
BEFORE THE UTAH STATE TAX COMMISSION

CASTLE VALLEY MINING, LLC¹,

Petitioner,

v.

CARBON COUNTY AND EMERY
COUNTY,

Cross-Petitioners,

v.

PROPERTY TAX DIVISION OF THE
UTAH STATE TAX COMMISSION,

Respondent.

INITIAL HEARING ORDER

Appeal No. 20-1498

Account No: 13485141-008-PCA

Tax Type: Property Tax

Tax Year: 2020

Judge: Marshall

This Order may contain confidential "commercial information" within the meaning of Utah Code Sec. 59-1-404, and is subject to disclosure restrictions as set out in that section and regulation pursuant to Utah Admin. Rule R861-1A-37. Subsection 6 of that rule, pursuant to Sec. 59-1-404(4)(b)(iii)(B), prohibits the parties from disclosing commercial information obtained from the opposing party to nonparties, outside of the hearing process. Pursuant to Utah Admin. Rule R861-1A-37(7), the Tax Commission may publish this decision, in its entirety, unless the property taxpayer responds in writing to the Commission, within 30 days of this notice, specifying the commercial information that the taxpayer wants protected. The taxpayer must send the response via email to taxredact@utah.gov, or via mail to Utah State Tax Commission, Appeals Division, 210 North 1950 West, Salt Lake City, Utah 84134.

Presiding:

Jan Marshall, Administrative Law Judge

Appearances:

For Petitioner: Lynn Kingston, Attorney for Petitioner
Charles Reynolds, Real Estate Manager

For Respondent: Laron Lind, Assistant Attorney General
Josh Nelson, Assistant Attorney General

¹ C.O.P. Coal Development Company purchased the subject property through bankruptcy proceedings in September 2020. The transfer included the right to continue the instant property tax appeal.

Roger Barth, Property Tax Division
Curtis Williams, Property Tax Division
Dave Plotkin, Property Tax Division
Lucas Hendrickson, Property Tax Division
For Counties: Tom Peters, Peters Scofield

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on October 20, 2021 for an Initial Hearing in accordance with Utah Code Ann. §59-1-502.5. Petitioner timely appealed the Respondent’s (“Division”) valuation of the subject property for the 2020 tax year. The Division valued the subject property at \$42,598,271. The Division and the Counties are asking the Commission to sustain the original assessed value. The Petitioner is asking the Commission to reduce the value to \$20,611,177.

APPLICABLE LAW

Article XIII, Section 2 of the Utah Constitution provides as follows, in pertinent part:

- (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:
 - (a) assessed at a uniform and equal rate in proportion to its fair market value, to be ascertained as provided by law; and
 - (b) taxed at a uniform and equal rate.
- (2) Each corporation and person in the State or doing business in the State is subject to taxation on the tangible property owned or used by the corporation or person within the boundaries of the State or local authority levying the tax...
- (5) The Legislature may by statute determine the manner and extent of taxing or exempting intangible property, except that any property tax on intangible property may not exceed .005 of its fair market value. If any intangible property is taxed under the property tax, the income from that property may not also be taxed...

The Commission is tasked with the assessment of certain properties in accordance with Utah Code Ann. §59-2-201, below in pertinent part:

- (1) (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 that 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.
- (3)(a) 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.
 - (b) The commission shall determine the rate of capitalization applicable to mines, consistent with a fair rate of return expected by an investor in light of that industry's current market, financial, and economic conditions.
 - (c) 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 following definitions, found in Utah Code Ann. §59-2-102, are relevant to these proceedings:

- (13) "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.
- (24) "Mine" means a natural deposit of either metalliferous or nonmetalliferous valuable mineral.
- (25) "Mining" means the process of producing, extracting, leaching, evaporating, or otherwise removing a mineral from a mine.
- (27) "Nonmetalliferous minerals" includes, but is not limited to, oil, gas, coal, salts, sand, rock, gravel, and all carboniferous materials...

Administrative Rule R884-24P-7 provides additional guidance on the assessment of mining properties, as follows in pertinent part:

A. Definitions...

- 14. "Non-operating mining property" means a mine that has not produced in the previous calendar year and is not currently capable of economic production, or land held under a mineral lease not reasonably necessary in the actual mining and extraction process in the current mine plan."...

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.
3. If the taxpayer does not furnish the information necessary to determine a value using the discounted cash flow method, the Property Tax Division may use the capitalized net revenue method:
 - a) Determine annual net revenue, both net losses and net gains, from the productive mining property for each of the immediate past five years, or years in operation, if less than five years. Each year's net revenue shall be adjusted to a constant or real dollar basis.
 - b) Determine the average annual net revenue by summing the values obtained in B.3.a) and dividing by the number of operative years, five or less.
 - c) Divide the average annual net revenue by the discount rate to determine the fair market value of the entire productive mining property.
 - d) Subtract from the fair market value of the entire productive mining property the fair market value, as of the lien date, of licensed vehicles and nontaxable items, to determine the taxable value of the productive mining property.
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.
6. A non-operating mine will be valued at fair market value consistent with other taxable property.
7. If, in the opinion of the Property Tax Division, these methods are not reasonable to determine the fair market value, the Property Tax Division may use other valuation methods to estimate the fair market value of a mining property.
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 modern design and materials, adjusted for loss in value due to physical deterioration or obsolescence for technical, functional, and economic factors.

Utah Code Ann. § 59-2-109 provides for the burden of proof in this matter, as follows:

- (2) For an appeal involving the valuation of real property to the county board of equalization or the commission, the party carrying the burden of proof shall demonstrate:
 - (a) substantial error in:
 - (i) for an appeal not involving qualified real property:
 - (A) if Subsection (3) does not apply and the appeal is to the county board of equalization, the original assessed value;
 - (B) if Subsection (3) does not apply and the appeal is to the commission, the value given to the property by the county board of equalization; or
 - (C) if Subsection (3) applies, the original assessed value; or
 - (ii) for an appeal involving qualified real property, the inflation adjusted value; and
 - (b) a sound evidentiary basis upon which the county board of equalization or the commission could adopt a different valuation.

The Taxpayer has the burden of proof in this matter. Under Utah Code Ann. §59-2-109(2), the Taxpayer has a dual burden of proof and must demonstrate both a substantial error in the original assessed value and provide a sound evidentiary basis upon which the Commission could adopt a different valuation. *See Also Utah Railway Company v. Utah State Tax Commission*, 5 P.3d 652, 655 (2000) and *Utah Power & Light Co. v. Tax Commission*, 590 P.2d 332, 335 (Utah 1979).

DISCUSSION

On April 30, 2020, the Division issued a Notice of Assessment to Castle Valley Mining for the Bear Canyon Mine. The assessment totaled \$42,598,271. The total taxable value for Emery County was \$39,436,544. The total taxable value for Carbon County was \$3,149,464. On July 30, 2020, Castle Valley Mining, LLC filed a Valuation Appeal Form, asserting the income allocation was too high. Castle Valley Mining, LLC, and its parent company, filed for bankruptcy in July of 2020. C.O.P. Coal Development Company (“Taxpayer”) purchased the subject property for \$2,690,000 through an auction in September of 2020. On September 24, 2020, Tom Fairfield, the Chief Restructuring Officer of Castle Valley Mining, LLC’s parent company, Rhino Energy, sent an email to the Division. Mr. Fairfield’s email indicated that the interest in Castle Valley Mining, LLC had been sold to C.O.P Coal Development Company, and that Charles Reynolds was authorized to continue the appeal initiated by Castle Valley Mining, LLC.

The Taxpayer’s representative stated that the value was appealed because of the increase in value from 2019 to 2020. He stated that the assessed value of the property in 2019 was approximately \$16,700,000, while the assessed value for the 2020 tax year was over \$42,000,000. The Taxpayer’s representative noted that for 2021, the assessed value was approximately \$15,900,000. He stated that the 2020 assessed value was \$40,000,000 over the purchase price; however, he recognizes that the purchase price through a bankruptcy auction may not represent market value.

The Taxpayer’s representative stated that the cash flow projection submitted by Castle Valley Mining was inflated far above what revenue actually was or would have been. He stated that in 2019, Castle Valley Mining had a large contract with Wolverine, and shipped 30% more coal than it did in a typical year. The Taxpayer’s representative stated that the contract was scheduled to end on December 31, 2019, but was extended to March 31, 2020. He stated that the Taxpayer had no sales contracts past the end of 2020, and no anticipated future sales on other contracts. The Taxpayer’s representative stated that Castle Valley Mining should have known that the revenue projections were grossly inflated. He stated that the correct amount should have been

approximately \$39,000,000 for 2019, and between \$26,000,000 and \$28,000,000 for 2020. The Taxpayer's representative stated that the likelihood of property more than doubling in value and then dropping down is unlikely when there was no significant change. He stated that the only difference in the calculation was the projected cash flow. The Taxpayer's representative stated that the Taxpayer believes the correct valuation for 2020 is \$20,611,177.²

Charles Reynolds, the real estate manager for the Taxpayer, proffered testimony on behalf of the Taxpayer. He stated that his first contact with Castle Valley Mining was in 2010, when Castle Valley Mining took over operations. Mr. Reynolds explained that the Taxpayer was the landowner/mineral owner of the property. He stated that he took over managing mining operations after the purchase in September.

Mr. Reynolds reviewed the PT-31COL, which is the discounted cash flow projected to 2029. He stated that the information was submitted by Castle Valley Mining in 2020. Mr. Reynolds stated that he believes the actual revenue numbers for 2019 are correct, but that the projection is incorrect. He stated this is because for years prior, the revenue was typically much lower than it was in 2019. Mr. Reynolds stated that the contracts in place for 2020 would have resulted in lower revenue, and that Castle Valley Mining would have known the 2020 revenue would be lower.

Mr. Reynolds stated that he prepared, and provided to the Division, a corrected discounted cash flow. He stated that he used the contract amounts in place for 2020 to come up with projections, and compared that to actual revenue that had been received from January 1 through the time of Castle Valley Mining's bankruptcy filing in July 2020. Mr. Reynolds stated that he also compared the historical numbers of typical income, and used an average of those to project typical revenue. He stated that all of this information would have been available to Castle Valley Mining, except for the actual revenue. Mr. Reynolds noted that the total sales for 2020 were between \$26,000,000 and \$27,000,000, and that the net present value of the calculations was a negative amount.

Mr. Reynolds' discounted cash flow projected income of \$27,729,284 for 2020, and projected income of \$28,000,000 for the years 2021 through 2029. He used the same projected total allowable costs as the Division of \$29,621,851 for the years 2020 through 2029. This resulted in net revenue of -\$1,842,567 for 2020, and -\$1,621,851 for the years 2021 through 2029.

² The Taxpayer arrived at this figure by totaling the land, improvements, personal property, and CWIP values on the Notice of 2020 Assessment Summary.

The Taxpayer provided a projection that was disclosed by Castle Valley Mining to the Taxpayer during the purchase through the bankruptcy proceedings. Mr. Reynolds stated that it reflects contracted sales for 2020. The projection indicates that it was revised on August 7, 2020. It shows projected contracted sales totaling \$26,673,405. The projection indicates there were contracts in place with PacifiCorp and Intermountain Power Agency from January through December 2020. Additionally, the projection shows a contract with Wolverine from January through March of 2020. Mr. Reynolds stated that there is no reason to believe that the projection would have changed from January 1 until the time of disclosure through the bankruptcy proceedings, as there was no change in contracts.

Mr. Reynolds stated that the Taxpayer's records show that Castle Valley Mining's revenue varied from \$25,000,000 to \$28,000,000 per year from 2011 to 2018. He noted that Castle Valley Mining always disclosed their revenue numbers to the Taxpayer because Castle Valley Mining paid the Taxpayer royalties. Mr. Reynolds stated that the revenue figures in 2019 were much higher than previous years. He explained that in 2019 there was a contract with Wolverine, which was set to terminate on December 31, 2019. Mr. Reynolds stated that Wolverine was having difficulty meeting their contracts from their own mines, and were buying extra coal to make up the difference. He stated that in November of 2019, the contract was extended through March of 2020, but that Castle Valley would have known as of January 1, 2020 that the contract would end.

Mr. Reynolds stated that a company's projected income is limited solely to contracts, as the Taxpayer had no source of revenue other than coal sales. He acknowledged that the Taxpayer could have produced more coal, if they had contracts in place. Mr. Reynolds stated that when he was projecting the Taxpayer's income, he also looked at past operations, and found that the revenue generated in 2019 was atypical. He stated that he had conversations with Mr. Scott Morris of Castle Valley Mining. Mr. Reynolds stated that it was Mr. Morris who first noticed the error in the projections, and filed the appeal. He stated that the individual who had signed and submitted the form to the Division originally was no longer working for Castle Valley Mining.

The Division's representative stated that in tax appeals like this one, the Taxpayer must demonstrate both that the Division's valuation contains substantial error, and provide a sound evidentiary basis for its requested value. He stated that the Division determined the value of the Bear Canyon Mine using a discounted cash flow, which is the preferred method under Rule 7. The Division's representative noted that all of the data for calculating the value was provided by

Castle Valley Mining, and showed actual revenue of approximately \$39,000,000 for 2019, and projected into the future.

The Division's representative stated that no one from Castle Valley Mining was present to explain why those numbers were reported. He stated that the Division relies upon taxpayers to self-report, and has no reason to believe that those numbers are inaccurate. The Division's representative noted that the Division also calculated a value using a cost approach, but stated the income approach is usually given the most weight because the cost approach does not include assemblage and mineral values. He stated that since the filing of the return by Castle Valley, and after the Division had issued the assessment, ownership changed. The Division's representative argued that the sale, and adjustments to the reported projections are post-lien date information, and were not known or knowable as of the lien date. He stated that the Division has valued the subject property consistent with Utah Code Ann. §59-2-102(13) and §59-2-201, as of January 1, 2020.

Mr. Curtis Williams testified on behalf of the Division. He stated that it does not appear to the Division that 2019 was an atypical year for the Bear Canyon Mine property. He proffered that he had reviewed the actual income reported by Castle Valley Mining for the last five years, and that revenue ranged from between \$34,000,000 and \$39,000,000, increasing each year. He stated that the 2019 revenue was in line with the revenue reported by Castle Valley Mining in the five years preceding.

Mr. Williams stated that he reviewed the returns filed by Castle Valley Mining for the 2019 and 2020 tax years. He stated that the returns were similar, but there were a couple of differences that impacted the values. Mr. Williams stated that for 2020, miscellaneous expenses were projected to be approximately \$3,500,000 with no increase. He stated that for 2019, miscellaneous expenses were approximately \$3,500,000, and increased to \$6,000,000 after three years, and carried forward. Mr. Williams stated that projected capital expenditures were \$7,500,000 in 2019, with all other years being a little over \$4,000,000. He stated that for 2020, the capital expenditures were a little over \$4,000,000, and remained steady. Mr. Williams stated that it was higher in 2019 because there was approximately \$3,500,000 of CWIP. He stated that the higher expenditures resulted in a lower value for 2019, and that by 2020, the expenditures had been made. In addition, Mr. Williams noted that the projected income increased approximately \$1,500,000, and that the Division's capitalization rate decreased from 2019 to 2020.

Mr. Williams stated that there are three approaches to value; income, cost, and sales. He stated that the Division developed cost and income approaches. Mr. Williams stated that the sales

approach was not used because there were no comparable sales. He noted that rarely is information available on the sale of mines in Utah, and that typically the Division is not able to use the sales approach.

Mr. Williams reviewed the cost approach developed by the Division. He stated that the cost approach reached a conclusion of value of \$20,711,573.³ \$3,044,353 was attributable to the land. Mr. Williams stated that the land value was based upon comparable land assessments in Emery County. He noted that this included the surface value only. Further, Mr. Williams stated that the land is leased, and is therefore taxable to other taxpayers. \$4,213,472 of the total value was attributable to improvements. Mr. Williams stated that the improvements were valued at cost, as reported by Castle Valley Mining. The personal property was valued at \$13,080,051. Mr. Williams explained this was determined by applying the percent good from the personal property tables in Administrative Rule R884-24P-33, based upon the reported acquisition cost, acquisition year, and personal property classification for each item. Additionally, the personal property total included \$68,306 of licensed vehicles and tax exempt personal property. The lien date cost of CWIP, discounted from estimated completion date, was \$3,373,697. Mr. Williams noted that the CWIP was for a dry air processing plant, and that all of the CWIP was estimated to be completed between March and October of 2020. The Division subtracted from the sum of the cost of assets the land value, licensed vehicles, and exempt personal property to arrive at a taxable value of \$17,598,914 using a cost approach.

Mr. Williams stated that the Division did not rely on the cost approach. He stated that when a mine is operating at a profit, a potential buyer/seller would take that into consideration, more so than just the cost of the assets. Mr. Williams explained that the income approach picks up assemblage and mineral value that is not picked up by cost approach. He noted that both mineral value and assemblage value are taxable under Utah law.

Mr. Williams stated that under Administrative Rule R884-24P-7(B), the discounted cash flow method is the preferred method of valuing productive mining property. He noted that “productive mining property” is defined in Subsection (A)(15) of Rule 7. Mr. Williams stated that the Division tries to value the process to the point of sale using the discounted cash flow method.

Mr. Williams explained how the Division developed its capitalization rate. He stated that the Division looked at publicly available information for five coal companies, and considered

³ The Commission notes that the sum of the land, improvements, personal property, and CWIP is \$23,711,573, and the taxable value would be \$20,598,914. The difference in value was not explained at the hearing.

their relative financial strength and beta. The average financial strength was 1.15 and average beta was 1.31, based on the following guideline companies:

Company Name	Tax Rate	Financial Strength	Beta
Alliance Resource	NMF	1.00 (B+)	1.15
CONSOL Coal Resources LP	NMF	1.11 (B)	1.20
Hallador Energy Co	NMF	1.33 (C+)	1.05
Peabody Energy	NMF	1.11 (B)	1.25
SunCoke Energy Inc	NMF	1.22 (C++)	1.90

Mr. Williams stated that the Division also developed a CAPM and risk premium model. He stated that the Division did not use the dividend growth model because there were few companies with projected dividends. Mr. Williams stated that for 2020, the Division put 100% weight on the CAPM, and noted the risk premium model yielded a lower capitalization rate. Following are the Division's CAPM and risk premium models:

CAPM: Rule 62 Compliant		Risk Premium	
Market Risk Premium	7.15%	Market Risk Premium	7.15%
x Industry Beta	1.31	x Industry Financial Strength	1.15
Industry Risk Premium	9.37%	Industry Risk Premium	8.22%
Add: Risk-Free Rate	2.25%	Add: Risk-Free Rate	2.25%
Indicated Rate	11.62%	Indicated Rate	10.47%

Mr. Williams stated that the Division looked at the capital structure of the guideline companies, and noted that the mean was 51.98% debt/preferred equity and 48.02% common equity. He stated that the weighted mean was 49.42% debt/preferred equity and 50.58% common equity. He noted that the average bond rating was a B1, with a rate of 7.01%. Following is the reconciliation of the Division's capitalization rate:

RECONCILIATION			
Equity Models			Equity Rate
CAPM: Rule 62 Compliant			11.62%
CAPM: Supply Side			10.33%
CAPM: Implied ERP			2.25%
CAPM: Total NYSE			N/A
CAPM: Deciles 1 & 2			N/A
Division's Risk Premium			10.47%
DGM: Earnings and Dividend			22.54%
DGM: Plowback Ratio			N/A
Reconciled Equity Rate			11.62%
Reconciled Equity Rate	11.62%	50.00%	5.81%
Debt Rate (Corporate B1)	7.01%	50.00%	3.51%
Weighted Average Cost of Capital			9.32%
Reconciled Equity Rate	11.62%		
Tax-Adjusted (25.00%)	15.49%	50.00%	7.75%
Industry Debt Rate	7.01%	50.00%	3.51%
Tax Adjusted Weighted Average Cost of Capital			11.26%

Mr. Williams stated that the Division's cash flow was based on projected income and expenses reported by Castle Valley Mining. He stated that the Division did not make any changes to the numbers that were provided by Castle Valley Mining. Mr. Williams stated that there was no reason for the Division to question the income figures reported. He stated that over the last five years, Castle Valley Mining's income ranged from \$34,000,000 to \$39,000,000, and increased each year. Mr. Williams stated that revenue figures, projected or otherwise, are not limited to contracts in place. He stated that most discounted cash flow projections are shorter-term, and should include anticipated income that may not come from contracts in place. Mr. Williams stated that he can think of no reason why Castle Valley Mining would overstate the projected income on its filings. He stated that all things being equal, a higher income projection would result in a higher value. Following are the Division's discounted cash flow calculations:

Appeal No. 20-1498

	PROJECTED 2020	PROJECTED 2021	PROJECTED 2022	PROJECTED 2023	PROJECTED 2024	PROJECTED 2025	PROJECTED 2026	PROJECTED 2027	PROJECTED 2028	PROJECTED 2029
INCOME										
1	39,372,000	39,372,000	39,372,000	39,372,000	39,372,000	39,372,000	39,372,000	39,372,000	39,372,000	39,372,000
2	-	-	-	-	-	-	-	-	-	-
3										
4										
5										
6										
7	39,372,000	39,372,000	39,372,000	39,372,000	39,372,000	39,372,000	39,372,000	39,372,000	39,372,000	39,372,000
ALLOWABLE COSTS										
8										
9	9,567,199	9,567,199	9,567,199	9,567,199	9,567,199	9,567,199	9,567,199	9,567,199	9,567,199	9,567,199
10	2,546,642	2,546,642	2,546,642	2,546,642	2,546,642	2,546,642	2,546,642	2,546,642	2,546,642	2,546,642
11	494,805	494,805	494,805	494,805	494,805	494,805	494,805	494,805	494,805	494,805
12	420,000	420,000	420,000	420,000	420,000	420,000	420,000	420,000	420,000	420,000
13a	632,400	632,400	632,400	632,400	632,400	632,400	632,400	632,400	632,400	632,400
13b	402,900	402,900	402,900	402,900	402,900	402,900	402,900	402,900	402,900	402,900
14	4,291,800	4,291,800	4,291,800	4,291,800	4,291,800	4,291,800	4,291,800	4,291,800	4,291,800	4,291,800
15	1,104,000	1,104,000	1,104,000	1,104,000	1,104,000	1,104,000	1,104,000	1,104,000	1,104,000	1,104,000
16	3,503,400	3,503,400	3,503,400	3,503,400	3,503,400	3,503,400	3,503,400	3,503,400	3,503,400	3,503,400
17	335,900	335,900	335,900	335,900	335,900	335,900	335,900	335,900	335,900	335,900
18	18,000	18,000	18,000	18,000	18,000	18,000	18,000	18,000	18,000	18,000
19	71,400	71,400	71,400	71,400	71,400	71,400	71,400	71,400	71,400	71,400
20										
21	60,000	60,000	60,000	60,000	60,000	60,000	60,000	60,000	60,000	60,000
22	1,748,117	1,748,117	1,748,117	1,748,117	1,748,117	1,748,117	1,748,117	1,748,117	1,748,117	1,748,117
23										
24	173,400	173,400	173,400	173,400	173,400	173,400	173,400	173,400	173,400	173,400
25	762,000	762,000	762,000	762,000	762,000	762,000	762,000	762,000	762,000	762,000
26	3,489,888	3,489,888	3,489,888	3,489,888	3,489,888	3,489,888	3,489,888	3,489,888	3,489,888	3,489,888
27	29,621,851	29,621,851	29,621,851	29,621,851	29,621,851	29,621,851	29,621,851	29,621,851	29,621,851	29,621,851
28	9,750,149	9,750,149	9,750,149	9,750,149	9,750,149	9,750,149	9,750,149	9,750,149	9,750,149	9,750,149
INCOME TAX CALCULATIONS AND CASH FLOWS										
29	(2,406,380)	(3,069,312)	(3,535,648)	(4,001,984)	(4,468,320)	(4,934,657)	(5,400,993)	(5,867,329)	(6,333,665)	(6,800,001)
30	(2,192,070)	(2,192,070)	(2,192,070)	(2,192,070)	(2,192,070)	(2,192,070)	(2,192,070)	(2,192,070)	(2,192,070)	(2,192,070)
31	(234,600)	(234,600)	(234,600)	(234,600)	(234,600)	(234,600)	(234,600)	(234,600)	(234,600)	(234,600)
32	(1,197,746)	(1,103,590)	(1,004,498)	(900,212)	(790,459)	(674,953)	(553,393)	(425,460)	(290,821)	(149,124)
33	3,719,352	3,150,576	2,783,332	2,421,282	2,064,699	1,713,868	1,369,093	1,025,318	681,543	337,769
34	781,064	661,621	584,500	508,469	433,587	359,912	287,510	215,108	142,706	70,214
35	2,938,288	2,488,955	2,198,832	1,912,813	1,631,112	1,353,956	1,081,583	809,858	538,742	268,645
36	185,968	157,529	139,167	121,064	103,235	85,693	68,455	52,217	36,974	22,535
37	2,752,321	2,331,426	2,059,666	1,791,749	1,527,877	1,268,263	1,013,129	761,613	518,687	275,395
38	(4,080,000)	(4,080,000)	(4,080,000)	(4,080,000)	(4,080,000)	(4,080,000)	(4,080,000)	(4,080,000)	(4,080,000)	(4,080,000)
39										
40	2,406,380	3,069,312	3,535,648	4,001,984	4,468,320	4,934,657	5,400,993	5,867,329	6,333,665	6,800,001
41	2,192,070	2,192,070	2,192,070	2,192,070	2,192,070	2,192,070	2,192,070	2,192,070	2,192,070	2,192,070
42	234,600	234,600	234,600	234,600	234,600	234,600	234,600	234,600	234,600	234,600
43	1,197,746	1,103,590	1,004,498	900,212	790,459	674,953	553,393	425,460	290,821	149,124
44	-	-	-	-	-	-	-	-	-	-
45	4,703,117	4,850,999	4,946,483	5,040,616	5,133,327	5,224,543	5,314,185	5,402,808	5,490,431	5,578,054
DISCOUNT RATE SCHEDULE										
CAPITALIZATION RATE	9.32%									
PROPERTY TAX RATE	1.07%									
INFLATION RATE	4.513,418	4.287,365	4.026,199	3.778,521	3.543,861	3.321,739	3.111,669	2.914,210	2.731,065	2.561,888
ADJUSTED NOMINAL DISCOUNT RATE*	10.39%									
ADJUSTED REAL DISCOUNT RATE*	8.58%									
DISCOUNT RATE USED	8.58%									
NET PRESENT VALUE (NPV)	45,698,634									
NPV PLUG IN	45,698,634									
ROUNDED NPV	45,698,634									

Mr. Williams stated that in its reconciliation of values, the Division placed 100% of the weight on the income approach, which indicated a value of \$45,698,634 for the Bear Canyon Mine Unit. He stated that in arriving at the assessed value, the Division excluded the value of licensed vehicles and leased assets, which he noted were mostly land leases. Mr. Williams stated that the taxable value was \$42,598,271, allocated between Emery and Carbon Counties.

In closing, the Division's representative stated that the information presented by the Taxpayer is either second hand, post-lien date, or both. He stated that the proffered testimony of Mr. Reynolds regarding Castle Valley Mining's income contradicts what was reported to the Division. The Division's representative stated that there was no incentive for Castle Valley Mining to inflate the income figures. He argued that the Taxpayer has not met its burden of proof to show substantial error in the Division's value, nor has the Taxpayer provided a sound evidentiary basis to support its requested value. The Division's representative asked to have the Division's assessed values upheld.

In closing, the Taxpayer's representative noted that the value for the Bear Canyon Mine increased from 2019 to 2020, and then decreased again in 2021. He noted that Castle Valley Mining was getting ready to enter bankruptcy at the time it submitted the income projections to the Division. The Taxpayer's representative speculated that Castle Valley may have had incentive for the value to be higher in order to get more for the property through the bankruptcy proceedings, but stated that he does not know. The Taxpayer's representative stated that Mr. Reynold's projections were taken from the company's records, and that there was no reason to believe the sales beyond 2020 would be \$39,000,000, and would in fact be closer to \$28,000,000. He stated that a cost approach provides the correct conclusion of value for the subject property.

The Taxpayer has the burden of proof in this matter. Under Utah Code Ann. §59-2-109(2), the Taxpayer has a dual burden of proof and must demonstrate both a substantial error in the original assessed value and provide a sound evidentiary basis upon which the Commission could adopt a different valuation. The Utah Supreme Court found in *Utah Railway Company v. Utah State Tax Commission*, 5 P.3d 652, 655 (2000), "[t]he 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).

The Division is tasked with valuing the Taxpayer's property. Utah Code Ann. §59-2-201(1)(a) provides that the Commission shall assess the following property at 100% of market value as of January 1, in accordance with this chapter, "(v) all mines and mining claims... (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 that 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.” There is no dispute in this matter that the Bear Canyon Mine Unit is to be centrally assessed.

The Division’s assessed value of \$42,598,271 has a presumption of correctness. See *Utah Railway*, 5 P.3d at 655-56 (quoting *Utah Power & Light*). The Division’s assessed value was determined in accordance with Utah Code Ann. §59-2-201, Administrative Rule R884-24P-7, and other applicable guidelines.

Utah Code Ann. §59-2-201(2) provides that the method for determining the fair market value of productive mining property is the capitalized net revenue method. It further provides that the rate of capitalization is to be determined by the Commission, consistent with a fair rate or return expected by an investor in light of that industry’s current market, financial, and economic conditions. The Division used the capitalized net revenue method to arrive at an income approach value of \$42,598,271. The Division followed the methodology as outlined in Administrative Rule R884-24P-7. The Taxpayer does not dispute the Division’s methodology, and has not provided an alternate discount rate. The Taxpayer disputes the projected income (revenue) figure used in the Division’s calculations.

The Taxpayer argued that the projected income reported by Castle Valley Mining was too high. Mr. Reynolds proffered that Castle Valley Mining had disclosed their revenue numbers to the Taxpayer in the past because Castle Valley Mining paid royalties to the Taxpayer. He stated that Castle Valley Mining’s revenue varied from \$25,000,000 to \$28,000,000 per year from 2011 to 2018. However, the Taxpayer has the burden of proof in this matter, and did not provide any records or other documentation to support its contention that the projected income reported was significantly higher than it should have been. The Taxpayer provided a “corrected discounted cash flow” prepared by Mr. Reynolds. However, he stated that he used contract amounts and compared that to actual revenue that had been received from January 1 through the time of Castle Valley Mining’s bankruptcy filing in July 2020. While the contracts in place would have been available as of the lien date, the actual revenue would not have been known or knowable as of the lien date.

The Taxpayer has argued that a cost approach estimates the appropriate value for the Bear Canyon Mine Unit. The Division’s cost value does not capture the full value of the Bear Canyon operation. Utah Code Ann. §59-2-201 (2) provides, in part, “In no event may the fair market value of 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 Division’s cost approach valued only the surface value of the land, improvement costs reported by the Taxpayer,

and tangible personal property with acquisition dates and costs reported by the Taxpayer and the application of the percent good tables found in Rule R884-24P-33.

The Division's cost approach does not capture the mineral value or assemblage value. The mineral value is taxable. Under Utah Code Ann. §59-2-201(1)(a)(v), the Commission is required to assess all mines and mining claims. Under Utah Code Ann. §59-2-102(23) "'Mine' means a natural deposit of either metalliferous or nonmetalliferous valuable mineral." Additionally, assemblage value is taxable. In *Beaver County, et. al., v. WilTel, Inc., et al.*, 2000 UT 29, 40 the Court found, "[s]tatutory and constitutional fair market value requirements recognize some element of value that is not attributable to either intangibles or simple costs and that this enhanced value is taxable." As the Division's cost approach does not capture mineral value or enhancement value, it is not the best indicator of value for the Bear Canyon Mine Unit.

The Taxpayer has not sustained its burden of proof to show that the Division's assessed value is in error, nor has the Taxpayer sustained its burden of proof to provide a sound evidentiary basis to support its requested value. The Division's assessed value should be sustained.



Jan Marshall
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission finds the value of the Bear Canyon Mine Unit was \$42,598,271 as of the January 1, 2020 lien date. The Taxpayer's appeal is denied. It is so ordered.

This decision does not limit a party's right to a Formal Hearing. However, this Decision and Order will become the Final Decision and Order of the Commission unless any party to this case files a written request within thirty (30) days of the date of this decision to proceed to a Formal Hearing. Such a request shall be mailed, or emailed, to the address listed below and must include the Petitioner's name, address, and appeal number:

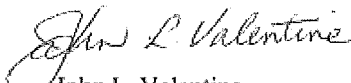
Utah State Tax Commission
Appeals Division
210 North 1950 West
Salt Lake City, Utah 84134

or emailed to:

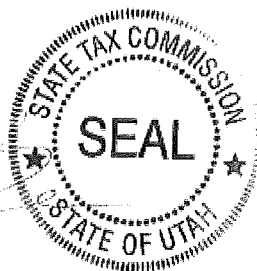
taxappeals@utah.gov


Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this **19** day of **January**, 2022.


John L. Valentine
Commission Chair


Rebecca L. Rockwell
Commissioner




Michael J. Cragun
Commissioner


Jennifer N. Fresques
Commissioner

USTC – Appeal
Certificate of Mailing
Utah State Tax Commission

Castle Valley Mining, LLC (Petitioner) vs Property Tax Division (Respondent)

20-1498

Property Tax Division

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Salt Lake City, UT 84134

Respondent

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Attorney for Petitioner

Thomas Peters

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Sandy, UT 84093

Attorney for Petitioner

**** CERTIFICATION ****

I certify on this date I mailed a copy of the foregoing document addressed to each of the above named parties.



January 19, 2022

Date

Signature