BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	**Docket Nos.:** **60166, 60167, 60168,** **60169, 60170, 60171**
Petitioner: **KINDER MORGAN CO2 CO., L.P.** v. Respondent: **MONTEZUMA COUNTY BOARD OF COMMISSIONERS.**	

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on June 18 and 19, 2013, Diane M. DeVries, James Meurer, and MaryKay Kelley presiding. Petitioner was represented by Alan Poe, Esq. Respondent was represented by Nathan Keever, Esq. Petitioner is requesting an abatement/refund of taxes on the subject property for tax year 2008.

Dockets 60166, 60167, 60168, 60169, 60170 and 60171 were consolidated for purposes of the hearing.

Subject property is described as follows:

Docket 60166 – Co2 Production Cluster B, C, E Water Disposal Well
Schedule No. 0100079
Docket 60167 – CO2 Production Cluster YA and YB
Schedule No. 0100078
Docket 60168 – CO2 Production Cluster YC, YD, YE and HF
Schedule No. 0100077
Docket 60169 – CO2 Production Cluster YF and HA
Schedule No. 0100076
Docket 60170 – CO2 Production Cluster C and All Oil
Schedule No. 0100034
Docket 60171 – CO2 Production Cluster D, CA, Cow Canyon, HD
Schedule No. 0100032

The subject property consists of land and leaseholds in the McElmo Dome (Montezuma and Dolores Counties) of the Permian Basin (Colorado, Texas, New Mexico, and Oklahoma). Carbon dioxide is the primary product of the various wells; recovered oil is used on site. The Cortez Pipeline Company owns the delivery pipeline; Kinder Morgan is its operator.

Respondent's assigned values and Petitioner's requested values are as follows:

	Respondent	Petitioner
Docket No. 60166	$53,699,340	$39,479,120
Docket No. 60167	$31,724,910	$23,323,780
Docket No. 60168	$40,663,430	$29,895,270
Docket No. 60169	$33,029,530	$24,282,920
Docket No. 60170	$48,151,320	$35,428,040
Docket No. 60171	$ 7,120,980	$ 5,235,260

The parties disagreed on two specific issues; retroactive assessment of actual values, and the deduction of transportation costs in valuation of oil/gas land and leaseholds.

Retroactive Assessment of Actual Values

After receipt of operation statements from Petitioner, the Assessor performed an audit resulting in actual value increases. Petitioner argued that the Assessor did not have the authority to retroactively increase values. According to Petitioner, Respondent may rely neither on the omitted property statutes, codified as Section 39-5-125(1) and 39-10-101(2)(a)(I), C.R.S., nor on the audit and review guidelines promulgated by the administrator under Section 39-2-109(1)(k), C.R.S. The Board did not find Petitioner's arguments convincing. It was most persuaded by Respondent's argument that Petitioner's taxes were retroactively increased pursuant to the audit guidelines delineated by the administrator in the ARL pursuant to Section 39-2-109(1)(k), C.R.S. This statute authorizes the property tax administrator to establish procedures for conducting audit and compliance review of oil and gas leasehold properties for property tax purposes:

> It is the duty of the property tax administrator, and the administrator shall have and exercise authority: (k) To prepare and publish guidelines, after consultation with the advisory committee to the property tax administrator and approval of the state board of equalization, concerning the audit and compliance review of oil and gas leasehold properties for property tax purposes, which shall be utilized by assessors, treasurers, and their agents. Such guidelines shall be subject to legislative review, the same as rules and regulations, pursuant to section 24-4-103(8)(d), C.R.S.

Exercising authority granted by Section 39-2-109(1)(k), C.R.S., the property tax administrator developed guidelines for auditing oil and gas leaseholds for property tax purposes. Under these guidelines, set out in 3 ARL § 6.52 et seq., the tax assessor and the county treasurer are expressly authorized: to review and audit oil and gas operator statements, 3 ARL § 6.52; to change

the valuation of oil and gas leaseholds by issuing Special Notices of Valuation, 3 ARL §§6.54-56; and to issue a tax bill to cover the omitted taxes, 3 ARL § 6.57.

Accordingly, the Board finds that Respondent has the statutory authority to retroactively assess.

Transportation Deductions – Related Versus Unrelated Parties

C.R.S. 39-7-101 requires self- reporting (barrels of oil or quantity of gas) of the selling price at the wellhead (net taxable revenues after gathering, transportation, manufacturing, and processing). While the Assessor's Reference Library (ARL) provides methodologies for deductions of these costs, a significant argument exists regarding transportation costs based on the relationship between Petitioner (Kinder Morgan CO2 Company, L.P.) and the pipeline company (Cortez Pipeline Company).

"Related parties" is defined by the ARL as "individuals who are connected by blood or marriage; or partnerships; or business that are subsidiaries of the same parent company or are associated by one company controlling or holding ownership of the other company's stock or debt." 3 ARL 6.41.

Petitioner's witnesses, James Wuerth (President, Kinder Morgan CO2 Co., L.P.) and Matthew J. Salzman (Partner, Stinson Morrison Hecker LLP), argued that Kinder Morgan CO2 Company, L.P. and the Cortez Pipeline Company were unrelated. They noted that the pipeline company was founded in 1982 by unrelated parties:

> Cortez Pipeline Company at 50% (later Shell Cortez, then Shell CO2 Co. LLC);
> Mobil Cortez Pipeline Company at 37%;
> Continental Cortez Pipeline Company at 13%.

Mr. Wuerth acknowledged that Kinder Morgan later held a 20% interest in Shell and bought the remaining 80% in 2000. He also acknowledged Mr. Kinder's and Mr. Morgan's signatures as "officers" in the Cortez Pipeline Company's Partnership Agreement but added that Kinder Morgan did not exist as an independent entity at the time of the signing.

Petitioner applied the ARL's Netback of Unrelated Party Charges (ARL) to value the price of the CO2 at the wellhead.

Respondent's witness, Mary Ellen Denomy, Certified Public Accountant, referenced Exhibit C (page 5, paragraph 1), which reported ownership of the Cortez Pipeline Company as of December 1, 2007:

> Kinder Morgan CO2 Company, L.P. at 50% (purchased from Shell);
> Mobil Cortez Pipeline, Inc. at 37% (subsidiary of Exxon Mobil);
> Cortez Vickers Pipeline Company at13%.

Ms. Denomy, referencing Exhibit C, stated that the Cortez Pipeline Company "derived 98.2% and 96.2% of its transportation revenues, based on non-regulated tariffs, in 2007 and 2006, respectively, from the parents of two partners with partnership interests aggregating 87% in both 2007 and 2006." The parent companies with 87% interests were Kinder Morgan and Exxon Mobil.

Convinced that Kinder Morgan CO2 Company was a related party to the Cortez Pipeline Company, the Assessor applied the ARL's related party methodology in its assessment.

The Board finds that Kinder Morgan and the Cortez Pipeline Company were related parties. As of December 31, 2007, Petitioner owned 50% of the Cortez Pipeline Company, having purchased it from Shell. Financial statements are supportive. Per the ARL, a transportation deduction is not allowed.

Petitioner presented insufficient probative evidence and testimony to prove that the tax year 2008 valuation of the subject property was incorrect.

ORDER:

The petition is denied.

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 for assessment of the county wherein the property is located, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provision 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 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 for assessment of the county in which the property is located, Respondent may petition the Court of Appeals for judicial review of such questions.

Section 39-10-114.5(2), C.R.S.

DATED and MAILED this 18th day of October, 2013.

BOARD OF ASSESSMENT APPEALS

Diane M. DeVries

James R. Meurer

MaryKay Kelley

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

Milla Lishchuk

STATE OF COLORADO SEAL BOARD OF ASSESSMENT APPEALS