14-45, 14-46, 14-47, 14-48 14-49, and 14-1265
TAX TYPE: CENTRALLY ASSESSED PROPERTY
TAX YEAR: YEAR-1 – YEAR-6
DATE SIGNED: 3-30-2016
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. PERO, R. ROCKWELL
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, vs. PROPERTY TAX DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent, COUNTY-1 AND COUNTY-2, Intervenors.	**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION** Appeal Nos. 14-45, 14-46, 14-47, 14-48 14-49, and 14-1265 Tax Type: Centrally Assessed Property Tax Tax Years: YEAR-1 – YEAR-6 Judge: Phan

Presiding:
John Valentine, Commission Chair
Michael Cragun, Commissioner
Robert Pero, Commissioner
Rebecca Rockwell, Commissioner
Jane Phan, Administrative Law Judge

Appearances:
For Petitioner: REPRESENTATIVE(S) FOR PETITIONER
For Respondent: REPRESENTATIVE(S) FOR RESPONDENT
For Intervenors: REPRESENTATIVE FOR INTERVENOR, COUNTY-1
REPRESENTATIVE FOR INTERVENOR, COUNTY-2

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on DATE through DATE, in accordance with Utah Code §59-2-1007 and §63G- 4-201 et seq. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT[1]

1. The issue before the Tax Commission at the Formal Hearing is to determine the proper assessed value of PETITIONER's ("PETITIONER") taxable property in the State of Utah on the lien dates at issue in this appeal. The PETITIONER's property is centrally assessed by Respondent ("Division").

2. The lien dates at issue in this appeal are January 1 for each of the years YEAR-1 through YEAR-6.

3. The values at issue for tax years YEAR-1 through YEAR-5 are the result of an escaped property assessment issued by the Division on DATE, pursuant to Utah Code Sec. 59-2-217 and 59-2-309.[2] PETITIONER timely appealed the escaped property assessment to the Utah State Tax Commission. The YEAR-6 value is at issue because PETITIONER timely appealed under Utah Code Sec. 59-2-1007 the Division's original YEAR-6 assessment, which had been issued on DATE.[3]

4. The property that is the subject of this appeal is located in COUNTY-2 and COUNTY-1. These Counties intervened in these appeals and were granted intervenor status.

5. Prior to the hearing, the parties had stipulated to the following facts which were received into the Formal Hearing record as Exhibit 1:

a. PETITIONER is a partnership owned %%% by ENTITY-1 and %%% by ENTITY-2 ("ENTITY-2") or its assignees, created to own and operate a gathering pipeline and

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[1] The parties had submitted Proposed Findings of Fact and Conclusions of Law on DATE. The Division submitted an Objection to PETITIONER's Proposed Findings of Fact and Conclusions of Law on DATE, to which PETITIONER responded on DATE. All these submissions were taken into consideration in the issuance of this decision.

[2] Exhibit 3.

[3] Exhibit 2.

compressor stations in COUNTY-1 and COUNTY-2 in Utah (the "Gathering System"). PETITIONER has most recently reported the following tribal ownership interests: From late YEAR to June 1, YEAR-2, through its ownership interests in ENTITY-3 ("ENTITY-3") and ENTITY-2 and/or its assignees, the TRIBE owned %%% of the PETITIONER Gathering System. From June 1, YEAR-2 to November 29, YEAR-4, through its ownership interests in ENTITY-3 and ENTITY-2 and/or its assignees, the TRIBE owned %%% of the PETITIONER Gathering System. .From November 29, YEAR-4 to present, through its ownership interests in ENTITY-3, ENTITY-2 and/or its assignees, the TRIBE owned/owns %%% of the PETITIONER Gathering System.

b. The Gathering System consists of compressor stations and gathering pipelines that cross on land that is not owned by PETITIONER. The Gathering System is subject to central assessment by the Division under Utah Code Ann. Sec. 59-2-201.

c. The completed Gathering System crosses through both COUNTY-1 and COUNTY-2 running west to east with a slight northeastern trajectory. The completed Gathering System consists of approximately ### miles of pipeline, with approximately ### miles located in COUNTY-1 and approximately ### miles located in COUNTY-2.

d. A portion of the Gathering System is also located on land held in trust by the United States government for the benefit of the TRIBE ("Trust Lands"). Approximately ### miles of the Gathering System is located on Trust Lands, which is all located in COUNTY-2. The specific Trust Lands in question were acquired by an act of Congress in YEAR, FEDERAL STATUTE. This act was pursuant to authority

granted under 25 U.S.C. Sec. 465 first enacted in 1934. Pub.L.No. 34-383, 48 Stat. 985.

e. Approximately ### miles of the Gathering System is located in the disputed terminated/present RESERVATION-1 lands ("Disputed RESERVATION-1 Portion"). Approximately ### miles of the Disputed RESERVATION-1 Portion is located in COUNTY-1. Approximately ### miles of the Disputed RESERVATION-1 Portion is located in COUNTY-2. An undetermined portion of the Gathering System in the Disputed RESERVATION-1 Portion crosses two separate State Institutional Trust Land Administration (SITLA) parcels. The remaining most westerly ### miles of the ### miles of the Gathering System located in COUNTY-1 are not located on any Disputed RESERVATION-1 Portion or Trust Lands ("COUNTY-1 Non-Tribal").

f. The Gathering System operated by PETITIONER was first placed on the tax rolls in YEAR. The PETITIONER gathering system was constructed in two phases. The first phase was from LOCATION-A to the LOCATION-B and LOCATION-C located in COUNTY-2. The second phase was from LOCATION-A to the compression station located near LOCATION-D in COUNTY-1.

g. The first phase of the Gathering System was placed in service in YEAR and categorized as an addition in the YEAR property tax assessment. The second phase was not completed until YEAR-1. Because this second phase was not completed until YEAR-1 and had been under construction since YEAR, PETITIONER had construction work in progress for the YEAR and YEAR-1 tax periods.

h. The total cost of the Gathering System (without any Tribal exemption applied) is as follows:

Year	Gathering	Compression	Total
YEAR	$$$$$	-	$$$$$
YEAR	$$$$$	-	$$$$$
YEAR	$$$$$	$$$$$	$$$$$
YEAR-1	$$$$$	$$$$$	$$$$$
YEAR-2	$$$$$	$$$$$	$$$$$
YEAR-3	$$$$$	$$$$$	$$$$$
YEAR-4	$$$$$	-	$$$$$
YEAR-5	-	$$$$$	$$$$$
Total	$$$$$	$$$$$	$$$$$

i. Of these amounts listed above, construction work in progress for the YEAR tax period was $$$$$ and for YEAR-1 was $$$$$ ($$$$$ + $$$$$).

j. The Gathering System was located in both COUNTY-2 and COUNTY-1. However, PETITIONER's records do not provide details on the exact location of much of the property. For simplicity's sake, the parties agree that all "compression" property is located in COUNTY-1 while all "gathering" pipeline property (other than specific costs for the locations identified below) should be apportioned among the counties and the categories of land (Trust Lands, Disputed RESERVATION-1 Portion, and COUNTY-1 Non-Tribal) pro rata based on the number of miles in each county and category as detailed above.

k. Property identified as "Valves-LOCATION-A" (and associated labor), "LOCATION-E," and "PETITIONER Pressure Valve at LOCATION-B," is located on Trust Lands.

l. Property identified as "LOCATION-F," "LOCATION-G," and "LOCATION-H to XXXXX Instl Meter" is located on RESERVATION-1.

m. In the original assessments for YEAR-1 - YEAR-5, the Division allowed a %%% Tribal exemption for all of PETITIONER's property and all property was assessed as being located in COUNTY-2. In YEAR-5 the Division learned that some of PETITIONER's property was located in COUNTY-1 and not all of its property was located on Trust Lands.

n. In December YEAR-5, the Division issued escaped property assessments for tax years YEAR-1-YEAR-5 (the "Escaped Property Assessments") allocating a portion of the Gathering System to COUNTY-1 and applying a Tribal exemption only to a portion of the Gathering System rather than to %%% of the pipeline.

6. The section of the Gathering System located in the Disputed RESERVATION-1 Portion is located in easements primarily through land that is designated as Public Land or SITLA Land. The Bureau of Land management and SITLA have granted easements to PETITIONER to lay the pipeline across this land. None of this section is on land held in title by the TRIBE or any individual tribal member.[4]

7. Evidence was submitted that depicts the Disputed RESERVATION-1 Portion as the "former" reservation. In DATE, NAME, the Commissioner of Indian Affairs, reported that he believed there had not been one single entry on any land that was in the "former RESERVATION-1."[5] COUNTY-1 also provided a quote made by Congress on DATE that authorized the Secretary of the Interior to approve ### allotments "within the *former* RESERVATION-1 Indian Reservations" even though the allotment period had been over. The YEAR and YEAR Territory of Utah maps created by the Department of Interior show the

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4 Exhibits 8, 9 & 10.

5 Report Concerning Indians in Utah, Reports of Agent for the REDACTED.

RESERVATION-1 to encompass the Disputed RESERVATION-1 Portion.[6] The YEAR State of Utah map created by the Department of the Interior does not show the RESERVATION-1 but instead shows a few small scattered shaded parcels, presumably the allotments that were made earlier.[7]

8. In YEAR Congress passed the XXXXX Act, which removed ### acres of public domain land to reservation status. FEDERAL STATUTE. This portion of land was located within the original historical boundary of the RESERVATION-1 and the XXXXX is now what is being referred to as the Trust Lands. Had the reservation continued to exist in the Disputed RESERVATION-1 Portion, there would have been no need to return this portion of land to reservation status. The YEAR State of Utah map, created by the Department of the Interior, Bureau of Land Management, and the University of Utah, among others, shows that the only land located within the Disputed RESERVATION-1 Portion still referred to as "Indian Land" was the congressionally created "XXXXX."[8] The County provided maps from the Department of the Interior that show in YEAR through YEAR-2 that the only "Indian Land or Reservation" in the Disputed RESERVATION-1 Portion is the XXXXX.[9] The XXXXX is what is being referred to herein as the Trust Lands area.

9. Unlike the section of the Gathering System located in the Disputed RESERVATION-1 Portion, the section of the Gathering System located in the XXXXX, or Trust Lands area, run through ### right-of-way easements granted by the Bureau of Indian Affairs as trustee for the TRIBE. ### of these easements were granted to COMPANY and ### to

[6] Exhibits 49 & 50.
[7] Exhibit 51.
[8] Exhibit 52.
[9] Exhibit 53.

PETITIONER. The grant of easements state that they are for the purposes of "construction, maintenance, repair, inspection, protection, operation and removal" of the subject section of pipeline.[10]

10. Employees of the Division testified that they had traveled to COUNTY-2 and COUNTY-1 where the Gathering System is located and it was only when entering the Trust Land area that there was signage identifying the Trust Land portion as tribal lands of the TRIBE. The Trust land portion was fenced in. When entering into the Trust Land portion, there were signs indicating that one would need a Tribal Access Permit before conducting business on the tribal lands. There was no fencing and signage of this nature when entering the Disputed RESERVATION-1 Portion.[11]

11. Throughout the tax years at issue and for years prior, the Division applied the Indian tribal exemption in the amount of the percentage of Indian ownership for any property located on land held in trust by the U.S. Government for the benefit of an Indian individual or tribe.[12] APPRAISER-2, DIVISION EMPLOYEE, testified that the Division deals with this exemption for other tribes and other reservations in the same manner, applying the exemption only to trust lands.[13]

12. During the years YEAR-1 through YEAR-5, PETITIONER had reported on its annual property tax returns that all of the property was located in COUNTY-2 and identified that the property was %%% Indian owned. Therefore, the Division's original assessments were on that basis for each of the years. In YEAR-5, during a site visit with ENTITY-1, on DATE, the

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[10] Exhibits 39-48.
[11] Formal Hearing Testimony of APPRAISER-1: 264 & Exhibit 133, pgs. 23-26.
[12] PTD SJ Opp. At APPRAISER-2 Declaration, 6.
[13] Testimony of APPRAISER-2, Formal Hearing Transcript: 343-344.

Division learned that PETITIONER had a compressor station in COUNTY-1. The Division visited the property on DATE and DATE. The Division began to examine all of PETITIONER's property to determine whether it was on Trust Land and, therefore, qualified for the Indian tribal exemption. On DATE, the Division issued revised escaped property assessments for the YEAR-1 through YEAR-5 tax years.[14] In addition to apportioning value to COUNTY-1, the Division revised the taxable values so that the %%% tribal exemption was only applied to personal property and improvements located on the Trust Lands. At this time the Division thought that only ### miles of the system was located on the Trust Lands.

13. In preparation for this hearing, the Division further reviewed the property and concluded that ### miles of the gathering system were located on the Trust Lands portion.[15] Also, other errors were then discovered in PETITIONER's reporting. On DATE, PETITIONER provided a document showing unreported additions to the property that had occurred in YEAR-5 and YEAR-6. Additionally during discovery, PETITIONER notified the Division on DATE, that the TRIBE did not have a %%% ownership interest in PETITIONER as had been previously reported; rather, the ownership fluctuated in the range of %%% to %%% over the years at issue. The Division issued appraisals of the property which corrected these errors. The Division issued an appraisal dated DATE[16] which was then revised with the final appraisal dated DATE.[17]

14. The valuations on the original assessments for the years YEAR-1 through YEAR-5 and then the valuations on the escaped property assessment for each of these years as well as the YEAR-6 valuation is listed below. Also included are the value conclusions from the

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[14] Exhibit 3.
[15] Formal Hearing Testimony of APPRAISER-1: 262-263.
[16] Exhibit 4.
[17] Exhibit 132.

final appraisal received at the hearing from the Division for each year which included the Indian tribal exemption and the appraisal received from PETITIONER, which had been prepared by APPRAISER-3 as then adjusted to include the tribal exemption on the same portion of the system as had been done by the Division.[18]

Year	Original Assessments	Escaped Property Assessments	Division Appraisal	APPRAISER-3 Appraisal[19] with Indian Tribal Exemption Applied
YEAR-1	$$$$$	$$$$$	$$$$$	$$$$$
YEAR-2	$$$$$	$$$$$	$$$$$	$$$$$
YEAR-3	$$$$$	$$$$$	$$$$$	$$$$$
YEAR-4	$$$$$	$$$$$	$$$$$	$$$$$
YEAR-5	$$$$$	$$$$$	$$$$$	$$$$$
YEAR-6	$$$$$		$$$$$	$$$$$

APPRAISER-3 Appraisal

15. PETITIONER supported its requested value with an appraisal prepared by APPRAISER-3, MAI CRE, Certified General Appraiser, and APPRAISER-4, MAI, Certified General Appraiser. The APPRAISER-3 Appraisal concluded a value for each of the years YEAR-1 through YEAR-6.[20] The appraisal represented the full market value of the property prior to consideration of the Indian tribal exemption. APPRAISER-3 then did apply the exemption to his market value appraisal in the same manner as had been done by the Division, which is shown in Formal Hearing Exhibit 6 and resulted in the final numbers listed above.

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[18] Exhibit 7, referring to information contained in Exhibit 2, Exhibit 3, Exhibit 4 and Exhibit 6.

[19] At the hearing, PETITIONER was requesting a further reduction from the value conclusion found in the APPRAISER-3 Appraisal (Exhibit 5) due to the Indian tribal exemption. APPRAISER-3 prepared a calculation (Exhibit 6), which showed how the Indian tribal exemption would reduce his appraisal value for tax assessment purposes based on the same manner as it was applied by the Division as a way to compare his appraisal value with the Division's appraisal value. The Division had applied the exemption in its appraisal value conclusions. PETITIONER requested a further expansion of this exemption which is not reflected in these numbers.

[20] Exhibit 5.

APPRAISER-3's appraisal conclusion prior to applying the tribal exemption for each year at issue is as follows:

YEAR-1	$$$$$
YEAR-2	$$$$$
YEAR-3	$$$$$
YEAR-4	$$$$$
YEAR-5	$$$$$
YEAR-6	$$$$$

APPRAISER-3's Discounted Cash Flow Approach

16. In his Appraisals, APPRAISER-3 considered both a discounted cash flow (DCF) income approach and a replacement cost new less depreciation cost approach. He explains his DCF approach in his appraisal as follows:

> The income approach is based on the appraisal principle of anticipation in that it measures the price a prudent buyer would pay for an entity based on anticipated future monetary benefits. Because of declining income and the finite economic life of the property, the applicable valuation technique is a discounted cash flow model ("DCF"). In the DCF model, income projections over a defined holding period are discounted to present value by a market-supported yield or discount rate, or weighted average cost of capital ("WACC").[21]

In the DCF model there are three components. The appraiser must estimate cash flow projections, determine the appropriate holding period and calculate the discount rate or weighed average cost of capital. APPRAISER-3 had concluded that the appropriate holding period for these assets is ### years and this was not at issue. The parties differed on net cash flow projections and the discount rate.

Cash Flow Projections

17. To determine net cash flow projections, APPRAISER-3 determined a revenue projection for year one, applied a decline rate for future years and subtracted projected expenses.

[21] Exhibit 5, pg. 21.

In determining the correct income or cash flow projections, APPRAISER-3 notes that under Utah Admin. Rule R884-24P-62(5) the cash flow projections are ". . . restricted to the operating property in existence on the lien date, together with any replacements intended to maintain, but not expand or modify, existing capacity or function." It was APPRAISER-3's position that only existing capacity could be considered in predicting cash flows and any production from the development of future wells disregarded.

18. In this analysis, year one is YEAR-6. For his revenue projection for year one, APPRAISER-3 used PETITIONER's actual YEAR-5 performance. He based revenue projections beyond YEAR-6 on year one revenue and what he referred to as a "market-supported decline rate."[22]

19. APPRAISER-3 and the appraisers for the Division had used a decline rate to estimate cash flow projections although they differed on the amount of the decline rate. APPRAISER-3's was %%% for each of the years YEAR-1 through YEAR-6. He explains the basis for applying a decline rate in his appraisal: ". . . natural gas wells have a non-linear declining production rate over time. Typically, at the beginning of a well's life it will produce at a very high rate. However, the production rate quickly declines in the early stages as gas escapes and pressure is reduced. The decline rate becomes much slower over time."[23] He acknowledged that the decline rate was essentially a market analysis to project the supply of gas available to go through PETITIONER's pipeline.[24] However, he notes that the rate he developed "reflects the average decline for the wells in place as of any given lien date" and based on his "interpretation

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[22] Exhibit 5, pg. 21-22.
[23] Exhibit 5, pg 23 and Testimony of APPRAISER-3, Formal Hearing Transcript 150-153.
[24] Testimony of APPRAISER-3, Formal Hearing Transcript 210:22-24.

of the rules," he did not think it was appropriate to capture volumes that would be coming from new wells or deepening of wells.[25]

20. APPRAISER-3 based his decline rate on three of the largest producing fields in the RURAL AREA, although he used only twenty wells from each of the three fields in his analysis. He explained that he had limited it to twenty because of the large number of wells in each field. He explained the wells he selected had not been deepened and that he had selected wells "from various periods of time. So if a well was drilled in 1995, we don't plug it in as 1995, we plug it in as year one, so that we can line up all the wells regardless of when they came online."[26] It was his conclusion from the twenty wells in the FIELD-1 field, that %%% of the production from the wells came in year one and "in the first five years, the total production for those wells is about %%%-%%% averaging %%%." After five years the remaining %%%-%%% of production would occur.[27] He explained that his approach limited the analysis to "reflect the average decline for the wells in place as of any given lien date." He testified that based on his interpretation of the rules that apply to this case he did not think it was appropriate to capture the projected production volumes from new wells or the deepening of existing wells.[28]

21. APPRAISER-3 also looked at the well fields FIELD-3 and FIELD-2 located in the RURAL AREA and performed the same analysis. He notes in his appraisal, "The subject's region is made up of a mix of older wells that are producing low, but steady volumes and newer wells producing high but quickly declining volumes. Accordingly a revenue decline rate over time would be more stable than the decline curves suggested by individual wells." He concludes

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25 Testimony of APPRAISER-3, Formal Hearing Transcript 209-210.
26 Testimony of APPRAISER-3, Formal Hearing Transcript 151.
27 Testimony of APPRAISER-3, Formal Hearing Transcript 151:9-25, Exhibit 5 pg. 24.
28 Testimony of APPRAISER-3, Formal Hearing Transcript 209-210.

the weighted average to volume decline "suggests a decline rate in or above the middle of the range would be appropriate for this analysis."[29] Later APPRAISER-3 explains, ". . . I have wells that are existing for years, wells that are new and wells in-between and that's why I flatten it out significantly and pick what I consider to be a reasonable average at %%% . . . my %%% rate is reflective of a well field, not an individual well's experience."[30]

22. APPRAISER-3 points out that ENTITY-1's projection of gas production from the wells that use its systems had an average decline in production of %%%. [31]

23. Once revenue can be projected using the year one total revenue and the decline rate, the net cash flow projections need to be determined. One of the items subtracted from revenue is operating expenses. Like he had done with revenue, APPRAISER-3 used YEAR-5 operating expenses as his year one (YEAR-6) expenses, which were $$$$$.[32] After comparing historical operating expenses to throughput volume and information used by PETITIONER for internal forecasting, APPRAISER-3 projected operating expenses to be %%% fixed through the projected life and %%% variable which would decline as revenue declined.[33]

24. APPRAISER-3 also subtracted capital expenditures from revenue to determine net cash flow. This was a significant area of difference between the Division's and APPRAISER-3's income approaches. The Division had allowed $$$$$ capital expenditures and APPRAISER-3 had subtracted $$$$$ for year one in his DCF. APPRAISER-3 opined that it is appropriate to deduct capital expenditures in this case, noting, "I've forecasted a typical reserve" and a prudent investor would set aside reserves to cover the obviously anticipated cost in the

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29 Exhibit 5, pg 27.
30 Testimony of APPRAISER-3, Formal Hearing Transcript 214:11-19.
31 Exhibit 5, pg. 28, Exhibit 18, Testimony of APPRAISER-3, Formal Hearing Transcript 154:4-7.
32 Exhibit 5, pg. 29, Testimony of APPRAISER-3, Formal Hearing Transcript 158:10-22.
33 Exhibit 5, pg. 29-30.

future.[34] APPRAISER-3 stated that PETITIONER was a very small entity that did not forecast expenses more than two years ahead so they did not have their own capital expenditures forecast. He testified that compressors needed to be rebuilt every five years and there was one compressor in the Gathering System.[35] He was able to obtain budgeted capital expenditures from ENTITY-1, a larger entity, for two of its other gathering systems, LOCATION-J and LOCATION-I.[36] He explains that his capital expenditure calculation was "iterated assuming a ### year-life on the pipeline, which is the average life that Marshal and Swift Valuation Services estimates for gathering lines." He goes on to explain, "It just happened that in year one it equates to %%% of cost which is the average of the ### capital expenditure forecasts made for LOCATION-J and LOCATION-I."[37] He concluded from his analysis that the average capital expenditure was %%% per year of the historical costs of those systems. He notes that if "you forecast %%% of cost over the life of the ### year asset, you're replacing about %%% over the life of that asset. You're not replacing %%%. But because it's a finite life asset you wouldn't expect to do %%%."[38] APPRAISER-3 reduces this amount further, however because he applies %%% to year one, but he also assumes the same %%% decline rate per year to be consistent with his revenues so that by year ### he was down to %%%. He notes that he did not apply any capital expenditure in the last three years of life assuming that the company would not spend any money on capital

[34] Testimony of APPRAISER-3, Formal Hearing Transcript 221:13-15.
[35] Testimony of APPRAISER-3, Formal Hearing Transcript 160:11-12 and 163:5-14.
[36] APPRAISER-3 acknowledged that these two gathering systems were older than PETITIONER's system but did not know how old. He also acknowledged that older properties tend to require more capital expenditures. Testimony of APPRAISER-3, Formal Hearing Transcript 220:15-19 & 221:7-8.
[37] Testimony of APPRAISER-3, Formal Hearing Transcript 224:16-19.
[38] Testimony of APPRAISER-3, Formal Hearing Transcript 161:9-12.

expenditures in those years. He explains that under this calculation, PETITIONER would be replacing "about %%% of that Gathering System over that ### year life."[39]

25. In the Stipulation of Facts, at Findings of Fact 5.h. the parties had agreed that of the $$$$$ total costs of the Gathering System, $$$$$ or %%% was for "compression" and the remainder for "gathering."

26. Additionally in support of making the capital expenditure deduction, APPRAISER-3 testified that the discount rate he uses in his DCF model is based on capital market analysis of publicly traded companies that have capital expenditures. He states it is a requirement in the "valuation industry that you match your cash flows with your discount."[40]

27. APPRAISER-3 also cites to Utah Admin. Rule R884-24P-7(A)(l)(b) which discusses assessment of mining properties and states, "For purposes of the discounted cash flow method, allowable costs shall include expected future capital expenditures in addition to those items outlined in A.l.(a)." A similar provision is found at Utah Admin. Rule R884-24P-10(A)(IO)(a), which discusses taxation of underground rights in oil and gas deposits.

28. In his appraisal, APPRAISER-3 points out that the cash flows to be discounted in the DCF model are after tax cash flows and so the tax benefit from interest needs to be accounted for. He indicates that he did account for this in his discount rate. He had used the weighted average cost of capital model and reduced the cost of debt by the income tax rate, which generates an after tax WACC, which he pointed out is appropriate to apply to after-tax cash flows.[41] APPRAISER-3 opined that his was the simplest way to approach this, "when dealing in

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[39] Testimony of APPRAISER-3, Formal Hearing Transcript 161:15-24.
[40] Testimony of APPRAISER-3, Formal Hearing Transcript 162:14-18.
[41] Exhibit 5, pg. 30.

real terms rather than nominal terms. Because otherwise you need to figure out what your nominal debt rate is and then adjust for debt inflation to get to your real interest rate."[42]

29. Income taxes are deducted as an expense. APPRAISER-3 deducted these at a %%% effective tax rate.

Discount Rate

30. APPRAISER-3 derived his discount rate based on the weighted average cost of capital ("WACC") model. In this model he has to determine the cost of equity, the cost of debt and the capital structure or weighting to be applied to debt and equity. His discount rate did fluctuate over the period from YEAR-1 through YEAR-6 as changes in the debt rate and equity rates occurred. A major difference between the discount rates in the Division's and APPRAISER-3's appraisal was that APPRAISER-3 allowed for a size premium in his rate, while the Division's appraisers did not allow for one. Because the size premium was disputed by the Division, APPRAISER-3 provided what his rate would be if the size premium was excluded. It was, however, APPRAISER-3's appraiser opinion that the size premium should be included. Without the size premium, APPRAISER-3's overall discount rate was lower than the Division's, which, other factors being equal, would result in a higher value. The overall discount rate adjusted for property tax used by APPRAISER-3 and by the Division for each year, and then APPRAISER-3's rate without the size premium are as follows:[43]

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[42] Testimony of APPRAISER-3, Formal Hearing Transcript 159:25-160:4.
[43] Exhibit 5 & Exhibit 132.

	APPRAISER-3's Appraisal	Division's Appraisal	APPRAISER-3's Without Size Premium
YEAR-1	%%%	%%%	%%%
YEAR-2	%%%	%%%	%%%
YEAR-3	%%%	%%%	%%%
YEAR-4	%%%	%%%	%%%
YEAR-5	%%%	%%%	%%%
YEAR-6	%%%	%%%	%%%

31. To determine the cost of equity component of the WACC, APPRAISER-3 used both a capital asset pricing model ("CAPM") and the Dividend Growth Model, weighting both equally. It is in his CAPM calculation that APPRAISER-3 had added the size premium. In his CAPM APPRAISER-3 determined the risk free rate, which was based on U.S. Treasury rates and for the YEAR-6 tax year he concluded this to be %%%. To this he applied a risk premium which is to account for general equity and industry-specific risks. He obtained his risk premium from the long-horizon equity risk premium published by Duff & Phelps, which was %%%. Then to add the industry specific risk, he considered a beta of ## as reported by Value Line for the companies included in that publication that was the most similar to the subject. As the beta is multiplied by the equity risk premium of %%%, the industry adjusted risk is %%%. He then added a size premium of %%%, which resulted in his cost of equity of %%%.[44]

[44] Exhibit 5, pgs. 35-45.

Risk Free Rate	%%%
Industry Adjusted Risk Rate	%%%
Size Premium	%%%
	%%%

32. APPRAISER-3 offered as support for making a size premium that Utah Admin. Rule R884-24P-7 does state that size is something that should be considered in determining the discount rate. He also expresses in his appraisal "that beta, which is used to capture specific market risk in the CAPM, does not account for what is commonly known as the size effect," He also testified, "Ibbotson will tell you beta is higher for small companies, they're more volatile relative to the market." He goes on to state, "that applying both a beta and size premium is not double counting."[45] He provides excerpts from a number of appraisal or market publications that support allowing for a size premium.[46]

33. There is not a size premium added in the dividend growth model, the second model APPRAISER-3 used in determining his cost of equity. By weighing the CAPM and dividend growth model at %%% each to determine the cost of equity, this further diluted the effect of the size premium. APPRAISER-3 explains, "For this [the dividend growth model] method, the cost of equity is calculated as a company's dividend yield rate plus a projected growth rate in dividends . . ." [47] APPRAISER-3's cost of equity from his CAPM model with the size premium had been %%% and his cost of equity based on the Dividend growth model had been %%%. Giving these two models equal weight resulted in his cost of equity of %%%.

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45 Testimony of APPRAISER-3, Formal Hearing Transcript 182:9-15.

46 Exhibit 5, pg. 36-45, citing for support of size premium: Ibbotson SBBI 2014 Classic Yearbook; Duff & Phelps 2014 Valuation Handbook; Cost of Capital, Fourth Edition, Pratt and Grabowski; Principles of Corporate Finance, Tenth Edition, Brealey, Myers, Allen; Valuing a Business: The Analysis and Appraisal of Closely Held Companies, Fifth Edition, Pratt and Niculita; and Damodaran on Valuation, Second Edition, Aswath Damodaran.

47 Exhibit 5, pg. 45.

34. The second component of the WACC is the cost of debt, which was not an issue in dispute in this matter and is basically the rate at which a firm can borrow money. APPRAISER-3 concluded for PETITIONER this would be %%%.

35. The third step in calculating the WACC is weighting the cost of equity and the cost of debt. The weight given to debt and equity is determined from market information. APPRAISER-3 concluded the appropriate weighing for the YEAR-6 tax year was %%% equity and %%% debt.[48]

WACC					
Equity	%%%	x	%%%	=	%%%
Debt	%%%	x	%%%	=	%%%
	WACC =				%%%

36. APPRAISER-3 then makes three additional adjustments. He adjusts his WACC for the interest tax deduction, which reduces his WACC to %%%. Then because the cash flows he used in his appraisal were real, rather than nominal, he accounts for inflation to convert his WACC to a real rate. This reduces his discount rate further to %%%. Finally, APPRAISER-3 adds the property tax rate of %%% to account for property taxes so his overall, property tax adjusted discount rate is the %%% for the YEAR-6 tax year. Similar calculations are made to determine the discount rate for each year at issue in this matter.[49]

37. The final step in APPRAISER-3's income calculation was to determine the present worth of the annual net income by discounting the net cash flows. The value he concluded from his income approach for each year is listed below. One difference for the YEAR-1 year, the Gathering System was not completed or fully operating in that year and the

[48] Exhibit 5, pg. 48.
[49] Exhibit 5, pg. 50.

addition of the construction work in progress (CWIP) made that year's value much nearer to the cost value. APPRAISER-3 also made the calculation for each year without a size premium as that was in dispute. His income values are as follows:

APPRAISER-3's Recommended Income Value[50]		APPRAISER-3's Income Value Without Size Premium[51]	
YEAR-1	$$$$$	YEAR-1	$$$$$ (Excludes CWIP)
YEAR-2	$$$$$	YEAR-2	$$$$$
YEAR-3	$$$$$	YEAR-3	$$$$$
YEAR-4	$$$$$	YEAR-4	$$$$$
YEAR-5	$$$$$	YEAR-5	$$$$$
YEAR-6	$$$$$	YEAR-6	$$$$$

RCNLD Cost Approach

38. APPRAISER-3 also prepared a replacement cost new less depreciation (RCNLD) cost approach for each of the years at issue. The first step of this approach is to estimate the replacement cost new of the improvements or personal property. The parties were able to stipulate to this amount and this step is not at issue.

39. The next step in the cost approach is to subtract depreciation from the replacement cost new, due to physical deterioration, functional obsolescence or external/economic obsolescence. Because the Gathering System's average base year was YEAR-1, each year that it aged would result in physical deterioration and again that was not an issue in dispute between APPRAISER-3 and the Division as they both used an age/typical economic life model for physical depreciation. APPRAISER-3 notes that his model "captures physical deterioration as well aa normal functional obsolescence." However, he goes on to state, "Any extraordinary obsolescence from functional or external factors must be considered

[50] Exhibit 5, pgs. 52 & 85.
[51] Exhibit 5, pgs. 136-141.

separately."[52] APPRAISER-3 argues that an additional adjustment needed to be made for extraordinary obsolesces and it is this additional obsolescence adjustment that the Division takes issue with. For the YEAR-6 tax year APPRAISER-3's cost estimate value was as follows:

Replacement Cost New		$$$$$	
Physical Depreciation	-	$$$$$	
Obsolescence (%%%)	-	$$$$$	
Value Estimate		$$$$$	(Rounded $$$$$)

40. APPRAISER-3 estimated his obsolescence adjustment based on the utilization method, which he described as, "not utilization as measured by capacity alone but its utilization as measured by the market."[53] In this method, APPRAISER-3 first determined when the system achieved stabilized operating levels, noting that this system was only in operation part of YEAR-1. He notes that in YEAR-3 they had achieved %%% utilization based on %%% capacity, but the utilization had decreased from there. Based on %%% capacity there was %%% utilization in YEAR-4 and %%% in YEAR-5, which was "a direction that would be anticipated based on the condition of the market, but would not have been anticipated when they built the facility."[54] APPRAISER-3 notes in his appraisal that the conception and construction of the system occurred when the natural gas market was strong and prices near or at their peak but the prices had declined substantially during the years at issue.[55]

41. The next step of his utilization method was to determine what market utilization was. He points out that from the subject line in YEAR-3 it is indicated that %%% is achievable. APPRAISER-3 also looked at rates for other gathering pipelines operated by ENTITY-1 in the

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[52] Exhibit 5, pg. 57.
[53] Testimony of APPRAISER-3, Formal Hearing Transcript 187:14-17.
[54] Testimony of APPRAISER-3, Formal Hearing Transcript 188:3-5.
[55] Exhibit 5, pg. 58.

general region which for YEAR-5 ranged from %%% to %%%. He looked at two other businesses that had gathering pipelines, one was at %%% capacity in YEAR-5 and the other at %%%. From this he concluded a market utilization rate of %%% and that this suggested an obsolescence factor of %%% for the YEAR-6 year. APPRAISER-3 states that he had spoken with representatives of the company and they told him that there really are no peaks and valleys of volume going through the line, that it is pretty constant through the year. He acknowledged that he did not see any numbers from PETITIONER that actually showed the maximum throughput at any point in time.[56]

42. APPRAISER-3 also calculated an inutility penalty. He explains, "This method attempts to measure the cost of a new, modern replacement asset of the same capacity as the actual production of the subject property." His conclusion was this method supported a %%% inutility penalty.[57] From these two methods he concluded his utilization obsolescence factor for the YEAR-6 tax year to be %%%. It was a different rate for each year. APPRAISER-3's cost estimate conclusion as indicated in his appraisal does not take into account the Indian tribal exemption and his cost conclusion for each year is as follows.[58]

[56] Testimony of APPRAISER-3, Formal Hearing Transcript 219:6-11.
[57] Exhibit 5, pgs. 59-60.
[58] Exhibit 5, pgs. 60 and 85.

Component	YEAR-1	YEAR-2	YEAR-3	YEAR-4	YEAR-5	YEAR-6
Replacement Cost New	$$$$$	$$$$$	$$$$$	$$$$$	$$$$$	$$$$$
Depreciation						
Physical Deterioration	-$$$$$	-$$$$$	-$$$$$	-$$$$$	-$$$$$	-$$$$$
Obsolescence %	%%%	%%%	%%%	%%%	%%%	%%%
Obsolescence	-$$$$$	-$$$$$	-$$$$$	-$$$$$	-$$$$$	$$$$$
Cost Value Estimate (Rounded)	$$$$$	$$$$$	$$$$$	$$$$$	$$$$$	$$$$$

Reconciliation of Income and Cost Approaches

43. In the appraisals, both APPRAISER-3 and the Division had prepared a discounted cash income approach and a replacement cost new less depreciation cost approach (RCNLD). Neither party performed a sales comparison approach. However, APPRAISER-3 and the Division differed considerably on the reconciliation of the two approaches. APPRAISER-3 gave weight to both approaches as he determined appropriate to get to fair market value.[59] Division gave %%% weight to the higher of the two approaches.

44. For the YEAR-1 tax year, APPRAISER-3 applied %%% weight on the income approach and %%% on the cost approach, but he testified that this was essentially a %%% cost approach since the construction work in progress was added to the income value.[60] For YEAR-2, APPRAISER-3 applied a %%% weighting on the income approach and a %%% weighting on the cost approach. For YEAR-3 - YEAR-6 he applied a %%% weighting on the income approach and %%% weighting on the cost approach, placing more weight on the income approach as the income of the new gathering system became more stable and reliable.[61] He did acknowledge at the hearing that he may have jumped the weighting all the way to %%% on the income approach

[59] Exhibit 6.
[60] Exhibit 5, pgs. 85-86, Testimony of APPRAISER-3, Formal Hearing Transcript 192:16-21.
[61] Exhibit 5, pgs. 85-87.

prematurely for the YEAR-3 tax year and did not disagree with a %%%/%%% weighting for YEAR-3.[62]

45. APPRAISER-3 testified in his opinion that to determine fair market value of an income producing property like a gathering pipeline, it is improper not to give weight to the income approach. He also testified that for income producing property, the income approach should receive greater weight because it is most heavily relied upon by market participants particularly when income is stabilized.[63] He supported this by reading from The Appraisal of Real Estate, which states, "reconciliation provides an integral quality control assessment of the valuation process prior to the final opinion of value and also helps identify key factors that must be clearly cited and explained, . . . No mechanical formula is used to select one indication over the others. The strengths and weaknesses of each of the approaches used must be discussed and the appraiser must explain why one approach may be relied upon more than another in a particular assignment." . . . . "If market participants are primarily interested in income earning potential, the final opinion of value may be closer to the conclusion derived from income capitalization than from sales comparison."[64]

46. PETITIONER WITNESS, Senior Corporate Counsel of ENTITY-5, testified that in his experience working for ENTITY-4, companies are more concerned with the return they are able to earn on an asset than what is paid for the asset. He stated that cost is not a big factor, but the income that can be generated from an asset is critically important.[65]

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[62] Testimony of APPRAISER-3, Formal Hearing Transcript 195-196.
[63] Testimony of APPRAISER-3, Formal Hearing Transcript 191-193.
[64] Testimony of APPRAISER-3, Formal Hearing Transcript 193:1-19; and Exhibit 15, pg. 645.
[65] Testimony of PETITIONER WITNESS, Formal Hearing Transcript 121:25-122:20.

47. On the reconciliation process, APPRAISER-3 testified, "So in this case I have exercised judgment. The judgment is that this is an income producing asset, that the income approach should be given heavier weight. Buyers don't buy based on cost."[66]

48. The purpose of APPRAISER-3's appraisal was to determine the fair market value of the Gathering System, which he did without accounting for the Indian tribal exemption. APPRAISER-3 prepared a calculation of how his appraisal value would be reduced for tax assessment purposes by the Indian tribal exemption based on the same manner as the Division had applied the exemption, exempting property on Trust Lands based on the TRIBE's percentage of ownership. APPRAISER-3's income value, cost value, reconciled appraisal value and then the appraisal values with the Indian tribal exemption deducted are as follows:

	YEAR-1	YEAR-2	YEAR-3	YEAR-4	YEAR-5	YEAR-6
Income Value Estimate	$$$$$	$$$$$	$$$$$	$$$$$	$$$$$	$$$$$
Weight	%%%[67]	%%%	%%%	%%%	%%%	%%%
Cost Value Estimate	$$$$$	$$$$$	$$$$$	$$$$$	$$$$$	$$$$$
Weight	%%%	%%%	%%%	%%%	%%%	%%%
Value Estimate	$$$$$	$$$$$	$$$$$	$$$$$	$$$$$	$$$$$
Value Estimate with Indian Tribal Exemption As Applied by Division	$$$$$	$$$$$	$$$$$	$$$$$	$$$$$	$$$$$

Division's Appraisals

49. In this matter several values have been offered by the Division. There were the original assessments issued for each of the years YEAR-1 through YEAR-5[68] and then the discovery of escaped property, and the escaped property assessments issued for these years on

[66] Testimony of APPRAISER-3, Formal Hearing Transcript 193:20-22.
[67] Because of the addition of CWIP, the income was essentially the same as the cost approach.
[68] Exhibit 2.

DATE.[69] In preparation for this hearing the employees of the Division have further reviewed information, made additional corrections and adjustments and at the hearing have submitted a final appraisal dated DATE,[70] that for each year indicates a lower value than the escaped property assessments and the original YEAR-6 assessment. This appraisal had been prepared by APPRAISER-1, Licensed Appraiser, and APPRAISER-2, SRA, Certified General Appraiser.

50. Like APPRAISER-3, the Division's appraisers had prepared a discounted cash flow income approach and a cost approach. There were several key differences from APPRAISER-3's appraisal between these two approaches as well as a significant difference on how the two approaches were weighted in the reconciliation process to determine the value. Unlike the APPRAISER-3 Appraisal, the Division had included the Indian tribal exemption in its appraisal conclusions for each year, which makes it more difficult to directly compare the values stated in the two appraisals. The Division's income approach values, cost approach values and reconciled values for each year which include the Indian tribal exemption are as follows:

Year	Income Approach	Cost Approach	Final Opinion of Value
YEAR-1	$$$$$	$$$$$	$$$$$
YEAR-2	$$$$$	$$$$$	$$$$$
YEAR-3	$$$$$	$$$$$	$$$$$
YEAR-4	$$$$$	$$$$$	$$$$$
YEAR-5	$$$$$	$$$$$	$$$$$
YEAR-6	$$$$$	$$$$$	$$$$$

Division's Discounted Cash Flow Income Approach

51. The Division used a discounted cash flow method for its income approach, which like in APPRAISER-3's appraisal a year one income was estimated and then income for the holding period was declined based on a decline rate.

[69] Exhibit 3.
[70] Exhibit 132.

Cash Flow Projections

52. For the YEAR-6 appraisal, the Division's year one total revenue was the same as APPRAISER-3's at $$$$$. However, the parties' projected income for the future years was substantially different because of their respective decline rates. APPRAISER-3 declined his income at %%% for each year he appraised. For its projection for the future years in the holding period, in its YEAR-6 appraisal, the Division had applied a decline rate of %%% to its revenue. The Division's lower decline rates in its appraisal means the revenue is projected to decline at a lower rate for future years, ultimately resulting in a higher value. The Division had a different approach and method of calculating the decline rate than had APPRAISER-3 and it had resulted in a different rate for each of the years. The decline rates used by the Division in its appraisal were as follows:[71]

YEAR-1	%%%
YEAR-2	%%%
YEAR-3	%%%
YEAR-4	%%%
YEAR-5	%%%
YEAR-6	%%%

53. APPRAISER-2, one of the appraisers for the Division, explained how he had derived these decline rates. He testified that instead of determining a decline curve on an individual well basis he was attempting a market analysis to predict the supply of gas available for a gathering system that services an entire region of wells.[72] Therefore, he felt it was appropriate to look at what actually happened with gas production in the state as reported to Utah Division of Oil, Gas and Mining (DOGM). It was his testimony, "that when you're valuing a

[71] Exhibits 132 & 138.
[72] Testimony of APPRAISER-2, Formal Hearing Transcript: 329 -330.

collection of wells, it tends to be a lot more stable than following just that single [well] life cycle."[73] He calculated his rate on a year-by-year basis based on the data available for that year and his information came from the natural gas production reported to DOGM which is provided by each county in Utah. For the YEAR-6 appraisal he looked at the YEAR-5 numbers and a five year average.[74]

54. Of the nine counties in Utah in which there was natural gas production, the largest of the production came from COUNTY-2, with %%% of the total state's coming from that county. COUNTY-1 was ###[75] with %%% of the state's production. After calculating his 5 year averages, the information showed that production was actually increasing in both COUNTY-1 and COUNTY-2, although declining in all the other counties. This reported production information included production from new wells and was not limited to production from existing wells. Because he was attempting to get at a decline rate, in computing his averages, APPRAISER-2 then changed the positive production percentage from COUNTY-1 and COUNTY-2 to zero, or as if they had no change in production. He explained, "Obviously, for COUNTY-1 and COUNTY-2, they're not negative. So it caused a dilemma where we don't want to increase the revenue that gets reported to us, 'cause I do think that would create a situation to potentially capture wells not yet drilled and things of that nature. So rather than use, for example, COUNTY-1 at %%%, we took them to zero."[76] Leaving COUNTY-1 and COUNTY-2 at zero, he computed an average decline in production of %%% and taking out COUNTY-1 and COUNTY-2 from the group he calculated an average decline in production of %%%. He also

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73 Testimony of APPRAISER-2, Formal Hearing Transcript: 328:8-9 & Exhibits 26-28.
74 Exhibit 137.
75 COUNTY was second, with %%% of the total production.
76 Testimony of APPRAISER-2, Formal Hearing Transcript: 322:2-8.

computed a weighted average of all which indicated a positive %%%. From this information he states he used appraisal judgment and concluded a decline rate of %%% would be applicable for his YEAR-6 appraisal. He explained how he came to this conclusion, "What I did is I looked at the average of all 'cause I don't think it's appropriate to exclude COUNTY-1 and COUNTY-2 by saying average of just the negative declines, especially when it's driven by natural gas liquids and not just natural gas. And we concluded a %%% by looking at kind of the combination between average of all."[77]

55. Exhibit 137 shows APPRAISER-2's study for each of the years at issue. APPRAISER-2 acknowledged during his testimony that there were errors in the calculation of his average of negative declines (which excludes COUNTY-2 and COUNTY-1) for the years YEAR-1 through YEAR-5 in that exhibit and testified to the correct number for this average, but did not change his final conclusion as to the decline rate for any of these years. As a comparison, the decline rates used by the Division in their original assessments, escaped property assessments, the Division's final appraisal, the averages from the Division's study as corrected and APPRAISER-3's decline rate for each of these years is as follows:[78]

[77] Testimony of APPRAISER-2, Formal Hearing Transcript: 323:5-9.

[78] Exhibit 138 compiles this information from Exhibits 5, 132, 137 and Testimony of APPRAISER-2, Formal Hearing Transcript: 323-324 & 357-358.

	Original & Escaped Prop Assessments	APPRAISER-3 Appraisal	Division Appraisal	Division's Study Average of All but w/COUNTY-1 and COUNTY-2 at ###	Division's Study Corrected Average of Negative Counties
YEAR-1	%%%	%%%	%%%	%%%	%%%
YEAR-2	%%%	%%%	%%%	%%%	%%%
YEAR-3	%%%	%%%	%%%	%%%	%%%
YEAR-4	%%%	%%%	%%%	%%%	%%%
YEAR-5	%%%	%%%	%%%	%%%	%%%
YEAR-6	%%%	%%%	%%%	%%%	%%%

56. The Division's witness, DIVISION WITNESS, Valuation Analyst, Property Tax Division, provided oil and gas production information which she had obtained from a Division of Oil, Gas and Mining website. She stated the DOGM website listed this as a decline curve. This information charted historical production for the well fields that were actually supplying the Gathering System, including FIELD-1, FIELD-2 and FIELD-3, as well as the number of wells in those fields. Like the information APPRAISER-2 had considered, this reported total production included production from new wells. DIVISION WITNESS pointed out that this information showed that the production for the largest field in the region, FIELD-1, was relatively flat, not declining.[79] For the years at issue in this appeal, the FIELD-1 chart shows an increase in the number of wells at the same time the production was relatively flat. DIVISION WITNESS did not attempt to calculate out a decline rate from the information in these charts, either by just including all production or trying to formulate a method to exclude new wells. The production from these well fields appears to be the most applicable to the valuation of the subject Gathering System, but no one attempted to derive a decline rate from these well fields that would exclude production from new wells.

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[79] Exhibits 29, 30 & 31.

57. DIVISION WITNESS noted the reason the Division had to have some sort of decline for its revenue in the DCF was due to natural gas being a depleting resource and so that the Division would not capture new production. It was her opinion that the Division was being a little bit conservative on its decline rate and that the Division could have "flattened it just a little bit."[80]

58. Having developed its total revenue and decline rate, the next step was to determine net revenue. For year one, both parties deducted the same amount for operating expenses which was $$$$$. The Division did not decline operating expenses for its projected income and expenses, which would result in a slightly lower value than APPRAISER-3's approach on this, as APPRAISER-3 held %%% of these expenses as fixed and declined the remaining %%%.

59. A difference that significantly impacts the value difference between the Division and APPRAISER-3's income approach was that APPRAISER-3 also subtracted capital expenditures, an amount of $$$$$ for year one, but declining for future years. The Division did not subtract capital expenditures in year one or any other year. APPRAISER-2 testified that he had asked PETITIONER for capital expenditure information, "on more than one occasion"[81] and PETITIONER did not provide the information to him. He testified that had PETITIONER provided the information on the projected capital expenditures, the Division would have considered deducting capital expenditures. The Division noted that there were ### gathering companies in Utah and only ### had provided capital expenditure information with their annual

[80] Testimony of DIVISION WITNESS, Formal Hearing Transcript: 393-394.
[81] Testimony of APPRAISER-2, Formal Hearing Transcript 335:18.

property tax return. Another ### provided that information when they appealed, so most of the gathering systems had not provided information on capital expenditures.[82]

60. Another difference between the Division and APPRAISER-3's appraisal was depreciation. Depreciation is considered for purposes of determining the state and federal income tax amount to get to income after taxes, which affects the net cash flow. APPRAISER-3 had performed his calculation using $$$$$ in depreciation, which resulted in a state and federal tax amount of $$$$$. The tax amount is subtracted to get the net cash flow and APPRAISER-3's net cash flow was $$$$$ for year one. For year one, the Division had utilized a much higher depreciation, in the amount of $$$$$, which resulted in a much lower calculation for state and federal taxes of $$$$$. This results in a higher net cash flow. For year one, the Division's net cash flow was $$$$$.[83] In the YEAR-6 appraisal, for year two, or YEAR, the Division had started with $$$$$ of net revenue, had reached a negative taxable income, which would represent a net operating loss (NOL) and had actually increased the cash flow by the tax amount. This was based on the assumption that the NOL would result in a refund. This occurred in every projection going forward until year YEAR where a positive taxable income was shown.[84]

<u>Discount Rate</u>

61. The major difference between the Division and APPRAISER-3's appraisal in the discount rate is the size premium. APPRAISER-2 testified for the Division that the Commission has disallowed adding a size premium to the cost of capital. He also stated he thought there was confusion in the financial community as to whether to include it or not. He points out that the likely purchaser of PETITIONER is a larger company, not a small company. He also points out

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[82] Testimony of DIVISION WITNESS, Formal Hearing Transcript 401-402, Exhibits 33 & 34.
[83] Exhibit 132, pg. 210 & Exhibit 5, pg. 52.
[84] Exhibit 132, pg. 210 & Testimony of APPRAISER-2, Formal Hearing Transcript 370-372.

that the amount of the premium is speculative.[85] The Division provided a paper negating the appropriateness of applying a size premium, titled 'Applying the CAPM: Issues and Activities in Utah.'[86]

62. DIVISION WITNESS testified for the Division that PETITIONER was owned by ENTITY-4, which was a larger company that had a way to diversify. Also, it was her contention that some of that risk is already captured in the beta. Further, she stated that APPRAISER-3's calculation was more for investment value purposes than determining fair market value.[87] She testified that not all market participants are asking for a size premium. She also referred to the Herfindahl-Hirschman Index for the position that the gathering system sector showed a lot of competition in the market.[88]

63. APPRAISER-2, for the Division, acknowledged that he had adjusted his debt rate for depreciation using nominal dollars where he should have used real dollars to be consistent with other aspects of his income approach. He indicated he would need to think about whether this should be corrected, but if corrected would be a relatively small change in value.[89]

Division's Cost Approach

64. In its appraisal, the Division also used a replacement cost new less depreciation approach, using the original acquisition cost of personal property and improvements as reported by PETITIONER and depreciating it based on the tables set out at Utah State Tax Commission Rule 33.[90] Both the Division and APPRAISER-3 had started with the same original acquisition

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[85] Testimony of APPRAISER-2, Formal Hearing Transcript: 333-334.
[86] Exhibit 35.
[87] Citing to Exhibit 4, Addenda, Deloitte Article.
[88] Exhibit 4 Addenda Exhibit C.
[89] Testimony of APPRAISER-2, Formal Hearing Transcript: 331-332.
[90] Exhibit 132, pgs. 24-26; Testimony of APPRAISER-2, Formal Hearing Transcript: 372-373.

costs and this was not in dispute. They also both subtracted an age based depreciation which was similar in amount. In its appraisal, the Division took the original acquisition cost of the property and depreciated this by applying the Rule 33 tables, also referred to as "percent good" tables. The Division states that no further obsolescence adjustment was needed. APPRAISER-2 testified that the "percent good" tables included all forms of depreciation and appreciation. In fact, APPRAISER-2 testified that if an industry was depressed that would be reflected in the tables.[91]

65. To apply the "percent good" tables, the personal property items are assigned a class from the table and then the acquisition cost of the items are depreciated based on the percentages listed in the tables. In their appraisal, the Division employees indicated that the items of personal property were either Class 16 or Class 20. The Division had categorized the pipelines being Class 16 and compressors, taps or valves as Class 20.[92] As the majority of the property was pipeline, most of the property was valued as Class 16, which depreciated at a slower rate than Class 20 property. For example, the Division's appraisal lists some Class 16 pipeline property with the acquisition year of YEAR-1 and the percent good for the YEAR-6 tax year was %%%. In the same YEAR-6 appraisal, the percent good for Class 20 property with the acquisition year of YEAR-1 was only %%%.

66. Class 16-Long Life Property, is described in Utah Admin. Rule R884-24P-33(6)(o) as property that has a long physical life with little obsolescence. Examples are provided that include billboards, ski lifts, signs, radio or tram towers, grain elevators and bulk storage tanks. Pipelines are not specifically listed, in fact they are not listed as an example in any class in Rule 33, but the list of examples is nonexclusive. Class 16 is not limited to the natural gas and

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91 Testimony of APPRAISER-2, Formal Hearing Transcript: 283-284.
92 Exhibit 132, pgs. 24-26.

petroleum exploration and production industry. It includes personal property from numerous industry categories and because of this would not account for industry specific conditions like a depressed petroleum and natural gas market.

67. Class 20-Petroleum and Natural Gas Exploration and Production Equipment, is described at Utah Admin. Rule R884-24P-33(6)(s) as property subject to significant functional and economic obsolescence due to the volatile nature of the petroleum industry. The examples provided for this class include oil and gas exploration equipment, distillation equipment, wellhead assemblies, holding and storage facilities, drill rigs, reinjection equipment, among other items.

68. There is no land at issue in this assessment as the Gathering System is constructed on easements across land not owned by PETITIONER. The Division considered very little of the system to be improvements in its valuation. For the years YEAR-2 through YEAR-6 the Division noted just $$$$$ in improvements each year out of its total valuation compared to personal property ranging from $$$$$ to $$$$$ for each of these years. Rule 33 applies only to items of personal property and it does depreciate personal property for each year from the acquisition date, while the value of the improvements did not depreciate each year. PETITIONER had reported all but the small amount of improvements as depreciable property.[93]

69. The major difference in the Division's cost approach compared to APPRAISER-3 was not the Division's Rule 33 depreciation compared to APPRAISER-3's age based depreciation. The major difference was that in addition to his age based depreciation, APPRAISER-3 subtracted an obsolescence factor based on what he argued was gathering underutilization and what he calculated out to be an inutility penalty. The Division argued that

[93] Exhibit 135.

this obsolescence adjustment was inappropriate. APPRAISER-3 had argued that after the design and construction of the subject gathering system, natural gas prices became depressed. The Division's witness DIVISION WITNESS, Valuation Analyst for the Property Tax Division, pointed out that although natural gas prices had declined the natural gas production in Utah and in the RURAL AREA had been increasing from YEAR to its all time high in YEAR-6.[94] She pointed out that it was the increased production that would create demand for the Gathering System. She cited to an article *The Rise of the Midstream: Shale Reinvigorates Midstream Growth* published in YEAR-5, which stated, "The perfect marriage of hydraulic fracturing and horizontal drilling has unlocked previously untapped reserves pushing domestic production in YEAR-4 to its highest level in 16 years. While the rising output has benefitted exploration and production in EMP companies, it has also fueled a demand for pipelines, gathering systems, and processing facilities." This article goes on to note, "The local component is made up of oil and gas-gathering and processing systems. This sector faces the greatest demand due to the increasing number and higher initial production rates of shale wells." DIVISION WITNESS states that this article is reflecting what is happening in the RURAL AREA where the subject is located.[95]

70. DIVISION WITNESS criticized APPRAISER-3's obsolescence adjustment as she indicated the optimum capacity of a pipeline is not necessarily the maximum capacity. For that reason she argued APPRAISER-3 should not have used the pipeline's maximum capacity in his inutility penalty calculation.[96] She also pointed to an article from the Energy Information

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[94] Testimony of DIVISION WITNESS, Formal Hearing Transcript 391:2-13, also referring to Exhibit 5, pg. 12.
[95] Exhibit 4, Addenda C.
[96] Testimony of DIVISION WITNESS, Formal Hearing Transcript 399-401.

Administration which explained that "new trunklines typically are built with a larger diameter pipe than will be needed initially but with compression capacity limited to meeting current needs. Compressors can be added, in either new or existing stations, to increase capacity as growth in load occurs."[97]

Reconciliation

71. As stated in its appraisal, the Division's position in reconciling the two approaches was, "based upon the intended use of this appraisal (i.e., ad valorem property taxes and adhering to the Utah Tax Code and Utah State Tax Commission Administrative Rules), the appraiser must rely on the higher of the recognized appraisal approaches to value."[98] In its final appraisal reconciliation, the Division gave no weight to the approach with the lower value in the escaped property assessments and the YEAR-6 assessment. For all tax years except YEAR-4 this meant that the Division in its final appraisal gave %%% of the weight to the cost approach. For YEAR-4, the Division gave %%% of its weight to the income approach.[99]

72. One of the Division's appraisers testified at the hearing that the value could not be less than the cost approach value for ad valorem assessment purposes.[100] Another of the Division's appraisers clarified the Division's process of reconciliation by stating, "If the income is not higher, then we do resort to the cost approach."[101] When trying to explain the Division's position why he felt the threshold value required in the statute was the cost approach, he gave the example when a well is drilled, "they put tanks, they put pump jacks, they put . . . meter stations, what have you on site." He goes on to state, "but if they shut a well in because it's uneconomic

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[97] Exhibit 36.
[98] Exhibit 132, pg. 9.
[99] Exhibit 132, pg. 5.
[100] Testimony of APPRAISER-1, Formal Hearing Transcript 277:7-12.
[101] Testimony of APPRAISER-2, Formal Hearing Transcript 302:6-10.

those assets on site still have value in the market . . . they can take those assets and sell them to other operators within the market . . . So it still has value . . . and that's where our percent good or valuation schedules really come into play. Because that's an annual study done every single year to capture the general, physical, functional and economic obsolescence for those assets if they're sold off separately."[102] He clarifies his position further, "If the market conditions get to the point where it's no longer productive they can sell those assets or leave them where they're at. I mean it happens all the time. But it doesn't change the fact that that tank or that compressor still has value in the open market, not based on income."[103] To explain how the cost approach would be equal to the fair market value he stated, "Well, I think that at least based upon these valuation schedules because they are based upon the percent good, I believe that is a market value for those individual assets."[104]

73. Going back to the original assessments for YEAR-1 through YEAR-5, the Division gave %%% weight to the higher of the cost or income approaches, except for YEAR-5 where the Division weighted the cost approach %%% and the income approach %%%.[105]

Finding of Fact Conclusions

DCF Income Approach

74. Both parties had determined an income approach value for the subject using a discounted cash flow model and were in agreement on many of the factors in that model. They both started with the same year one total revenue and operating expenses. The primary differences in determining the net income to be discounted were the decline rate, capital

[102] Testimony of APPRAISER-2, Formal Hearing Transcript 287-288: 19-25 & l-10.
[103] Testimony of APPRAISER-2, Formal Hearing Transcript 377:10-13.
[104] Testimony of APPRAISER-2, Formal Hearing Transcript 382: 7-18.
[105] Exhibit 2.

expenditures, and accounting for income tax NOLs or depreciation. Regarding the discount rate itself, although there were other differences, the primary issue was whether or not to use a size premium. A small difference also involved a mismatch between real and nominal factors.

75. In order to forecast total revenue to perform a DCF income approach, both parties applied a decline rate to their year one total revenue. Both parties agree that it is proper to decline the revenue because at some point production of the existing well fields that feed into the gathering system will decline and, therefore, a decline in revenue will occur. APPRAISER-2, for the Division, explained, "It is appropriate to decline it as opposed to increase it so that we don't capture potential future mineral value that's not even been drilled yet."[106] It is therefore appropriate to apply a decline rate. The parties, however, disagreed as to the amount of that rate.

76. The Division's theory that the decline rate should estimate the supply of gas available for the subject Gathering System is appropriate. However, the Division's actual attempt to calculate a decline rate on this basis is problematic because the Division considers production data, listed countywide, that includes production from new wells and deepened wells. The Division does not try to estimate the portion of growth attributable to new wells. In order to get a rate that actually declines, the Division either ignores, or arbitrarily modifies to zero, production statistics from the very counties that would be most relevant. The Division calculates a statewide average for just the counties that were declining and a statewide average that included the counties with increasing production, but at zero instead of the actual rate, although the County's decline rate conclusion was not directly related to these calculations. This is shown by the fact that when the Division's math errors were corrected it changed the averages significantly, but the Division did not change its concluded decline rate.

[106] Testimony of APPRAISER-2, Formal Hearing Transcript 362: 11-13.

77. APPRAISER-3's decline rate was based on the premise of the decline in production of the existing wells in a well field. His analysis does not capture any new wells or wells not yet drilled. APPRAISER-3 looked at a representative sampling of what would be in a well field on any given lien date, by looking at wells at various stages of production. He argues that his conclusion, at %%%, is conservative and a flatter decline than ENTITY-1's own projections.

78. Except for tax year YEAR-5, the Division has used a different decline rate in its appraisal than it did in the original assessments and escaped property assessments. This means that the Division does not have the presumption of correctness on the new appraisal decline rates and has the same burden of proof to establish a different rate as has PETITIONER. APPRAISER-3 has used data that is more directly related to the conclusion he is attempting to derive and a decline rate of %%% to project future revenue for each year that should be applied.

79. Another significant difference between the Division and PETITIONER's DCF income approach was the disparate treatment of capital expenditures. The Division stated that had information on capital expenditures been provided, the Division may have considered deducting this from the cash flow. Utah Admin. Rules R884-24P- 7 and R884-24P-10 indicate that capital expenditures are allowable costs in the discounted cash flow method. The testimony at the hearing was that PETITIONER, a relatively small company, did not make capital expenditure projections. APPRAISER-3 did make in his appraisal a reasonable calculation and estimate for capital expenditures that would indicate replacement of %%% of the Gathering System over its ### year life. As it is clear the applicable Administrative Rules provide for the deduction of capital expenditures and APPRAISER-3's was the only estimate provided, his estimate should be subtracted from revenue in the income approach.

80. Although there were some minor differences in the discount rate used by the parties in the appraisals, the most significant difference was the size premium. APPRAISER-3 had used the weighted average cost of capital method to calculate a discount rate. One component of this method is the cost of equity. APPRAISER-3 actually used two different models to calculate the cost of equity, which he weighted equally. In one of those methods, the capital asset pricing model or CAPM, he added the size premium. During the hearing, APPRAISER-3 provided various publications which support the size premium and the Division, noting it is generally not allowed by the Commission, has presented a basis for not allowing the size premium. The Division did not allow a size premium in the original assessments or escaped property assessments and PETITIONER would have the burden of proof on any factual component of this issue. It does appear however, that this may be an issue of both fact and law combined. This is an issue the Commission has previously reviewed and generally disallowed. There was not a sufficient basis provided at the hearing to change this practice.

81. In the Division's appraisal, the Division had a mismatch in its depreciation as it was using nominal dollars where in other aspects of the appraisal real dollars were used. The Division conceded that this may be an error in its appraisal. APPRAISER-3's appraisal was internally consistent. Based on the conclusion that APPRAISER-3 has developed the most appropriate decline rate and appropriately accounted for capital expenditures, although finding the size premium adjustment not sufficiently supported, the Commission should accept APPRAISER-3's appraisal income approach absent the size premium.[107] Although not his recommended conclusion, APPRAISER-3 had prepared discounted cash flow calculations in his

[107] Exhibit 5, pgs. 136-141.

appraisal without the size premium for each year. These will be the income approach values accepted herein for each year:

Year	Income Approach Value Without Size Premium
YEAR-1	$$$$$[108]
YEAR-2	$$$$$
YEAR-3	$$$$$
YEAR-4	$$$$$
YEAR-5	$$$$$
YEAR-6	$$$$$

Cost Approach

82. Both parties had used a type of replacement cost new less depreciation (RCNLD) method to derive their cost approach values and they had agreed to the starting point, which was the replacement cost new. The Division and APPRAISER-3 differed on their approaches to subtract typical age based physical deprecation and normal functional obsolescence. The Division applied the percent good tables set out in Utah Admin. Rule R884-24P-33. APPRAISER-3 applied an age/typical economic life model. For the YEAR-6 year this appears to result in very similar values. For the YEAR-6 tax year, a cost value without the Indian tribal exemption can be determined in the Division's appraisal and it was a value of $$$$$.[109] APPRAISER-3's replacement cost new less physical depreciation for the YEAR-6 year was $$$$$, also prior to the application of the tribal exemption. So at this point the parties' approaches were very similar. The big difference for YEAR-6 was the additional %%% obsolescence factor based on what APPRAISER-3 determined to be underutilization and an inutility penalty that he had subtracted in his cost approach. For the YEAR-6 tax year this

[108] This is the income value of $$$$$ plus $$$$$ in CWIP that needs to be added for this year. See Exhibit 5, pg. 71.

[109] Exhibit 132, pgs. 24-26.

obsolescence amount was $$$$$, which further reduced the value from his cost approach to $$$$$ for that year.[110]

83. The Division has provided information that although prices had declined, production of gas was very high during the years at issue, with an all time high in YEAR-6, and it was production, not gas prices that would create demand for the Gathering System. The Division called into question APPRAISER-3's premise that the pipeline was underutilized, pointing out that the optimum capacity was not the maximum capacity and also cited to an article which stated that new trunk lines, and the subject was new in YEAR and YEAR-1, were typically built with a larger pipe than is needed initially so it would be able to handle load growth when it occurs.[111] After reviewing the information presented, the underutilization or inutility obsolescence adjustment should not be allowed in this matter. With this disallowed from APPRAISER-3's appraisal, the cost approach values would be very similar to those calculated by the Division for each year and are the following rounded:

YEAR-1	$$$$$
YEAR-2	$$$$$
YEAR-3	$$$$$
YEAR-4	$$$$$
YEAR-5	$$$$$
YEAR-6	$$$$$

Reconciliation of Cost and Income Approach

84. At the hearing, although the Division indicates it does a reconciliation of the approaches calculated in its appraisal, it is the Division's position that the cost value is the

[110] Exhibit 5, pg. 60.
[111] Testimony of DIVISION WITNESS, Formal Hearing Transcript 399-401; Exhibit. 4, Addenda C, & Exhibit 36.

threshold value, so the reconciled value could never be lower than the Rule 33 cost value. This interpretation is contrary to the statutory provisions.

85. The cost approach is not the statutory threshold value. Under Utah Code Sec. 59-2-201(3), the "fair market value" of the land, improvements, and tangible personal property upon or appurtenant to the mining property is the threshold value. Therefore, if the evidence and appraisal information supports reconciling of various values to obtain the fair market value, the approaches should be reconciled, regardless of whether an income or sales approach value were lower than the cost approach.

86. In this case, APPRAISER-3 presented the opinion and provided support for the position that for the subject income producing property it was improper not to give weight to the income approach. In fact, it was his contention that the income approach should receive greater weight because it is most heavily relied on by market participants, particularly when the income has stabilized.[112] The Division, relying on its position that the cost approach was the threshold value, did not present evidence to refute the position that a prospective buyer would be primarily concerned about the income produced from this asset in determining a market price. Reconciliation that gives weight to both the cost and income approaches and gives more weight to the income approach after the income was stabilized is appropriate.

87. In his appraisal, APPRAISER-3 had placed %%% of the weight on his income approach for the years YEAR-3 through YEAR-6. Although he had testified that it was appropriate to place more weight on the income approach once income was stabilized, he acknowledged at the hearing that he may have done that too soon for YEAR-3 as income did not appear to be stabilized at that point in time. His conclusion for the YEAR-3 year was

[112] Testimony of APPRAISER-3, Formal Hearing Transcript 191-193.

significantly lower than for the other years and appeared out of line in the values. He acknowledged at the hearing that a %%%/%%% weighting may be more appropriate for the YEAR-3 year. Upon further review however, the income for YEAR-3 does not appear to be significantly nearer stabilization for YEAR-3 than for YEAR-2. For the YEAR-2 tax year APPRAISER-3 had given %%% weight to his income approach and %%% to his cost approach. For the YEAR-3 tax year, the weighting should be the same as the YEAR-2 year.

88. Prior to the application of the Indian tribal exemption, which will be discussed further in the conclusions of law, the fair market value for the subject property for each year at issue are as follows:

	YEAR-1	YEAR-2	YEAR-3	YEAR-4	YEAR-5	YEAR-6
Income Value Estimate	$$$$$	$$$$$	$$$$$	$$$$$	$$$$$	$$$$$
Weight	%%%[113]	%%%	%%%	%%%	%%%	%%%
Cost Value Estimate	$$$$$	$$$$$	$$$$$	$$$$$	$$$$$	$$$$$
Weight	%%%	%%%	%%%	%%%	%%%	%%%
Value Estimate	$$$$$	$$$$$	$$$$$	$$$$$	$$$$$	$$$$$

89. The Indian tribal exemption should be subtracted from the fair market values noted in the finding above for the portion of the property that is located on the Trust Lands, but then should be based on the percentage of TRIBE ownership in PETITIONER for each year at issue. The parties will need to calculate the amount of the exemption on this basis for each year at issue.

APPLICABLE LAW

Article XIII, Section 2(1) of the Utah Constitution provides as follows:

[113] Because of the addition of CWIP the income was essentially the same as the cost approach.

> (1) So that each person and corporation pays a tax in proportion to the fair market value of his, her, or its tangible property, all tangible property in the State that is not exempt under the laws of the United States or under this Constitution shall be. . . assessed at a uniform and equal rate in proportion to its fair market value, to be ascertained as provided by law;
>
> Utah Code § 59-2-102(12) [114] provides as follows:
> As used in this chapter and title:
> ***
> (12) "Fair market value" means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts."
> ***
> (23) "Mine" means a natural deposit of either metalliferous or nonmetalliferous valuable mineral.
> ***
> (30) "Real estate" or "real property" includes:
> (a) the possession of, claim to, ownership of, or right to the possession of land;
> (b) all mines, minerals, and quarries in and under the land, all timber belonging to individuals or corporations growing or being on the lands of this state or the United States, and all rights and privileges appertaining to these; and
> (c) improvements.

Utah Code §59-2-201 provides as follows:

> (l)(a) By May 1 of each year the following property, unless otherwise exempt under the Utah Constitution or under Part 11, Exemptions, Deferrals, and Abatements, shall be assessed by the commission at 100% of fair market value, as valued on January 1, in accordance with this chapter:
> ***
> (v) all mines and mining claims except in cases, as determined by the commission, where the mining claims are used for other than mining purposes, in which case the value of mining claims used for other than mining purposes shall be assessed by the assessor of the county in which the mining claims are located;
> and
> (vi) all machinery used in mining, all property or surface improvements upon or appurtenant to mines or mining claims. For the purposes of assessment and taxation, all processing plants, mills, reduction works, and smelters which are primarily used by the owner of a mine or mining claim for processing, reducing, or smelting minerals taken from a mine or mining claim shall be considered appurtenant to that mine or mining claim, regardless of actual location.

[114] All citations to the Utah Code and the Utah Administrative Code are to the versions in effect in YEAR, which had no substantive changes unless otherwise noted.

> ***
> (3) The method for determining the fair market value of productive mining property is the capitalized net revenue method or any other valuation method the commission believes, or the taxpayer demonstrates to the commission's satisfaction, to be reasonably determinative of the fair market value of the mining property. The rate of capitalization applicable to mines shall be determined by the commission, consistent with a fair rate of return expected by an investor in light of that industry's current market, financial, and economic conditions. In no event may the fair market value of the mining property be less than the fair market value of the land, improvements, and tangible personal property upon or appurtenant to the mining property.

The assessing authority may assess property that had escaped assessment going back five years at Utah Code Sec. §59-2-217 as follows:

> (1) Any escaped property may be assessed by the original assessing authority at any time as far back as five years prior to the time of discovery, in which case the assessing authority shall enter the assessments on the tax rolls and follow the procedures established under Part 13 of this chapter.
> (2) Any property found to be willfully concealed, removed, transferred, or misrepresented by its owner or agent in order to evade taxation is subject to a penalty equal to the tax on its value, and neither the penalty nor assessment may be reduced by the county board of equalization or the commission.

"Escaped Property" is defined at Utah Code §59-2-102(11):

> (a) "Escaped property" means any property, whether personal, land, or any improvements to the property, subject to taxation and is:
> (i) inadvertently omitted from the tax rolls, assigned to the incorrect parcel, or assessed to the wrong taxpayer by the assessing authority;
> (ii) undervalued or omitted from the tax rolls because of the failure of the taxpayer to comply with the reporting requirements of this chapter; or
> (iii) undervalued because of errors made by the assessing authority based upon incomplete or erroneous information furnished by the taxpayer.
> (b) Property that is undervalued because of the use of a different valuation methodology or because of a different application of the same valuation methodology is not "escaped property."

Utah Code § 59-2-1007 provides that a property owner or county may appeal a property assessment as follows:

> (l)(a) If the owner of any property assessed by the commission, or any county upon a showing of reasonable cause, objects to the assessment, the owner or the county

may, on or before the later of June 1 or a day within 30 days of the date the notice of assessment is mailed by the commission pursuant to Section 59-2- 201, apply to the commission for a hearing.

(b) The commission shall allow the following to be a party at a hearing under this section: (i) the owner; and (ii) the county upon a showing of reasonable cause.
. . . .
(7) At the hearing on the application, the commission may increase, lower, or sustain the assessment if: (a) the commission finds an error in the assessment; or
(b) the commission determines that increasing, lowering, or sustaining the assessment is necessary to equalize the assessment with other similarly assessed property.

Rule R884-24P-7 ("Rule 7") provides, in relevant part, as follows:

A. Definitions.
1. "Allowable costs" means those costs reasonably and necessarily incurred to own and operate a productive mining property and bring the minerals or finished product to the customary or implied point of sale. a) Allowable costs include: salaries and wages, payroll taxes, employee benefits, workers compensation insurance, parts and supplies, maintenance and repairs, equipment rental, tools, power, fuels, utilities, water, freight, engineering, drilling, sampling and assaying, accounting and legal, management, insurance, taxes (including severance, property, sales/use, and federal and state income taxes), exempt royalties, waste disposal, actual or accrued environmental cleanup, reclamation and remediation, changes in working capital (other than those caused by increases or decreases in product inventory or other nontaxable items), and other miscellaneous costs. b) For purposes of the discounted cash flow method, allowable costs shall include expected future capital expenditures in addition to those items outlined in A.1.a).
* * *
3. "Capital expenditure" means the cost of acquiring property, plant, and equipment used in the productive mining property operation and includes:
a) purchase price of an asset and its components;
b) transportation costs;
c) installation charges and construction costs; and
d) sales tax.
4. "Constant or real dollar basis" means cash flows or net revenues used in the discounted cash flow or capitalized net revenue methods, respectively, prepared on a basis where inflation or deflation are adjusted back to the lien date. For this purpose, inflation or deflation shall be determined using the gross domestic product deflator produced by the Congressional Budget Office, or long-term inflation forecasts produced by reputable analysts, other similar sources, or any combination thereof.
5. "Discount rate" means the rate that reflects the current yield requirements of investors purchasing comparable properties in the mining industry, taking into

account the industry's current and projected market, financial, and economic conditions.
* * *
12. "Net cash flow" for the discounted cash flow method means, for each future year, the expected product price multiplied by the expected annual production that is anticipated to be sold or self-consumed, plus related revenue cash flows, minus allowable costs.
* * *
15. "Productive mining property" means the property of a mine that is either actively producing or currently capable of having economic production. Productive mining property includes all taxable interests in real property, improvements and tangible personal property upon or appurtenant to a mine that are used for that mine in exploration, development, engineering, mining, crushing or concentrating, processing, smelting, refining, reducing, leaching, roasting, other processes used in the separation or extraction of the product from the ore or minerals and the processing thereof, loading for shipment, marketing and sales, environmental clean-up, reclamation and remediation, general and administrative operations, or transporting the finished product or minerals to the customary point of sale or to the implied point of sale in the case of self-consumed minerals.
* * *
B. Valuation.
1. The discounted cash flow method is the preferred method of valuing productive mining properties. Under this method the taxable value of the mine shall be determined by: a) discounting the future net cash flows for the remaining life of the mine to their present value as of the lien date; and b) subtracting from that present value the fair market value, as of the lien date, of licensed vehicles and nontaxable items.
2. The mining company shall provide to the Property Tax Division an estimate of future cash flows for the remaining life of the mine. These future cash flows shall be prepared on a constant or real dollar basis and shall be based on factors including the life-of-mine mining plan for proven and probable reserves, existing plant in place, capital projects underway, capital projects approved by the mining company board of directors, and capital necessary for sustaining operations. All factors included in the future cash flows, or which should be included in the future cash flows, shall be subject to verification and review for reasonableness by the Property Tax Division.
* * *
4. The discount rate shall be determined by the Property Tax Division. a) The discount rate shall be determined using the weighted average cost of capital method, a survey of reputable mining industry analysts, any other accepted methodology, or any combination thereof. b) If using the weighted average cost of capital method, the Property Tax Division shall include an after-tax cost of debt and of equity. The cost of debt will consider market yields. The cost of equity shall be determined by the capital asset pricing model, arbitrage pricing model, risk premium model,

discounted cash flow model, a survey of reputable mining industry analysts, any other accepted methodology, or a combination thereof.
5. Where the discount rate is derived through the use of publicly available information of other companies, the Property Tax Division shall select companies that are comparable to the productive mining property. In making this selection and in determining the discount rate, the Property Tax Division shall consider criteria that includes size, profitability, risk, diversification, or growth opportunities.
* * *
8. The fair market value of a productive mining property may not be less than the fair market value of the land, improvements, and tangible personal property upon or appurtenant to the mining property. The mine value shall include all equipment, improvements and real estate upon or appurtenant to the mine. All other tangible property not appurtenant to the mining property will be separately valued at fair market value.
9. Where the fair market value of assets upon or appurtenant to the mining property is determined under the cost method, the Property Tax Division shall use the replacement cost new less depreciation approach. This approach shall consider the cost to acquire or build an asset with like utility at current prices using modem design and materials, adjusted for loss in value due to physical deterioration or obsolescence for technical, functional and economic factors.

Utah Admin. Code R884-24P-10 (“Rule 10”) provides, in relevant part, as follows:

A. Definitions.
* * *
6. “Expected annual production” means the future economic production of an oil and gas property as estimated by the Property Tax Division using decline curve analysis. Expected annual production does not include production used on the same well, lease, or unit for the purpose of repressuring or pressure maintenance.
* * *
9. “Revenue” means expected annual gross revenue, calculated by multiplying the product price by expected annual production for the remaining economic life of the property.
10. “Costs” means expected annual allowable costs applied against revenue of cost-bearing interests: a) Examples of allowable costs include management salaries; labor; payroll taxes and benefits; workers’ compensation insurance; general insurance; taxes (excluding income and property taxes); supplies and tools; power; maintenance and repairs; office; accounting; engineering; treatment; legal fees; transportation; miscellaneous; capital expenditures; and the imputed cost of self consumed product. b) Interest, depreciation, or any expense not directly related to the unit will shall not be included as allowable costs.
* * *
B. The discount rate shall be determined by the Property Tax Division using methods such as the weighted cost of capital method.

1. The cost of debt shall consider market yields. The cost of equity shall be determined by the capital asset pricing model, risk premium model, discounted cash flow model, a combination thereof, or any other accepted methodology.
2. The discount rate shall reflect the current yield requirements of investors purchasing similar properties, taking into consideration income, income taxes, risk, expenses, inflation, and physical and locational characteristics.
3. The discount rate shall contain the same elements as the expected income stream.
***
C. Assessment Procedures.
***
5. The minimum value of the property shall be the value of the production assets.

Utah Admin. Code R884-24P-62 ("Rule 62") provides, in relevant part, as follows:

(1) Purpose. The purpose of this rule is to: (a) specify consistent mass appraisal methodologies to be used by the Property Tax Division (Division) in the valuation of tangible property assessable by the Commission; and (b) identify preferred valuation methodologies to be considered by any party making an appraisal of an individual unitary property.
(2) Definitions:
***
(d) "Unitary property" means operating property that is assessed by the Commission pursuant to Section 59-2-201(l)(a) through (c). (i) Unitary properties include:
(A) all property that operates as a unit across county lines, if the values must be apportioned among more than one county or state . . .
***
(A) Cash flow is restricted to the operating property in existence on the lien date, together with any replacements intended to maintain, but not expand or modify, existing capacity or function.
***
(II) Capital expenditures should include only those necessary to replace or maintain existing plant and should not include any expenditure intended primarily for expansion or productivity and capacity enhancements.
***
(C) The growth rate "g" is the expected future growth of the cash flow attributable to assets in place on the lien date, and any future replacement assets.
***
(C) Growth may not be attributed to assets not in place as of the lien date.
***
(d) Reconciliation. When reconciling value indicators into a final estimate of value, the appraiser shall take into consideration the availability, quantity, and quality of data, as well as the strength and weaknesses of each value indicator. Weighting percentages used to correlate the value approaches will generally vary by industry, and may vary by company if evidence exists to support a different weighting. The

> Division must disclose in writing the weighting percentages used in the reconciliation for the final assessment. Any departure from the prior year's weighting must be explained in writing.
>
> Utah Admin. Rule R884-24P-33 provides in relevant part:
> * * *
> (6) All taxable personal property, other than personal property subject to an age-based uniform fee . . . is classified by expected economic life as follows:
> * * *
> (o) Class 16 - Long-Life Property. Class 16 property has a long physical life with little obsolescence.
> (i) Examples of property in this class include: (A) billboards; (B) sign towers; (C) radio towers; (D) ski lift and tram towers; (E) non-farm grain elevators; and (F) bulk storage tanks.
> (ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.
> * * *
> (s) Class 20-Petroleum and Natural Gas Exploration and Production Equipment. Class 20 property is subject to significant functional and economic obsolescence due to the volatile nature of the petroleum industry.
> (i) Examples of property in this class include: (A) oil and gas exploration equipment; (B) distillation equipment; (C) wellhead assemblies; (D) holding and storage facilities; (E) drill rigs; (F) reinjection equipment; (G) metering devices; (H) cracking equipment; (I) well-site generators, transformers, and power lines; (J) equipment sheds; (K) pumps; (L) radio telemetry units; and (M) support and control equipment;
> (ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

DISCUSSION

The parties presented two distinct categories of issues at the hearing that the Commission must resolve in this decision. The first is the legal issues regarding the application of the tribal exemption and the second, valuation issues regarding the determination of the fair market value of the property for property tax assessment purposes.

Tribal Exemption Issues

The Commission first considers the tribal exemption issues.[115] The parties had several arguments at the hearing regarding the proper application and percentages for the tribal exemption and how they should be applied in the assessment of the subject property. For each of the assessments at issue, the Division had allowed some percentage of tribal exemption on the Gathering System property. In the escaped property assessments and original YEAR-6 assessment, the Division had applied the tribal exemption to the portion of the Gathering System that the Division had determined was located within the Trust Lands, and then the exemption amount was based on the percentage of ownership that the TRIBE held of PETITIONER for each year, which fluctuated between %%% to %%%.

The portion of the Gathering System located on the Trust Lands was about ### miles of pipeline. It was clear that had the TRIBE been the %%% owner of PETITIONER, and, therefore, of the Gathering System, the Division would have exempted %%% of the Gathering System that was located within the Trust Lands area. The Trust Lands are a smaller portion within what had originally been the historic boundary of the RESERVATION-1. The Gathering System also went through a portion of land that was outside the Trust Lands, but located within the historic boundary of the RESERVATION-1.[116] The land that is within the historic reservation boundary,

[115] These legal issues regarding the tribal exemption were addressed in detail in the parties' prehearing submissions consisting of PETITIONER's Amended Motion For Summary Judgment, dated September 18, 2015, the Property Tax Division's Opposition to PETITIONER Amended Motion For Summary Judgment dated September 22, 2015, and COUNTY-1's Opposition to Petitioner's Amended Motion for Summary Judgment and Counterclaim Motion for Partial Summary Judgment, dated September 22, 2015. As the Motion and Counterclaim Motion had been filed too near the hearing date to be resolved prior to the hearing, the legal arguments contained in all parties' submissions were incorporated into the Formal Hearing record and are being considered as part of the Formal Hearing decision on the tribal exemption issues.

[116] See Exhibits 8 & 9.

but outside the Trust Lands area has been referred to in this decision as the Disputed RESERVATION-1 Portion. About ### miles of the gathering system pipelines were located within the Disputed RESERVATION-1 Portion.

PETITIONER argues that it was entitled a larger tribal exemption than what had been applied by the Division in the assessments based on two independent theories. The first was PETITIONER's position that it was entitled to the tribal exemption based on the TRIBE's percentage of ownership for that portion of the Gathering System that was outside the Trust Lands but within the Disputed RESERVATION-1 Portion. The second argument made by PETITIONER was that the portion of the Gathering System located within the Trust Lands area should be %%% exempt regardless of the TRIBE's percentage of ownership in the Gathering System. COUNTY-1 and the Division argue that the tribal exemption should not be expanded to the Disputed RESERVATION-1 Portion or to %%% in the Trust Lands portion. The County adds some additional issues. The first is the County's assertion that PETITIONER lacks standing to assert claims regarding the tribal exemption on behalf of the TRIBE. The second is whether the RESERVATION-1 has been diminished (disestablished) or terminated. Thirdly, the County questions whether, if the reservation has not been diminished or terminated, would the County have the authority to assess tax on the TRIBE or businesses partially owned by the Tribe.

Standing

The Commission first addresses the County's argument that PETITIONER lacked standing to assert claims on behalf of the TRIBE. The County argues that only the TRIBE and the Tribe's businesses could argue for and receive the exemptions and not any other business partners, shareholders, or entities on their behalf. The County points out that there was no representative at the hearing from the TRIBE requesting the exemption and the Tribe did not

appear as a petitioner, intervenor or Amicus Curiae. However, PETITIONER is a partnership, which during the tax years at issue, was partly owned by the TRIBE. PETITIONER was owned %%% by ENTITY-1 and %%% by ENTITY-2 (ENTITY-2). ENTITY-1 is not Indian owned, but the TRIBE did have an ownership interest through ENTITY-2. The Tribe's ownership interest in ENTITY-2 and, therefore, the percentage of tribal ownership in the Gathering System fluctuated some over the years at issue in these appeals from %%% to %%%.

The County cites to the three elements required for constitutional standing set out by the United States Supreme Court in *Lujan v. Defenders of Wildlife,* 504 U.S. 555, 561, which are: 1) the Plaintiff must have suffered an "injury in fact"; 2) the injury must be causally related to the conduct complained of; and 3) a favorable decision would likely redress the harm. The County also points to several alternative bases for standing[117] set out by the Utah Supreme Court in *Kennecott Corp. v. Salt Lake County,* 702 P.2d 451 (Utah 1985) and *Shelledy v. Lore,* 836 P.2d 786 (Utah 1992). In *Kennecott* at 454 the court had noted one alternative way a party had standing was if no one had a greater interest and the issue would unlikely be raised if the plaintiff was denied standing.

The County does not however, address that fact that PETITIONER has the statutory right as the owner of the property to contest the Division's ad valorem tax assessment under Utah Code Sec. 59-2-1007. Utah Code Sec. 59-2-1007(1)(a) provides, "If the owner of any property assessed by the commission . . . objects to the assessment, the owner . . . may, on or before the later of June 1 or a day within 30 days of the date the notice of assessment is mailed by the commission . . . apply to the commission for a hearing." PETITIONER was assessed by the Division for the years at issue. Subsection 1007(7) provides, "At the hearing on the application,

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[117] COUNTY-1's Opposition to Petitioner's Amended Motion for Summary Judgment, pgs. 5-10.

the commission may increase, lower, or sustain the assessment if: (a) the commission finds an error in the assessment . . . ."

PETITIONER, the Petitioner in this matter, is the owner of the Gathering System and has a statutory right to appeal the tax assessment. PETITIONER is not asking for a new exemption, one not included in the assessments. In fact, the Division had calculated and allowed the tribal exemption as part of the assessment, although not in the manner and amount now argued by PETITIONER. So the issue is not whether the exemption should be applied to the subject property, it is instead how it should be applied. PETITIONER, as the property owner and entity responsible for payment of the tax, has standing to contest the assessment against its property under Utah Code Sec. 59-2-1007 including the right to argue mistakes in how exemptions have been applied by the Division. If property owned by PETITIONER is entitled to the tribal exemption due to the percentage ownership that the TRIBE has in PETITIONER, PETITIONER has standing in this appeal before the Commission to contest the assessment, although there may be some limitations on what PETITIONER may argue on behalf of the TRIBE,[118] which are not controlling in this matter.

Disputed RESERVATION-1 Portion

The Commission next looks at the question of whether the tribal exemption should have been applied to the portion of the Gathering System that is located in the Disputed RESERVATION-1 Portion based on the percentage ownership that the TRIBE has in

[118] This was an issue addressed by the Montana Supreme Court in *Northern Border Pipeline Company v. Montana*, 237 Mont 117, 772 P.2d 829 (Mont. 1989). Northern Border Pipeline was a non-Indian owned pipeline that crossed reservation land. In that case the court noted that Northern Border had, "standing by virtue of its taxpayer status to challenge the property tax imposed on it by the State." It went on to find, however, that Northern Border "did not have standing to assert the Tribe's sovereign right of self-government in doing so." *Northern Border Pipeline* at 128.

PETITIONER. PETITIONER argues that the tribal exemption should be applied to the property located in this area. In the escaped property assessments and original YEAR-6 assessment, the Division did not apply the tribal exemption to any of the Gathering System located in the Disputed RESERVATION-1 Portion and argues that it should not be applied in that manner. The County argues that the RESERVATION-1 was terminated or disestablished, but even if it had not been disestablished the property would be subject to tax.

The County has provided at the hearing and in its submissions[119] a history of the RESERVATION-1 which it has prepared based on case law and various congressional or executive acts. In the County's Opposition to Petitioner's Amended Motion for Summary Judgment and Counterclaim Motion for Partial Summary Judgment ("County's Opposition"), beginning pg. 10, the County provides the following:

REDACTED.

As noted above in the Findings of Fact, in YEAR the State of Utah map created by the Department of the Interior does not show the RESERVATION-1 with its historical boundary and instead shows only a few scattered shaded parcels, presumably the allotments that were made earlier.[120]

However, there was again a change in policy. Under the Indian Reorganization Act of 1934, Congress stopped any further allotments, extended all trust restrictions or restrictions on alienation, and authorized the Secretary of the Interior to restore to tribal ownership the remaining surplus land of any Indian reservation previously opened to sale and settlement not

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[119] See COUNTY-1's Opposition to Petitioner's Amended Motion for Summary Judgment and Counterclaim Motion for Partial Summary Judgment ("County's Opposition") and COUNTY-1's Proposed Findings of Fact, Conclusions of Law and Final Decision.

[120] Exhibit 51.

otherwise already allotted or sold. Indian Reorganization Act of 1934, 48 Stat. 984, 984. 73 Cong. Ch. 576.[121] REDACTED.

One point noted in the Findings of Fact above, most of the land located within the Disputed RESERVATION-1 Portion is not currently owned by the TRIBE or even individuals privately, whether members of the tribe or not. Most of the land is in fact, public land under the control of the Federal Bureau of Land Management. Some additional parcels are owned by the State of Utah as State Institutional Trust Land Administration (SITLA) parcels. Most of the Gathering System property that is located outside of the Trust Land, but within the Disputed RESERVATION-1 Portion is located in easements that cross either the public land or the SITLA parcels. PETITIONER has obtained easements from SITLA and the Bureau of Land Management in which to lay the pipelines that comprise the Gathering System that is located in the Disputed RESERVATION-1 Portion. None of the system located in the Disputed RESERVATION-1 Portion is over parcels privately owned by the TRIBE, INDIANS individually or by the United States in trust for the TRIBE.

PETITIONER argues that the RESERVATION-1 was not diminished or disestablished so that all of the Gathering System located within the historical boundaries should be subject to the tribal exemption. PETITIONER relies on a series of cases involving the boundary of the RESERVATION-1 for criminal jurisdiction purposes as support for its position. The County and the Division argue that the applicable cases are those involving property tax issues, but those cases were based on issues arising from reservations other than the RESERVATION-1. The decisions have been complex. The County provided a history of some of the cases in its Opposition, starting at page 13, as follows:

[121] REDACTED.

REDACTED. [122][123]

The issue before the Utah State Tax Commission is a property tax assessment. For property taxation purposes the question is whether the lands had previously been alienated or opened to public entry and, as the Division argued in this matter, property in an opened reservation is subject to state and local taxation. The Division cites to *County of Yakima v. Confederated Tribes of Yakima Indian Nation,* 502 U.S. 251, 112 S.Ct. 683 (1992). In *County of Yakima* the United States Supreme Court held that fee property interests acquired by the Yakima Tribe from previously-alienated Indian lands within the Yakima Indian Reservation were subject to local ad valorem levies on taxable real property. The Yakima Indian Reservation, similar to the RESERVATION-1, had within its reservation boundaries both trust lands and non trust lands. The Yakima Reservation covered 1.3 million acres in southeastern Washington State, eighty percent of which were held by the United States in trust for the benefit of the Tribe and twenty percent owned in fee by Indians and non-Indians as a result of patents distributed during the allotment era. Some of this fee land was owned by the Yakima Indian Nation. The Court held that the fee land was subject to property taxation, even the land that had been acquired by the Yakima Indian Nation. The Court stated, "And when Congress, in 1934, while putting an end to further allotment of reservation land, see 25 U.S.C. Sec. 461, chose not to return allotted land to pre General Allotment Act status, leaving it fully alienable by the allottees, their heirs, and assigns, it chose not to terminate state taxation upon those lands as well." *Yakima* at 264.

The decision was extended by the United States Supreme Court in *Cass County v. Leech Lake Band of Chippewa Indians,* 118 S.Ct. 1904. (1998), which made it clear that the only land

[122] REDACTED.
[123] REDACTED.

exempt from state and local property tax was the land held in trust for the Tribe. In *Cass County* the Court held, "When Congress makes Indian reservation land freely alienable, it manifests an unmistakably clear intent to render such land subject to state and local taxation. The repurchase of such land by an Indian tribe does not cause the land to reassume tax-exempt status. The eight parcels at issue here were therefore taxable unless and until they were restored to federal trust protection under Sec. 465." *Cass County* at 1911. From these cases it is clear that the state or county may assess property tax on land within an opened reservation unless it was placed into trust status by the Secretary of the Interior pursuant to 25 U.S.C. Sec. 465. Land that is placed in trust under 25 U.S.C. Sec. 465 is owned by the United States and held in trust for the tribe.

With respect to the RESERVATION-1, the only portion of the land within the traditional reservation boundaries placed into trust status by the Secretary of the Interior pursuant to 25 U.S.C. Sec. 465 is what has been referred to in this decision as the Trust Lands. As noted by the court in CASE-1, Congress opened the RESERVATION-1 in YEAR, allotting parcels of land to Indians and Non-Indians. It appears that much of the land within the traditional reservation boundaries was not acquired through the allotment process, perhaps because it was arid and there was little interest for the land. So the unallotted land was restored to the public domain and currently much of the area is still public land. After the Order of Restoration, Congress did pass the XXXXX Act in YEAR which set aside the INDIAN Trust Land portion within the RESERVATION-1 boundary. Title to this land is held by the United States in Trust for the TRIBE and this portion is exempt from property tax. In the Disputed RESERVATION-1 Portion, however, title to the land is not held in trust for the tribe and is not subject to the tribal exemption regardless of whether the historical reservation boundary has been diminished, disestablished or remains in place. Therefore, the Division appropriately applied the tribal exemption only to the

portion of the Gathering System that is located within the Trust Lands portion of the historic reservation.

Percentage of Exemption on Trust Land

The second tribal exemption issue argued by PETITIONER was that the portion of the Gathering System located in the Trust Lands should be %%% exempt, regardless of the percentage of ownership by the INDIANS. In the escaped property assessments and the original YEAR-6 assessment, for that portion of the Gathering System located within the Trust Lands, the Division had allowed the tribal exemption, but it had been allowed based only on the percentage ownership that the TRIBE had of PETITIONER for that tax year. This varied from %%% to %%% over the years at issue. It should be noted that in allowing this exemption in this manner, the Division was applying the exemption in the same manner it has applied the exemption for other properties owned in part by various Indian Tribes and various areas of trust land in the state.

PETITIONER points out that in 1934, Congress passed 25 U.S.C. Sec. 465, providing that "[t]itle to any lands or rights acquired pursuant to this Act or the Act of July 28, 1955 (69 Stat. 392), as amended (25 U.S.C. Sec. 608 et seq.) shall be taken in the name of the United States in trust for the Indian tribe or individual Indian for which the land is acquired, and such lands or rights shall be exempt from state and local taxation." Then the YEAR Act of Congress was adopted creating the XXXXX which is the Trust Lands. FEDERAL STATUTE, stated, "Title to any lands and rights acquired hereunder shall be taken in the name of the United States in trust for the TRIBE, and such land and rights shall be exempt from state or local Taxation." From these provisions it is clear that the state or counties may not assess property tax on the land that is held in the name of the United States in trust for the Indian Tribe. As support for the

position that this %%% exemption also applies to the pipeline Gathering System, held not in the name of the United States in trust for the Indian tribe, but instead in the name of PETITIONER, PETITIONER cites to *Mescalero Apache Tribe v. Jones,* 411 U.S. 145 (1973) and *Chehalis v. Thurston County Board of Equalization,* 724 F.3d 1153 (9th Cir. 2013).

Mescalero did not involve property tax. In that case the State of New Mexico imposed a use tax on the Mescalero Apache Tribe on the purchase price of materials used to construct ski lifts on a ski resort owned and operated by the Indian tribe, but located on land leased by the tribe from the United States Forest Service. It was noted by the United States Supreme Court that it was unclear whether the Mescalero Tribe had actually incorporated itself as a chartered corporation,[124] but it was apparent that in whatever form it was conducting its business, the Mescalero Tribe was the 100% owner of the ski resort and it was the Mescalero Tribe that had leased the land from the Forest Service. In *Mescalero* the Court found 25 U.S.C. Sec. 465 applied to exempt from property tax the non-reservation land leased by the Mescalero Tribe.[125] The Court concluded New Mexico could not impose a use tax on the materials purchased to construct the ski lifts. The Court in *Mescalero* notes it was a stipulated fact that the personal property was "permanently attached to the realty." Based on that the Court holds, "But use of permanent improvements upon land is so intimately connected with use of the land itself that an

[124] *Mescalero*, at 158, Ft.Nt. 13, the Court noted, "It is unclear from the record whether the Tribe has actually incorporated itself as an Indian chartered corporation pursuant to Sec. 477. . . . In any event, the question of tax immunity cannot be made to turn on the particular form in which the Tribe chooses to conduct its business." The issue of whether a property was part owned by Indian and part by non-Indian was not raised or addressed in this case, because this property was 100% owned by the Mescalero Tribe.

[125] In this case the Court assumes Sec. 465 applied, noting that the United States held title to the land and the "lease arrangement here in question was sufficient to bring the Tribe's interest in the land within the immunity afforded by Sec. 465." This assumption appears inconsistent with the United States Supreme Court's later conclusions in *County of Yakima v. Confederated Tribes of Yakima Indian Nation*, 502 U.S. 251, 112 S.Ct. 683 (1992) and *Cass County v. Leech Lake Band of Chippewa Indians*, 118 S.Ct. 1904 (1998), which cases were decided years after *Mescalero*.

explicit provision relieving the latter of state tax burdens must be construed to encompass an exemption for the former. 'Every reason that can be urged to show that the land was not subject to local taxation applied to the assessment and taxation of the permanent improvements.'" (Internal Citations Omitted.) *Mescalero* at 158.

The Division's application of the tribal exemption is distinguishable from *Mescalero.* The Division applied the exemption on the portion of the Gathering System located within the Trust Lands based on the percentage of Indian ownership, despite some arguments made by the Division at the hearing that the Gathering System was not permanently attached to real property. As *Mescalero* dealt with a situation where the property was owned 100% by the Indian Tribe, the United States Supreme Court did not consider in that case the contention that the property should be 100% exempt regardless of non-Indian ownership interests. PETITIONER argues, however, the Ninth Circuit Court of Appeals in *Chehalis v. Thurston County Board of Equalization,* 724 F.3d 1153 (9th Cir. 2013), expanded the position further to cover improvements regardless of ownership. The Ninth Circuit in *Chehalis* held, "Mescalero sets forth the simple rule that Sec. 465 preempts state and local taxes on permanent improvements built on non-reservation land owned by the United States and held in trust for an Indian tribe. This is true without regard to the ownership of the improvements."

Chehalis involved land located off of the Chehalis Reservation that was owned by the United States and held in trust for the Chehalis Tribe. The Tribe was a 51% owner of COG, LLC. COG leased the land from the Tribe for a period of twenty-five years and built a resort, conference center and a water park on the property. The lease provided that COG would own the buildings and improvements in fee for the period of the lease. The county recognized that the land itself was exempt under Sec. 465, but assessed a tax on the buildings and improvements

because they were owned by COG and not the Tribe. In reaching its conclusion, the court indicated that whether the property was a permanent improvement under state law was irrelevant, that permanent improvements would be determined as a matter of federal law.[126]

Chehalis does support the position that the tribal exemption should be applied to permanent improvements on trust land regardless of ownership. However, the Ninth Circuit Court of Appeals decision is not binding on this Commission and would present a departure from how the Division has assessed other properties on trust lands on the RESERVATION-1 and other reservations in Utah during all of the years at issue. The Division also offers a further distinction, noting the Gathering System is actually constructed on easements or right-of-ways throughout the trust land. The Division argues the more appropriate case law is that dealing with pipelines and utilities constructed in easements, as well as Tenth Circuit decisions. [127]

There is considerable case law where the courts have determined whether a state may impose various types of taxes on non-Indian interests on Indian trust lands and as noted by the Tenth Circuit Court of Appeals, the courts have applied a "flexible preemption analysis

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[126] PETITIONER argues under federal law pipelines are permanent improvements, citing the U.S. Supreme Court's statement that "pipelines" fall within the list of "permanent . . . improvements" in *Public Lands Council v. Babbitt*, 529 U.S. 728, 749 (2000)(quoting 43 C.F.R. Sec. 4120.3-2(b)). PETITIONER also points to the six factor test to determine whether an asset is an improvement to real property set out in *Trentadue v. Commissioner of Internal Revenue*, 128 T.C. 91, 2007 U.S. Tax Ct. LEXIS 8 (2007).

[127] For cases involving right of ways or pipelines, the Division cites to *Big Horn County Elec. Co-op., Inc. v. Adams*, 219 F.3d 944 (9th Cir. 2000) and *Northern Border Pipeline Company v. Montana*, 237 Mont. 117, 772 P.2d 829 (Mont. 1989). In *Northern Border Pipeline*, the Montana Supreme Court considered whether the State of Montana could impose a property tax on a non-Indian owned natural gas pipeline that ran through a right-of-way on Indian reservation trust lands. In deciding that the State could impose the property tax, the court noted, "The State does not seek to tax the right-of-way itself or any facet of the granting process. The State's tax is on the pipeline; the property of Northern Border that was not put in place until after the right-of-way grant was obtained." *Id* at l26. Although not directly on point because this dealt with a non-Indian owned property, the Court did, however, base its conclusion on an analysis of the state's interest in funding school districts and providing local service verses the Tribe and federal interests.

developed by the Supreme Court in *Bracker, Ramah,* and *Cotton Petroleum*. . . ." *Ute Mountain Ute Tribe v. Rodriguez,* 660 F.3d 1177, 1185 (10th Cir. 2011), citing *White Mountain Apache Tribe v. Bracker,* 448 U.S. 136 (1980); *Ramah Navajo School Board, Inc. v. Bureau of Revenue of New Mexico,* 458 U.S. 832 (1982); and *Cotton Petroleum Corp. v. New Mexico,* 490 163 (1989). In *Ute Mountain* the state of New Mexico had assessed state taxes on oil and gas production and property owned by a non-Indian company and the Ute Mountain Indian Tribe had challenged the tax. One of the taxes at issue was an ad valorem tax on oil and gas production equipment. After applying the "flexible preemption analysis" the Tenth Circuit found the state tax was not preempted by federal law. The Tenth Circuit in *Ute Mountain* described this test as follows:

> At the outset, it is important to point out the three primary factors the Supreme Court has focused on when applying this flexible preemption analysis: (1) the extent of the federal and tribal regulations governing the taxed activity; (2) whether the "economic burden" of the tax falls on the tribe or the non-Indian individual or entity; and (3) the extent of the state interest justifying the imposition of the taxes.

Ute Mountain, at 1187. Although *Ute Mountain* addresses non-Indian ownership the "flexible preemption analysis is persuasive and useful to the resolution of assets owned in part by the Indian tribe.

PETITIONER had argued that this "flexible preemption analysis" was not necessary, arguing that under *Mescalero* and *Chehalis,* the state may not assess a tax on improvements to real property, regardless of ownership. As noted previously, *Mescalero* dealt with a use tax on materials purchased by the Indian tribe to construct ski lifts on property the court gave the same protections as Indian Trust Land. The court noted ski lifts were permanently attached to the land and permanent improvements attached to trust land would be exempt from tax. The Ninth Circuit

Court of Appeals in *Chehalis v. Thurston County Board of Equalization,* 724 F.3d 1153 (9th Cir. 2013) extended the exemption to non-Indian property in that Circuit. PETITIONER's reliance on *Chehalis* is misplaced. The appropriate test would be that relied on by the Tenth Circuit Court of Appeals in *Ute Mountain.* PETITIONER has the burden of establishing it is eligible for the exemption[128] and would be held to show the extent of the federal and tribal regulations and whether the economic burden falls on the tribe or non-Indian entity. PETITIONER has not established under the flexible preemption analysis as discussed in *Ute Mountain* that it is entitled to a tribal exemption on the non-Indian owned percentage of its Gathering System located within the Trust Land.

Valuation Issues

These appeals also present to the Commission several valuation issues with differences in how the income approach should be calculated, whether there is obsolescence in the cost approach, and then how the two approaches should be reconciled.

1. Decline Rate

In the income approach one major issue of contention between the parties was the appropriate decline rate to apply in the DCF calculation. Both parties had started with an identical amount for total revenue in year one. Both parties agreed that it was appropriate to apply a decline rate to forecast total revenue for future years because at some point production of the existing well fields that feed into the Gathering System will decline and, therefore, a decline in revenue will occur. APPRAISER-2 for the Division explained, "It is appropriate to decline it

[128] The courts have held that "exemptions should be strictly construed and one who so claims has the burden of showing he is entitled to the exemption." See *Union Oil Company of California v. Utah State Tax Commission*, 222 P.3d 1158 (Utah 2009), quoting Par*son Asphalt Inc. v. Utah State Tax Commission*, 617 P.2d 397, 398 (Utah 1980).

as opposed to increase it so that we don't capture potential future mineral value that's not even been drilled yet."[129]

The Division's theory that the decline rate should be an estimate of the supply of gas available for the subject gathering system, rather than based on an individual well, is appropriate and well taken. However, the Division's actual attempt to calculate a decline rate on this basis is problematic. The countywide production averages that the Division uses in its study include new wells coming on line and wells being deepened, therefore it is capturing potential future mineral value that is not yet drilled. The Division does not attempt to separate out production attributable to new wells and its averages are statewide statistics not specific to the gas fields which feed the subject Gathering System. Countywide production rates are actually increasing in the two counties that are the subject of this appeal and the Division acknowledges concerns that consideration of these rates would potentially capture wells not yet drilled. So in order to get a rate that is declining, rather than increasing, the Division ignores, or modifies to zero production statistics from the very counties that would be most relevant. The Division's countywide production information and statewide averages are not directly related to the question the Division is trying to answer, which is a decline rate for the gas fields feeding the Gathering System that does not capture potential future mineral value. Ultimately the County's decline rate conclusion is not directly derived from the averages concluded, as shown by the fact that after the mathematical errors were corrected in the study to significantly higher numbers, the Division's decline rate conclusion did not change.

Some information was provided by the Division on the more specific fields that feed into the Gathering System, which would have been helpful in determining a decline curve relevant to

[129] Testimony of APPRAISER-2, Formal Hearing Transcript 362: 11-13.

this appeal.[130] The Division was able to obtain information on the FIELD-1, FIELD-2 and FIELD-3 fields,[131] but again it was total production numbers that would include new wells like the Division's countywide production information. However, the Division did not attempt a decline rate calculation from this information. A way to develop a decline rate that takes out new production is not readily apparent from these exhibits. Further, although the Division's rates are somewhat supported in the various statewide averages that the Division has calculated in its decline rate study, when corrected for the Division's calculation errors which are significant, the Division's averages also support APPRAISER-3's decline rate. Essentially, the Division's rate was subjective and not specifically derived from the statewide averages calculated.

APPRAISER-3's decline curve analysis was not an attempt to get a decline rate for a single well, but rather an attempt to determine the rate for the existing wells in a well field. They are derived from a representative sampling of what would be in a well field on any given lien date. He looked at existing wells at various stages of production, made an appraiser judgment that %%% would be conservative, and compared his rate to ENTITY-1's own projections which indicated a steeper decline rate of %%%.

Except for tax year YEAR-5, the Division has used a different decline rate in its appraisal than it did in the original assessments and escaped property assessments. This means that the Division does not have the presumption of correctness on the new appraisal decline rates and has the same burden of proof to establish a different rate as has PETITIONER. APPRAISER-3 has used data that is more directly related to the conclusion he is attempting to derive and a decline rate of %%% to project future revenue for each year should be applied.

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[130] Exhibits 29, 30 & 31.
[131] Exhibits 29, 30 & 31.

2. Obsolescence

The major difference in the Division and APPRAISER-3's cost approaches was that in addition to age based depreciation, APPRAISER-3 subtracted an obsolescence factor based on a combination of underutilization of the system and an inutility penalty. APPRAISER-3 had argued that after the design and construction of the subject Gathering System, natural gas prices became depressed and the system was not utilized to its full extent. APPRAISER-3 estimated underutilization as, "not utilization as measured by capacity alone but its utilization as measured by the market."[132] In this method, APPRAISER-3 first determined when the system achieved stabilized operating levels, noting that this system was only in operation part of YEAR-1. He notes that in YEAR-3 they had achieved %%% utilization based on %%% capacity, but the utilization had decreased from there. Based on %%% capacity there was %%% utilization in YEAR-4 and %%% in YEAR-5, which he argued was "a direction that would be anticipated based on the condition of the market, but would not have been anticipated when they built the facility."[133] APPRAISER-3 notes in his appraisal that the conception and construction of the system occurred when the natural gas market was strong and prices near or at their peak.[134] His conclusion from his analysis was a %%% obsolescence adjustment for the YEAR-6 tax year. His adjustment did vary for each year at issue.[135]

The Division argued that this obsolescence adjustment was inappropriate. The Division points out that although natural gas prices had declined natural gas production in Utah and in the

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[132] Testimony of APPRAISER-3, Formal Hearing Transcript 187:14-17.
[133] Testimony of APPRAISER-3, Formal Hearing Transcript 188:3-5.
[134] Exhibit 5, pg. 58.
[135] Exhibit 5, pgs. 59-60.

RURAL AREA had been increasing from YEAR to its all time high in YEAR-6.[136] As noted by the Division, it is gas production that creates the demand for the Gathering System. The Division provided articles in support of this position, as well as the fact that the optimum capacity of a pipeline is not necessarily the maximum capacity and supporting that new trunk lines or gathering lines were generally built with a larger diameter pipe than was needed initially, so they could accommodate an eventual increase in capacity that may come years later. Starting with a larger pipe than currently needed would be far more cost effective than digging the pipe up after a number of years and replacing it with a larger one. APPRAISER-3's obsolescence adjustment is, therefore, inappropriate and should not be subtracted in the cost approach.

3. Reconciliation

Although the Division had performed both a cost approach and an income approach to value in its appraisal, in its reconciliation the Division gave no weight to the approach with the lower value. This meant that for all years at issue except YEAR-4, %%% weight was given to the cost approach. For YEAR-4, %%% of the weight was given to the income approach because it was higher, but still relatively near the cost approach. At the hearing, although the Division indicates it did a reconciliation of the approaches, it is the Division's position that the cost value is the threshold value, so the reconciled value could never be lower than the Rule 33 cost value. This is an interpretation taken by the Division, not the Commission, and is contrary to the statutory provisions.

Utah Code Sec. 59-2-201(1) provides that the property is "assessed by the commission at 100% of fair market value, as valued on January 1, in accordance with this chapter . . ." The

[136] Testimony of DIVISION WITNESS, Formal Hearing Transcript 391:2-13, also referring to Exhibit 5, pg. 12.

Commission then must make a determination of the fair market value of the Gathering System for each of the years at issue. Reconciliation of the various approaches to value is typically done by appraisers to derive their opinion of fair market value. Utah Admin. Rule R884-24P-62(5)(d) provides for reconciliation of appraisal approaches and certainly does not provide support for the Division's position that the cost approach is the threshold value. Rule 62(5)(d) states:

> When reconciling value indicators into a final estimate of value, the appraiser shall take into consideration the availability, quantity, and quality of data, as well as the strength and weaknesses of each value indicator. Weighting percentages used to correlate the value approaches will generally vary by industry, and may vary by company if evidence exists to support a different weighting. . .

The Division's position seems to be that the cost approach value is the threshold value. However, Utah Code Sec. 59-2-201(3) states, "In no event may the fair market value of the mining property be less than the fair market value of the land, improvements, and tangible personal property upon or appurtenant to the mining property."[137] It appears the Division reads this provision to mean that the fair market value of the property could in no event be less than the cost approach value of the land, improvements and tangible personal property, but that is not what the statute provides. The Division's appraisers explain their reasoning for cost being the threshold value, that if it becomes uneconomic to continue to operate the system "that tank or that compressor still has value in the open market, not based on income."[138] Then to explain why this value would be determined by the Rule 33 cost approach, the Division offers the opinion that Rule 33 would be market value for those individual assets. The Division had asserted that Rule

[137] The Division also cites to similar provisions in Tax Commission Rules R884-24P-7 and R884-24P-10.

[138] Testimony of APPRAISER-2, Formal Hearing Transcript 377:10-13.

33 even takes into account if an industry was depressed and that would be reflected in the tables.[139]

While petroleum and natural gas exploration and production industry economic factors may have some effect on the property in Class 20, which would include the pumps and compressors to which the Division referred in its example, most of the Gathering System was not classified as Class 20. The Gathering System property is mostly comprised of pipelines. The pipelines were valued by the Division as Class 16-Long Life Property, which is depreciated at a slower rate than the Class 20 property. Class 16 covers property from numerous industries so the Division cannot argue that the petroleum and gas exploration and production industry factors are considered in this class. Furthermore, although the Division's point is noted that if it becomes uneconomic to operate the system, the pump or compressor may still have market value not based on income, the same cannot be said about the buried pipeline system. If the buried pipeline system was no longer being used for gathering, it is questionable whether it would be cost effective or even possible to dig up the pipeline and separate it into sections that would have a market value. The cost approach is not the statutory threshold value. The "fair market value" of the land, improvements, and tangible personal property upon or appurtenant to the mining property is the threshold value. Therefore, if the evidence and appraisal information supports reconciling of various values to obtain the fair market value, the approaches should be reconciled, regardless of whether an income or sales approach value was lower than the cost approach.

APPRAISER-3 presented the opinion that for an income producing property it is improper not to give weight to the income approach and, in fact, the income approach should

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[139] Testimony of APPRAISER-2, Formal Hearing Transcript 283-284.

receive greater weight because it is most heavily relied on by market participants, particularly when the income has stabilized.[140] He cited the Appraisal of Real Estate as support and PETITIONER WITNESS had testified that companies are concerned about the return from this type of asset and not the cost. The Division, relying on its "cost is the threshold value" position, did not counter APPRAISER-3's argument or provide evidence that the income approach would not be considered by a prospective buyer in determining what to pay for the subject property. Reconciliation that gives weight to both the cost and income approaches, and more weight to the income after the income was stabilized is appropriate.

CONCLUSIONS OF LAW

1. The Utah Supreme Court has determined that the taxpayer has a dual burden of proof in property tax valuation appeals, stating in *Utah Railway Company v. Utah State Tax Commission,* 5 P.3d 652, 655 (2000) as follows, "the protesting taxpayer is required 'not only to show substantial error or impropriety in the assessment, but also to provide a sound evidentiary basis upon which the Commission could adopt a lower valuation.'" Citing *Utah Power & Light Co. v. Tax Commission,* 590 P.2d 332, 335 (Utah 1979). A "presumption of correctness" attaches to the Division's original assessed values. *See Utah Railway Co. v. Utah State Tax Comm'n,* 5 P.3d 652, 655-56 (Utah 2000) (quoting *Utah Power & Light Co. v. Tax Comm'n,* 590 P.2d 332 (Utah 1979)). This presumption would also extend to the Division's escaped property assessments, to the extent that they were correcting errors or omissions on the part of the property owner, as had occurred in this matter. At the hearing, both the Division and the taxpayer presented appraisals which showed error in the escaped property assessments for the years

[140] Testimony of APPRAISER-3, Formal Hearing Transcript 191-193.

YEAR-1 through YEAR-5 and in the original YEAR-6 assessment. However, again these changes in part were due to further corrections of information that had been in error on PETITIONER's property tax returns. Because of this, the Division retains the presumption of correctness on certain issues in its appraisal where the Division maintained the same position as in the escaped property assessments and the YEAR-6 original assessment. The Division maintains the presumption on the issue of capital expenditures, interest, size premium and obsolescence. The Division maintains the presumption on reconciliation for tax years YEAR-1-YEAR-4 and YEAR-6. The Division does not have presumption regarding reconciliation for tax year YEAR-5. The Division in its appraisal changed its position on the decline curve and income tax refund issue. The Division does not retain the presumption on these issues and the Division has the same burden of proof as PETITIONER for these issues.

2. PETITIONER, as the property owner and party responsible for payment of the tax has the statutory right to contest the Division's ad valorem tax assessment under Utah Code Sec. 59-2-1007, including challenging the amount or method of calculation for exemptions applied by the Division in the assessment.

3. PETITIONER has argued in this matter that it is entitled to the tribal exemption based on the percentage of Indian ownership for the portion of the Gathering System located in the Disputed RESERVATION-1 Portion. This is the area within the historical reservation boundaries, but located outside the Trust Lands. PETITIONER relies on the boundary set in CASE I, which the Tenth Circuit Court of Appeals would not revise or revisit in CASE II or CASE III. CASES I-III cases involve a boundary dispute for criminal jurisdiction. Whether or not the RESERVATION-1 was disestablished or diminished under these cases is not controlling because even if the reservation boundary is as argued by PETITIONER, a state or county may

assess property tax on "opened" land within a reservation if the land is not owned by the United States in trust for the Indian tribe. In CASE I, while finding that the RESERVATION-1 had not been diminished or disestablished, the Tenth Circuit found that it had been opened to public entry. CASE I. In *County of Yakima v. Confederated Tribes of Yakima Indian Nation,* 502 U.S. 251, 112 S. Ct. 683 (1992), the United States Supreme Court held that fee property interests in previously-alienated Indian lands within the Yakima Indian Reservation were subject to local ad valorem levies on taxable real property. The decision was extended by the United States Supreme Court in *Cass County v. Leech Lake Band of Chippewa Indians,* 118 S. Ct. 1904 (1998), which made it clear that the only land exempt from state and local property tax was the land held by the United States in trust for the Indian tribe. For the RESERVATION-1, the only portion exempt from property tax is what has been referred to herein as the Trust Lands.

4. In its assessments, the Division had allowed an Indian tribal exemption on the portion of the Gathering System located within the Trust Lands, but it was based on the percentage ownership that the TRIBE held in PETITIONER for each particular year, ranging from %%% to %%%. PETITIONER argue that this portion of the property should be %%% exempt regardless of Indian or non-Indian ownership. The Division has correctly applied the exemption to only the percentage of the property located within the Trust Lands that is Indian owned as PETITIONER has failed to show that a greater percentage should be exempt under the "flexible preemption analysis" applied by the Tenth Circuit Court of Appeals. PETITIONER had argued that it was not necessary to consider the "flexible preemption analysis" which was set out by the United States Supreme Court in cases like *White Mountain Apache Tribe v. Bracker,* 448 U.S. 136 (1980). However, the Tenth Circuit Court of Appeals has followed the Supreme Court's approach regarding taxation of non-Indian improvements or activities within Indian trust lands.

In *Ute Mountain Ute Tribe v. Rodriguez,* 660 F.3d 1177 (10th Cir. 2011), after applying the "flexible preemption analysis" the Tenth Circuit found the state tax was not preempted by federal law to tax non-Indian oil production equipment on trust land. PETITIONER has not shown entitlement to a greater percentage of exemption on the non-Indian owned portion of the property under a flexible preemption analysis.

5. For the reasons outlined in the discussion portion of this decision, the Commission concludes that there is no requirement in Utah law that natural resource property must be valued using the "higher of" the income and cost approaches to value or that the cost approach is the "threshold" value. Utah Code Sec. 59-2-201(1) provides that the property is "assessed by the commission at 100% of fair market value." Reconciliation of the various approaches to value, which is typically done by appraisers, is supported by Utah Admin. Rule R884-24P-62(5)(d). Utah Code Sec. 59-2-201(3) provides, "In no event may the fair market value of the mining property be less than the fair market value of the land, improvements, and tangible personal property upon or appurtenant to the mining property."(Emphasis Added.) The cost approach is not the statutory "threshold" value. The "fair market value" of the land, improvements, and tangible personal property upon or appurtenant to the mining property is the threshold value. Therefore, if the evidence and appraisal information supports reconciling of various values to obtain the fair market value, the approaches should be reconciled, regardless of whether an income or sales approach value was lower than the cost approach.

The values should be lowered in accordance with this decision.

____
Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission finds the fair market values for the subject Gathering System for each tax year at issue to be the following values prior to the application of the Indian Tribal Exemption.

	YEAR-1	YEAR-2	YEAR-3	YEAR-4	YEAR-5	YEAR-6
Value Estimate	$$$$$	$$$$$	$$$$$	$$$$$	$$$$$	$$$$$

The Division is to apply the Indian tribal exemption to these adjusted values for only the portion of the Gathering System located within in the Trust Lands as defined herein, and the exemption is to be limited to the percentage ownership that the TRIBE has in PETITIONER. It is so ordered.

DATED this _____ day of ____________, 2016.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

Rebecca L. Rockwell
Commissioner

Notice of Appeal Rights: You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Ann. §63G-4-302. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Ann. §59-1-601 et seq. and §63G-4-401 et seq.