot agree with WPX.

[¶ 26] First, WPX takes the Court's language out of context. WPX incorrectly argues that the Court effectively determined the present question in its favor: "The Department's Revised Remanded Assessment is contrary to the Supreme Court's decisions and the law of the case doctrine should apply." (WPX's Opening Br., 6). WPX adds "[i]n fact, the Supreme Court specifically dismissed the limitation the Department seeks to impose and as such, the Department's Revised Remanded Assessment is incorrect." (WPX's Opening Br., 7). "[T]he law of the case doctrine 'requires a trial court to adhere to its own prior rulings, adhere to the rulings of an appellate court, or adhere to another judge's rulings in the same ... or a closely related case.'" *BTU Western Res., Inc. v. Berenergy Corp.*, 2019 WY 57, ¶ 27, 442 P.3d 50, 58 (Wyo. 2019) (quoting *Triton Coal Co. v. Husman, Inc.*, 846 P.2d 664, 667 (Wyo. 1993)).

[¶ 27] The Wyoming Supreme Court did not consider the Department's present position because WPX did not offer its current argument in either previous litigation (*WPX I* or *WPX II*), nor before the Wyoming Supreme Court in *WPX Energy Rocky Mt., LLC*. WPX stretches the Court's decision, in particular the context in which the Court repeated the phrase "fully deduct." *Supra* ¶¶ 9-15, 23-24. WPX seeks a deduction outcome different than what the Court specifically decided in *WPX Energy Rocky Mt., LLC*. Law of the case doctrine is, therefore, inapplicable.

[¶ 28] Indeed, the Court prefaced its paragraph 24 analysis with WPX's statutory interpretation from its initial appeal and its position in *WPX II*: "WPX interprets the operative language broadly, contending its reservation fees are fully deductible regardless of whether or how much gas it transported on the respective pipelines." *WPX Energy Rocky Mt., LLC* at ¶ 20, 516 P.3d at 454. Translated, WPX narrowly challenged the Department's policy of limiting the pipeline transportation deduction to the lowest fractional rate (assuming a "100% load factor"), allowing only a percentage deduction of the cost equal to the percent of capacity actually used. WPX responded that the Department's policy was incorrect—that WPX could deduct the entire reservation fee regardless of how much

capacity it used. *See WPX II*, ¶¶ 4, 8-9, 11, 16, ** 2-6; *WPX Energy Rocky Mt., LLC*, at ¶¶ 10-14, 516 P.3d at 452-53. Contrary to its present appeal, WPX did not contend that its un-deducted expenses should thereafter overlap from one month's calculation to another's after taxable value drops to zero for the month in question. We may not shoehorn its current interpretation into what the Court previously decided.

[¶ 29] Moreover, the Court's response to the Department's mention of a "zero" or "negative value," which WPX points to in support of its argument, is unavailing. *See id.* at ¶ 26, 516 P.3d at 456. The Department anecdotally raised those untenable valuation outcomes. (See e.g. Dep't's Opening Br., 7-13). The Court deflected the Department's concerns within the context of WPX's well-articulated case presentation, but did not invite WPX to revise its claimed deduction upon remand. The Court, as did this Board, noted that the netback valuation method could generate zero taxable valuations under certain circumstances, a fact known to the legislature for some time. *Id.* at ¶ 26, 516 P.3d at 456; *WPX I*, ¶¶ 41-43, ** 14-15 (offering history of legislative responses to this feature).³ Such occurs in the reissued audit assessment at issue herein. *Supra* ¶ 24.

[¶ 30] Neither is WPX's claim consistent with the mineral tax code over all. As we explained in *WPX II*, the natural gas valuation paradigm is "mineral production-centric": taxpayers track a production stream, including isolated mineral components, from the wellbore to the point of sale. *WPX II*, ¶ 33, * 11; *see* Wyo. Stat. Ann. § 39-4-203 (2023). When reporting taxable value, producers must tie actual expenses for classified activities, such as transportation (i.e. compression) or processing (i.e. fractionation in a processing facility), to the mineral stream or isolated components as they occur downstream from the point of valuation. *Id.*; *see Williams Prod. RMT Co. v. State Dep't of Revenue*, 2005 WY 28, ¶¶ 9-14 (Append. A), 107 P.3d 179, 183-84, 189-201 (Wyo. 2005); *Wyo. Dep't of Revenue v. Guthrie*, 2005 WY 79, 115 P.3d 1086 (Wyo. 2005) (In Wyoming's "self-reported" system, producer was required to accurately track and report fuel use deductions in calculating taxable value, even though expenses were bundled in third-party transactions.). Most producers must report taxable value and pay severance taxes on a monthly basis. Wyo. Stat. Ann. § 39-14-207(a)(v) (2023).

³ The Department's unfortunate reference to a "negative taxable value" outcome is hyperbolic, as the Board disagrees that a taxable valuation may be negative. Such invites extreme scenarios warning that taxpayers may claim a deduction-driven refund, may bank the difference as a valuation credit, or may seek a like remedy. (See Dep't's Opening Br., 10-13). In the annals of Wyoming mineral tax law, neither the statutes, rules, nor case law recognize or speak of a negative tax valuation possibility, and no provision under law sets forth how a negative value of minerals would arise. The reason for this is clear: the Department either assesses taxable value or it does not, i.e. a positive taxable value versus a zero value. We find no indication the legislature envisioned or ever contemplated a "negative" taxable value possibility, and a separate range of consequences. *See e.g., WPX I*, ¶ 43, * 15 n. 4 (describing ExxonMobil's reported zero valuation in 1986 under the netback valuation method).

[¶ 31] Here, WPX seeks to deduct pipeline reservation fees in taxable value calculations for months *other than the month in question*, arguing it must do so to “fully deduct” the un-deducted fees per the Wyoming Supreme Court’s decision. *Supra* ¶¶ 5, 7, 23-24. However, reading the statutory valuation formula and definitions in *pari materia*, as we must, if a producer does not pay an expense to transport *the actual quantity of gas valued*, then the expense is not deductible *in that valuation analysis* under the netback statute. That is, transportation deductions under the netback are not transferable between, or interchangeable among, valuation determinations, and costs must tie directly to the gas valued. If they do not, they are irrelevant to the taxable valuation of that mineral product.

[¶ 32] The pipeline transportation service contracts are instructive. As is fairly routine, WPX paid its pipeline fees on a volumetric daily basis, billed monthly. Without divulging those confidential fees, WPX paid the Bison pipeline a set daily fee billed per month to reserve a capacity of 100,000 Mcf per day (an MCF is one thousand cubic feet of gas). (Confid. WPX Ex. 113 at 0134-35, 0155). Likewise, WPX acquired pipeline transportation services from the Fort Union Pipeline, paying a set sum to transport a quantity each day. (Confid. WPX Ex. 121, 0179, 0190; Ex. 122, 0215). In each case, WPX incurred a daily expense, billed monthly, to secure pipeline capacity for that period of time. It did not pay pipeline reservation fees in months to reserve pipeline capacity in previous or future months. WPX’s transportation contracts do not support its position.

[¶ 33] Finally, WPX’s interpretation requires that we radically change the role mineral tax audits currently play within the tax system, without any statutory directive. The Department of Audit’s authority to conduct oil and gas tax audits, and the Department’s authority to assess additional mineral taxes relying on audits, are set forth in Wyoming Statute sections 39-14-208 and 9-2-2003 (2023). The audit process and findings, inasmuch as they allow the state to resolve whether taxpayers are correctly self-reporting and paying their taxes, play no role whatsoever in the taxable value calculation itself. In other words, the audit process is valuation neutral—it is merely a process by which to reconcile self-reported tax liabilities, credits, refunds, and interest impositions over an established period. *Id.*; *see also* Wyo. Stat. Ann. § 39-14-209(d) (2023) (taxpayers entitled to offsetting credits).

[¶ 34] But, if WPX’s new theory of “fully deduct” were accepted, the months captured within an audit might play a direct role in whether or not a producer’s transportation expenses are deductible. The very existence of positive taxable values in some months would thereafter be subject to further deduction from left over un-deducted transportation expenses carried forward or backward from other audit months. WPX asks that we essentially import the audit process into the mineral valuation calculus (Section 39-14-203(b)), without legislative intent.

[¶ 35] The uniformity ramifications and arbitrary outcomes are unmistakable. A taxable value of natural gas, if based upon or readjusted according to audit periods selected by the Department of Audit, treats taxpayers throughout the oil and gas industry differently. WPX might benefit because it can deduct un-deducted pipeline expenses across positive taxable value months within a three year audit period, while other producers not subject to audit, or participating in limited audit years, would not be able to do so. WPX's revised claim gives rise to other problems, which we will not fully review. It is enough that we find no statutory basis or framework for what WPX asks. As we were unwilling to read language into the tax statutes in *WPX I* at the Department's request, *id.* at ¶ 37, * 9, we are likewise unwilling to do so here. If audits are to play a direct role in how the Department or taxpayers figure taxable value, the legislature must give that direction. *See WPX Energy Rocky Mt., LLC*, ¶ 29, 516 P.3d at 456.

CONCLUSION

[¶ 36] The Department correctly limited WPX's transportation expense deductions to those incurred in the months that WPX incurred those expenses, and denied WPX's claim that it apply un-deducted expenses to taxable valuation determinations for other months. We reject WPX's claim that the Wyoming Supreme Court's phrase "fully deduct" required the Department to apply deductions from given months to past or future months when determining taxable value within the 2013-15 audit of WPX's mineral production.

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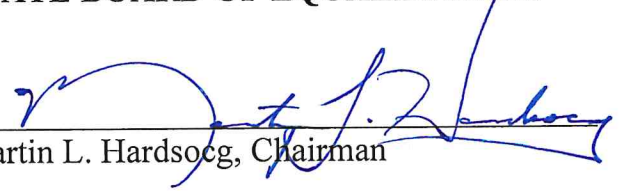
ORDER


[¶ 37] **IT IS, THEREFORE, ORDERED** that the Department of Revenue's re-issued mineral tax audit assessment of WPX Energy Rocky Mountain, LLC's 2013-15 oil and gas production, dated October 25, 2022, in response to the Wyoming Supreme Court's decision and remand from *WPX Energy Rocky Mt., LLC v. Wyo. Dep't of Revenue*, 2022 WY 104, 516 P.3d 449 (Wyo. 2022), is **Affirmed**.

[¶ 38] Pursuant to Wyoming Statutes section 16-3-114 (2023) 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 after the date of this decision.

DATED this 14 day of December 2023.


STATE BOARD OF EQUALIZATION


Martin L. Hardsocg, Chairman


David L. Delicath, Vice-Chairman


E. Jayne Mockler, Board Member

ATTEST:

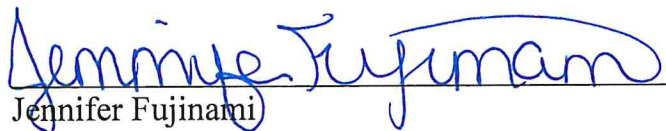

Jennifer Fujinami, Executive Assistant

CERTIFICATE OF SERVICE

I hereby certify that on the 14 day of December, 2023, I served the foregoing **Findings of Fact, Conclusions of Law, 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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