

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>QUESTAR EXPLORATION & PRODUCTION COMPANY,</p> <p>v.</p> <p>Respondent:</p> <p>MONTEZUMA COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 49006</p>
<p>ORDER</p>	

THIS MATTER, continued from March 18 and 19, 2008, was heard by the Board of Assessment Appeals on September 24 and 25, 2009, Sondra W. Mercier and MaryKay Kelley presiding. Petitioner was represented by Alan Poe, Esq. and Robyn Kashiwa, Esq. Respondent was represented by Bob D. Slough, Esq. Petitioner is protesting the 2007 actual value of the subject property.

On May 4, 2009 the Board issued an Order, requiring the parties to file respective valuations of the subject property with the Board in accordance with that Order. The hearing on September 24 and 25, 2009 followed the filing of this information.

PROPERTY DESCRIPTION:

The subject property is described as follows:

**Montezuma County Schedule Nos. P100001, P100082, P100084-P100090,
P100092, P100094-P100100, P100225, P100226, P100330-P100332.**

The subject property comprises 21 schedule numbers for personal property related to oil and gas wells in the Paradox Basin, Montezuma County.

Respondent assigned an actual value for the personal property of \$7,564,963.00 for tax year 2007. Petitioner is requesting a value of \$2,026,990.00.

The parties have stipulated that minor variations in the equipment list are insignificant and do not affect value.

Based on the cost and market approaches, Petitioner presented a personal property value of \$2,026,990.00. Petitioner relied on market values within the Basic Equipment Lists (BELs) where possible. Cost data was secured from two sources: historical costs from company records; and replacement costs new secured from pipeline companies, vendors, and consulting companies' engineering staffs. Cost data was trended to the date of value by factors derived from the Assessor's Reference Library (ARL) manual. Physical depreciation of well equipment valued by historical and replacement costs was based on age, condition, and use, while obsolescence is already factored into the BEL-derived values. Petitioner's witness, Mr. Mark A. Andrews, based physical depreciation factors for pipelines on ARL tables, relying on the ARL formula for functional and economic obsolescence.

Petitioner's witness applied tests of reasonableness to the values indicated by the cost and market approaches relying on vendor interviews and a pro forma income approach for the pipelines.

Based on the cost approach, Respondent presented a value for the personal property of \$7,058,335.00. Respondent declined use of the BELs, arguing that the overall concept is wrong, that equipment variation between the BELs and actual wellheads affects value, and that application results in neither uniformity nor equalization within Montezuma County. Respondent's cost sources included historical costs and data from Colorado and Oklahoma companies, Canada Pipeline Cost Study, and Marshall and Swift. Respondent's witness, Mr. Jerry L. Wisdom, acknowledged that costs are higher in Colorado than Oklahoma by a factor of approximately 1.50 but denied that broad-brush application of this factor to Oklahoma pricing was his sole methodology. Trending was based on Handy Whitman tables.

Respondent's witness applied physical depreciation based on Marshall and Swift tables with application of up to a 30-year life. Respondent argued that economic obsolescence for the pipelines did not exist, because transportation fees from 2004 forward remained level, equating to no historical loss of income.

Petitioner presented sufficient probative evidence and testimony to prove that the tax year 2007 valuation of the subject property was incorrect. The Board considers Petitioner's valuation persuasive.

Pursuant to Section 39-1-103(5)(a), C.R.S., the assessor is charged with determination of actual value of personal property by consideration of the cost approach, market approach, and income approach to appraisal.

In general, assessors must follow property tax manuals published by the Property Tax Administrator. Pursuant to Section 39-2-109(e), C.R.S., the Property Tax Administrator is required

to prepare and publish manuals, appraisal procedures, and instructions regarding methods of appraising and valuing personal property and to require their utilization by assessors in valuing and assessing taxable property. Assessors, however, only are bound to the manuals to the extent the manuals themselves are in accord and do not conflict with state statute. Regulations which are inconsistent with or contrary to state statute are void. *McCool v. Sears*, 186 P.3d 147, 151 (Colo.App. 2008), citing *Cartwright v. State Bd. Of Accountancy*, 796 P.2d 51, 53 (Colo.App. 1990).

According to the Property Tax Administrator's manual, the ARL, volume 5, page 6.2, when valuing oil and gas equipment, "The BELs and the Valuation Grids should be used to determine the actual value of the production equipment." The ARL, at page 6.12, further states:

A common misconception about the BELs is that they were meant to reflect what is typically found at the wellsite. From their inception, the BELs were designed to reflect what would be typically engineered for a particular wellsite. Engineered configurations indicate what is necessary to produce oil or gas at a given depth, at a given rate of production per day. Any equipment being used on site with greater ability or capacity than that which was engineered to produce such oil or gas is essentially super-adequate to operate the well.

Respondent did not present a convincing argument that the BELs should not have been used in the valuation of the wellsite equipment based on the fact that the actual equipment did not exactly match a specific BEL.

Petitioner appropriately used the BELs to value wellsite equipment. The values derived from the BELs appropriately accounted for all forms of obsolescence. Petitioner provided data indicating that utilization rates (production) were 0% at Cutthroat Units 1, 3, 4, and 7 as well as Island Butte II Units 5 and 6. The highest production was shown for Cutthroat Unit 8, with under 50% utilization. Petitioner's witness described production decline and depletion of various wells: some converted to fresh water or disposal wells, some shut in, some dry wells, marginal production or closure of some facilities and capping of some lines.

Regarding the cost approach, the ARL, volume 5, pages 3.8-3.9, indicates, "The two methods used by assessors to estimate the [replacement cost new] of personal property are: 1. Original installed costs trended by cost indices 2. Research of replacement cost new data from outside sources." Petitioner's witness used original installed costs of equipment and pipelines and replacement costs new secured from reliable sources appropriately trended to the end of the data gathering period. The Board concludes the replacement costs new presented by Petitioner's witness were based on acceptable and reliable sources. Respondent's witness did not provide the Board with convincing reasons for using alternate sources of cost data nor for using alternative trending tables such as Handy Whitman, outside of the ARL.

The Board also agrees with the depreciation applied to the pipeline and equipment by Petitioner. According to the ARL, volume 5, page 3.12, "The economic lives in this manual are generally accurate but there may be exceptions. The estimate of economic life of the property must be defensible, reasonable, and supported by documented evidence." Petitioner applied a 14-year life

to the pipeline and equipment based on ARL guidelines. Petitioner provided data indicating that a majority of the wells, including Cutthroat Units 1, 3, 4, and 7 along with Island Butte II Units 5 and 6, were operating at 0% production in advance of reaching a 14-year life. Further, Cutthroat Units 5 and 9 and Island Butte II Units 7AH and 8 were operating at production levels of under 10% prior to reaching a 14-year life. None of the remaining three wells, Cutthroat Units 8, 12, and 14, were operating over 50% as of the date of value. Respondent applied a 30-year life to depreciate replacement costs new. Respondent's witness provided no convincing evidence to show that a life expectancy greater than 14 years was reasonable.

The Board is convinced that both functional and economic obsolescence occurred in the forms of superadequacy, overcapacity, and underutilization. According to the ARL, volume 5, page 7.32:

After a pipeline system has begun operation, functional/economic obsolescence may become evident. This obsolescence may be caused by a drop in "throughput" (amount of product shipped through the pipeline) due to reduced oil or gas reserve estimate, super-adequacy of the system based on current supply, the shut-in (shut down) of wells due to economic conditions making production uneconomical, or other functional problems or economic conditions affecting the pipeline system.

Examples of superadequacy, overcapacity, and underutilization included documentation showing aging fields with reduced flow and declining production, underutilization of pipelines built for greater flow, reduced reserves and drops in throughput, and reduced pipeline operation due to plants not operating at capacity. Petitioner's calculation of functional/economic obsolescence was done using the formula provided in volume 5 of the ARL, page 7.32, which factors the previous calendar year throughput against the normal operating design capacity of the pipeline. Mr. Andrews reported extreme underutilization in the pipelines with the 15% floor indicated in the ARL, page 7.29, having been met and/or exceeded. Petitioner provided examples of pipelines that were underutilized as well as lines that had never been put in use. This included a 24,151 foot, 3 inch steel pipeline at Island Butte 6 that was never used, has been welded and capped. Functional superadequacy was also indicated for 2 and 3 inch pipelines at Cutthroat Units 4, 5, 7, 9, and 14, along with Island Butte Units 5, 6, 7, 8, 12, and 15 with utilization below 10% or listed as inactive. The Board is convinced the transportation fees, used by Respondent to show that economic obsolescence did not exist, were paid to related parties, therefore they are not an appropriate measure of obsolescence.

Volume 5 of the ARL, page 7.26, indicates that typically pipelines 6 inches or larger could be used as gathering system pipelines with a 14-year economic life or as trunk or transmission pipelines with a 22-year economic life. Petitioner indicated that throughput for this line was 500,000 cubic feet with a capacity of 10,500,000 cubic feet resulting in a utilization rate of 4.8%. Petitioner concluded that using a 22-year life and an appropriate deduction for functional/economic obsolescence resulted in the same 15% floor as did the use of a 14-year life. The Board is convinced that classification of the 6 inch pipeline as a gathering line and applying a 14-year economic life was reasonable.

The Board concludes that the 2007 actual value of the subject property should be reduced to \$2,026,990.00.

ORDER:

Respondent is ordered to reduce the 2007 actual value of the subject property to \$2,026,990.00.

The Montezuma County Assessor is directed to change his/her records accordingly.

APPEAL:

If the decision of the Board is against Petitioner, Petitioner may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

If the decision of the Board is against Respondent, Respondent, upon the recommendation of the Board that it either is a matter of statewide concern or has resulted in a significant decrease in the total valuation of the respondent county, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when Respondent alleges procedural errors or errors of law by the Board.

If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation of the respondent county, Respondent may petition the Court of Appeals for judicial review of such questions within thirty days of such decision.

Section 39-8-108(2), C.R.S.

DATED and MAILED this 9th day of December 2009.

BOARD OF ASSESSMENT APPEALS

Sondra W Mercier

Sondra W. Mercier

MaryKay Kelley

MaryKay Kelley

I hereby certify that this is a true and correct copy of the decision of the Board of Assessment Appeals.

Heather Flannery

Heather Flannery



<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>QUESTAR EXPLORATION & PRODUCTION COMPANY,</p> <p>v.</p> <p>Respondent:</p> <p>MONTEZUMA COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 49006</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on March 18 and 19, 2008, Sondra W. Mercier and MaryKay Kelley presiding. Petitioner was represented by Alan Poe, Esq., and Robyn Kashiwa, Esq. Respondent was represented by Bob D. Slough, Esq. Petitioner is protesting the 2007 actual value of the subject property.

PROPERTY DESCRIPTION:

The subject property is described as follows:

**Montezuma County Schedule Nos. P100001, P100082, P100084-P100090,
P100092, P100094-P100100, P100225, P100226, P100330-P100332, & WSW**

The subject property comprises 22 schedule numbers for personal property related to oil and gas wells in the Paradox Basin, Montezuma County. Montezuma County Schedule Number P100083 was originally listed on Petitioner’s petition to the Board; however, P100083 was withdrawn by Petitioner by letter to the Board on November 19, 2007. Both parties erroneously included Schedule Number P100083 in their exhibits and valuations presented to the Board.

Petitioner, holding mineral leases from the federal government and private landowners, began drilling in 1985 and selling oil and gas near well sites and at interconnections with interstate pipelines. Some wells have been shut down and some remain operable at varying levels. Personal property includes processing equipment, machinery, storage tanks, and pipelines.

The Montezuma County Assessor assigned a value for the personal property of \$6,600,000.00 for tax year 2007. Petitioner protested. Respondent increased the assigned value to \$7,564,963.00. Petitioner is requesting a value of either \$2,200,000.00 or \$1,100,000.00. Petitioner's requested values are rounded figures and are based on an acknowledged discrepancy in the accounting of pipeline operability.

Petitioner presented a value of \$758,361.00 for machinery and equipment utilizing the market approach to value. The model for this approach was the Basic Equipment List (BELs) and Valuation Grid published in the Assessor's Reference Library (ARL). Reflecting value in use, it addresses physical depreciation, functional super adequacy, and economic obsolescence. Market values in the Valuation Grid were obtained from research by an outside source, Hadco.

Utilizing the cost approach, Petitioner presented a value of \$1,400,000.00 for the pipelines. Recalculation of Respondent's pipeline valuation by the cost approach and referencing the ARL's economic life and depreciation factors, Petitioner's witness concluded that Respondent's replacement costs were 20% to 25% high, economic life was excessive, functional obsolescence adjustments for super adequacy were insufficient or absent, and economic obsolescence adjustments for non-operational wells were not applied. Petitioner's witness also testified that his calculations did not account for non-functioning and inoperable pipelines, and he presented an alternate value of \$500,000.00 to acknowledge such.

	Petitioner's Value relying on the ARL	Petitioner's Value accounting for inoperable pipelines
Machinery & Equipment	\$ 758,361.00	\$ 758,361.00
Pipelines	\$1,400,000.00	\$ 500,000.00
Total	\$2,158,361.00	\$1,258,361.00

Utilizing the cost approach, Respondent presented a value of \$7,575,900.69, which included an appraisal by Visual Lease Services following a cursory on-site inspection. The value, which includes both equipment and pipelines, reflects replacement or reproduction cost new, physical depreciation, a 30-year economic life for pipelines, and a minimum 20-year life for equipment. Neither functional nor economic depreciation was applied.

In general, assessors must follow property tax manuals published by the Property Tax Administrator. Pursuant to C.R.S. section 39-2-109(e), the Property Tax Administrator is required to prepare and publish manuals, appraisal procedures, and instructions regarding methods of appraising and valuing personal property and to require their utilization by assessors in valuing and assessing taxable property.

Assessors, however, only are bound to the manuals to the extent the manuals themselves are in accord and do not conflict with state statute. Regulations which are inconsistent with or contrary to state statute are void. *McCool v. Sears*, 186 P.3d 147, 151 (Colo.App. 2008), citing *Cartwright v. State Bd. Of Accountancy*, 796 P.2d 51, 53 (Colo.App. 1990).

C.R.S. section 39-1-103(5)(a) requires that the assessor determine the actual value of personal property by appropriate consideration of the cost approach, market approach, and income approach to appraisal. *See Home Depot U.S.A., Inc. v. Pueblo County Bd. of Comm.*, 50 P.3d 916, 919 (Colo.App. 2002). Additionally, C.R.S. section 39-2-109(e) requires that the Property Tax Administrator’s manuals “be based on the three approaches to appraisal”

Petitioner contends that Respondent was required, but failed, to adhere to the BELs and Valuation Grid in the ARL and that all assessors must utilize the BELs and Valuation Grid to value oil-producing personal property. The Board is clear that Respondent is not bound by the BELs but, rather, must consider all three approaches to value the subject property. *See Transamerican Realty Corp. v. Clifton*, 817 P.2d 1049, 1051 (Colo.App. 1991).

The Board is convinced that physical, functional, and economic depreciation must be taken into account when applying the cost approach. Application of depreciation, including functional super adequacy and economic obsolescence, was not adequately addressed by Respondent. Further, Respondent extended the economic life of equipment outside of the guidelines provided in ARL Volume 5, Chapter 4, without adequate market support.

The Board is unclear as to what personal property actually existed on the subject property and its condition. Petitioner was required to submit an accurate list of personal property to the Montezuma County Assessor but failed to do so.

ORDER:

The Board retains jurisdiction over this case.

Schedule Number P100083 was withdrawn from this matter. Within 45 days of the date of this Order, the parties shall address the inclusion of “WSW” as a schedule number.

The Board orders Petitioner, within 14 days of the date of this Order, to provide Respondent with an accurate list of the personal property that existed on the assessment date, reflecting the property’s condition and use as of the assessment date. Within 14 days of receiving the list from Petitioner, Respondent must respond to Petitioner as to whether or not they agree with Petitioner’s equipment list. If Respondent does not agree with the list, Respondent must identify with specificity why Respondent does not agree and provide Petitioner with their equipment list. The Board directs the parties to work on reaching a stipulation on this issue to the extent possible.

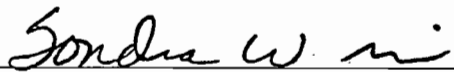
The Board orders the parties to file with the Board, within 45 days of the date of this Order, their respective valuations of the machinery, equipment and pipelines in accordance with this Order. In preparing the valuations, the parties must give appropriate consideration of the cost approach, market approach, and income approach to appraisal. Both parties are required to apply the market approach utilizing the BELs and Valuation Grid or other appropriate market data or utilize the cost approach as described in ARL Volume 5, Chapter 4. In applying the cost approach, the guidelines provided in the ARL must be followed with respect to economic life or adequate market support must be provided for deviating from the guidelines. In applying the cost approach, all forms of depreciation, including physical, functional, and economic depreciation must be considered.

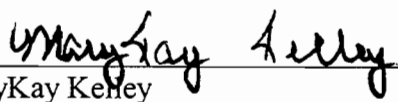
A new hearing is scheduled for determination of valuation only:

Date: July 9, 2009 and July 10, 2009
Time: 8:30AM (Mountain)
Location: 1313 Sherman Street, Suite 315
Hearing Room C, 3rd Floor
Denver, Colorado 80203
Time Allocated: 8 hours per side


DATED and MAILED this 4th day of May 2009.

BOARD OF ASSESSMENT APPEALS


Sondra W. Mercier


MaryKay Keney

I hereby certify that this is a true and correct copy of the decision of the Board of Assessment Appeals.


Heather Flannery

