IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

FURIE OPERATING ALASKA, LLC, Appellant, v. STATE OF ALASKA, DEPARTMENT OF REVENUE and STATE ASSESSMENT REVIEW BOARD, Appellees.	)	Case No. 3AN-21-06462CI

AMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW Re: TRIAL DE NOVO OF DEPARTMENT OF REVENUE FURIE OPERATING ALASKA PROPERTY TAX ASSESSMENT YEARS 2021 AND 2022

I. INTRODUCTION

1. This is an appeal of the State Assessment Review Board's ("SARB") Certificate of Determination and the Department of Revenue's ("Department") assessment of the Kitchen Lights Unit ("Property") owned by Furie Operating, LLC ("Furie") for ad valorem property tax under AS 43.56 for tax years 2021 and 2022.

2. For the reasons set for below, the Court finds Furie failed to establish that the Department's valuation methodology under AS 43.56.060(d) and Department regulations are fundamentally flawed. The Court also finds that Furie failed to show by a preponderance of the evidence that the Department's valuations of the Property for the tax years at issue and SARB's certification of those valuations were improper or inconsistent with Alaska law.

II. PROCEDURAL BACKGROUND

3. The Department assessed the Property at $81,053,000 for 2021, and $81,747,510 for 2022. SARB affirmed these valuations on an appeal.

4. Pursuant to AS 43.45.130(i), Furie appealed SARB's Determination to this Court. Furie is the appellant and the State of Alaska Department of Revenue is appellee. Kenai Peninsula Borough ("Borough") is intervenor. Furie asserts the value of the Property should be $18 million for 2021 and $18.5 million for 2022. The Department and Borough assert the Department's assessments of $81 million and $81.7 million should stand.

5. Prior to trial *de novo* before this Court, motion practice by the parties demonstrated considerable disagreement as to the methodology the Department must employ to arrive at a value for replacement cost of the Property and requisite depreciation. The Court addressed these motions finding: Alaska law requires the Department to assess oil and gas production property based on replacement cost less depreciation methodology; there remained a genuine issue of material fact as to whether the use of fair market value data to assess replacement cost is "proper,"[1] and; although there is a reasonable basis supporting the Department's interpretation, there remained a genuine issue of material fact as to whether limits on depreciation remain intact when the Department

[1] The Borough and Department interpret AS 43.56.060(d) to exclude consideration of market value to determine replacement cost of a production property. Furie interprets Subsection (d) to provide for inclusion of market value data to determine replacement cost.

deviates from its methodology, constituting fraud or a fundamentally wrong principle of valuation.[2]

6. Prior to trial *de novo*, the Borough sought to limit introduction of certain evidence, including: Motion in Limine 1: To Preclude Furie's Use of Petition Filed in Harris County Texas; Motion in Limine 2: To Preclude Testimony that Investors Relied on the BCG Pitchbook; Motion in Limine 3: To Preclude Testimony Relying on the Boston Consulting Group Presentation; Motion in Limine 4: To Preclude Furie's Use of David Bundy's SARB Testimony; Motion in Limine 5: To Preclude Testimony Regarding Cost Overruns and Imprudent Expenditures; and a Motion to Strike Depositions as Exhibits to the Trial Brief. The Court summarily denied these Motions because the subject matter of these pretrial motions are contained within the agency record. The Court took note at trial that there was brief testimony regarding the petition filed in Harris County in the hearing before SARB, but the document is not contained within the record and was not admitted into evidence.[3]

II. LEGAL STANDARDS

a. Taxation Authority

7. The Alaska Constitution promotes a policy of developing Alaska's resources with an emphasis on the public interest.[4]

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[2] The Borough and Department interpret 15 AAC 56.100 to constitute a "floor" that the Department may not depreciate a property more that 80% of its replacement cost while the property is still in production, and 90% if the property is no longer producing or intended to produce, but has not yet been dismantled, *i.e.*, "shut in."

[3] Trial Tr. Vol. VII, 1221:3-1222:1.

[4] AK Const. Art. 8 § 1 ("It is the policy of the State to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest."); AK Const. Art. 8 s. 2

8. The Alaska Constitution grants authority to the legislature to fashion standards and methodology to appraise property taxable by the State.[5]

9. Through AS 43.56.010 *et seq.*, the Legislature provided that property used for oil and gas exploration, production, and pipeline transportation are not assessed by municipalities under AS 29.45, but by the State under AS 43.56.

10. Alaska Statute 43.56.060 vests the authority in the Department of Revenue to assess oil and gas production property at its full and true value at the start of each assessment year.

11. The ad valorem tax scheme for oil and gas property in Alaska provides such properties be assessed by the Department on a lien date of January 1, each year.[6] Notice of the Department's assessment of taxable property is issued to the owner and municipality in which the property is located by March 1 of the tax year.[7] The Department must certify the tax assessment roll by June 1 of year tax year.[8]

12. Alaska Statute 43.56.060(d) provides the Department must determine the "full and true value" of production property based on actual costs during construction; then for subsequent years, on the basis of "replacement cost new less depreciation based on the economic life of proven reserves."

("The legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the State, including land and waters, for the maximum benefit of its people.").

[5] AK Const. Art. IX, § 3.

[6] AS 43.56.060.

[7] AS 43.56.100.

[8] AS 43.56.135; 15 AAC 56.042.

13. Alaska Statute 43.56.060(e) provides the "full and true value" of pipeline property as the actual cost incurred or accrued on the construction commencement date until the following January 1 when the pipeline begins to transport gas or unrefined oil. For subsequent years, the full and true value is based on the "economic value of the property based on the estimated life of proven reserves of gas or unrefined oil then technically, economically, and legally deliverable into the transportation facility[.]"

14. Department regulation, 15 AAC 56.100(a)(1)-(2), provides production property is valued on a use value standard. Before the commencement of regular production, full and true value is the actual cost incurred or accrued as of the assessment date. After the commencement of regular production, replacement cost is calculated by the use of "accepted appraisal techniques or other acceptable methods and will reflect the full and current cost of a modern replacement for the production property physically present and installed as of the assessment date."

15. Department regulation, 15 AAC 56.100(a)(3), provides that depreciation of production property is determined either on the basis of a one-percent per year deduction for property serving reservoirs in ramp-up or plateau, or by applying a percent good factor to the replacement cost of production property serving reservoirs in production decline.

16. Department regulation, 15 AAC 56.100(a)(4) provides, "[d]epreciation of the replacement cost may not exceed 80 percent in any assessment year while a production property is in operation[.]"

17. Department regulation, 15 AAC 56.100(a)(5), provides that the Department will use the methodology set forth in the regulation "unless the Department determines deviation from the methodology necessary when either[:]" 1) a new reservoir significantly underperforms directly resulting in "super-adequacy," or 2) a "non-reservoir related circumstance occurs," significantly altering expected production.[9]

18. A taxpayer or municipality may request deviation.[10] In this instance, the proponent bears the burden of establishing that without deviation, the assessment would be unequal, excessive, or improper.[11]

19. Presence of significant underperformance or non-reservoir related circumstance that significantly alters production does not require the Department to deviate if the Department nonetheless finds that the assessment is not unequal, excessive, or improper.[12]

20. When the Department deviates, it may rely on "other acceptable methods" in its assessment.[13]

21. Both taxpayers and municipalities affected by the Department's assessment have the right to appeal the Department's assessment for an Informal Conference Decision

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[9] *Id.* (a)(5)(A)-(B).
[10] *Id.*
[11] *Id.*
[12] *Id.*
[13] *Id.*

(ICD).[14] An ICD reached by the Department must be issued no more than 30 days of the effective date of the notice of the assessment.[15]

22. Both taxpayers and municipalities adversely affected by the Department's ICD have the right to appeal to SARB for a Certificate of Determination (COD) no more than 50 days of the effective date of the notice of the assessment.[16] A hearing is held by a quorum of SARB members in which documentary evidence and witness testimony may be taken.[17] SARB may only adjust the assessment upon a finding the appellant has shown the valuation to be unequal, excessive, or improper or otherwise not determined in accordance with applicable law.[18] SARB must certify its decision within 7 days of the hearing's conclusion.[19]

23. Both taxpayers and municipalities adversely affected by SARB's Determination have the right to appeal to the Superior Court for trial *de novo* of the SARB's action.[20]

b. Standard of Review and Burden of Proof

24. The Superior Court conducts a *de novo* review of SARB's decision.[21]

25. Taxing authorities have broad discretion to determine the requisite valuation method for tax assessments.[22] Therefore, this Court confers deference to the Department and

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[14] AS 43.56.110; 15 AAC 56.020(c).
[15] 15 AAC 56.020(d).
[16] AS 43.56.120(a); 15 AAC 56.130(a).
[17] 15 AAC 56.130(b); 15 AAC 56.040(a) & (e).
[18] AS 43.56.130(f); 15 AAC 56.040(g).
[19] AS 43.56.130(g); 15 AAC 56.040(i).
[20] AS 43.56.130(i).
[21] *Id.*
[22] See *Bullock v. State*, 19 P.3d 1209, 1214 (Alaska 2001).

SARB as agency experts in its determination of the premise of value and methodologies that it uses to assess oil and gas production property.

26. If a reasonable basis for the taxing authority's method of valuation exists, the appellant's burden is to prove the Department and SARB employed a fundamentally wrong principal of valuation in its assessment of the Property.[23]

27. In evaluating the evidence, this Court has considered Civil Pattern Jury Instruction 02.23: "The evidence should be evaluated not only by its own intrinsic weight but also according to the evidence which is in the power of one party to produce and of the other party to contradict. If weaker and less satisfactory evidence is offered when it appears that stronger and more satisfactory evidence was within the power of one party to produce, the evidence should be viewed with caution."

28. The Court will also note that both parties make considerable reference in support of their arguments to Superior Court decisions in *BP Pipelines, Inc. v. State Department of Revenue*[24] and *BP Pipelines, Inc. v. Alaska*[25] in consideration of the Trans Alaska Pipeline (TAPS) and the appeal of its 2006 and combined 2007, 2008, and 2009 tax assessments under AS 43.56.060(e).

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[23] See *Cool Homes, Inc. v. Fairbanks N. Star Borough*, 860 P.2d 1248, 1263 (Alaska 1993).
[24] *BP Pipelines (Alaska) Inc. v. State Dept. of Revenue*, No. 3AN-06-8446 CI, 2010 WL 11431885 (Alaska Super. June 24, 2010) (The appeal of the 2006 assessment proceeded to trial *de novo* in the Superior Court before Judge Gleason in a five-week trial *de novo* beginning August 10, 2009).
[25] *BP Pipelines (Alaska) Inc. v. Alaska*, No. 3AN0608446, 2011 WL 11549442 (Alaska Super. Dec. 30, 2011) (The appeal of the 2007-2009 assessments proceeded to trial *de novo* before Judge Gleason in a nine-week trial *de novo* beginning October 26, 2010).

29. The Supreme Court of Alaska affirmed the Superior Court's decisions,[26] which established some precedent that is relevant to this case, such as: the application of the use value approach is legally appropriate valuation methodology for pipeline property,[27] the Department was not required to use a fair market valuation standard for pipeline property pursuant to a cost approach valuation using replacement cost new less depreciation,[28] and "proven reserves" as it is used in Chapter 56 are reserves that are "technically, economically, and legally deliverable," which can include undeveloped reserves without infrastructure in place.[29] The Supreme Court also affirmed the Superior Court's findings on depreciation, which is not provided for by regulation for pipeline property as it is for production property.[30]

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[26] *BP Pipelines (Alaska) Inc. v. State, Dep't of Revenue*, 325 P.3d 478 (Alaska 2014) [hereinafter "*BP Pipelines I*"]; *State, Dep't of Revenue v. BP Pipelines (Alaska) Inc.*, 354 P.3d 1053 (Alaska 2015) [hereinafter "*BP Pipelines II*"]. In *BP Pipelines I* and *II*, TAPS Owners, the Fairbanks North Star Borough, and the City of Valdez all appealed the Department's 2006 and 2007 assessments. The North Slope Borough joined in the appeal of the 2008 and 2009 assessments. *BP Pipelines II* at 2. The Supreme Court found the parties presented more evidence in the *BP Pipelines II* case; however, they acknowledged the operative facts remained "substantially the same and the superior court applied similar standards and methods for valuation." The Court found much of the issues raised in *BP Pipelines II* were similar or identical to those in *BP Pipelines I* and were "wholly or partially resolved by [their] prior opinion."

[27] *BP Pipelines I* at 484-85; *BP Pipelines II* at 1060.

[28] *BP Pipelines I* at 482-83; *BP Pipelines II* at 1059, n.31.

[29] *BP Pipelines I* at 491.

[30] Neither statute nor regulation provides for the method the Department *must* use to depreciate pipeline property. The full and true value of pipeline property in operation is determined "with due regard to the economic value of the property based on the reserve's economic life of the proven reserves[.]" AS 43.56.060(e)(2). Department regulation does provide that replacement cost less depreciation is an appropriate method to determine the pipeline's "economic value." 15 AAC 56.110(c). Department regulation also provides that pipeline property will be valued at actual cost less depreciation on a straight-line basis over the economic life of the proven reserves if the taxpayer can show the economic life of the proven reserves is "materially shorter" than the physical life of the pipeline. 15 AAC 56.110(d). The Superior Court's analysis of depreciation of TAPS included consideration of the three generally recognized categories: physical deterioration, economic obsolescence, and functional obsolescence. *BP Pipelines* (2011) at 59. The Superior Court found the economic age-life method to be a standard methodology used by the Department and deferred to this approach for physical depreciation of TAPS stated as a ratio between the effective age of the property and its economic life expectancy. *BP Pipelines* (2011) at 62. The Superior Court found found that additional depreciation was warranted to account for economic obsolescence using a scaling factor to account for TAPS' underutilization and functional obsolescence due to costs anticipated from the Owners' reconfiguration plan. *BP Pipelines I* at 487.

c. History of Department/SARB Valuation of Furie Property

30. SARB consists of a five-member board within the Department of Revenue.[31] SARB members are appointed by the Governor and confirmed by the Alaska Legislature.[32] Members must be knowledgeable of Chapter 56 assessment procedures.[33]

31. The Property was first appeared on the tax roll in 2012.[34] Development of the Property began in 2013 and production began in late 2015.[35]

32. The Department valued the Property using historic cost figures provided by Old Furie.[36] According to the certified assessment rolls, the Department valued the Property at approximately $241 million in 2016, $244 million in 2017, $243 million in 2018, $196, million in 2019, and $96 million in 2019.[37] The drop in property tax between 2017 and 2019 was due to additional depreciation added under Department Regulation 15 AAC 56.100 to account for reservoir underperformance in contrast to expected production.[38] Old Furie did not appeal any of the Department's assessments prior to the sale in bankruptcy.

33. For tax year 2021, the Department assessed the Property at approximately $81 million.[39] The Department assessed the property under the cost approach using the

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[31] AS 43.56.040.
[32] *Id.*
[33] *Id.*
[34] Trial Tr. Vol. I, 130:15-16.
[35] ROA 35-42, Ex. 1, Department of Revenue Decision No. 21-56-02, 2 (Mar. 30, 2021).
[36] The taxpayer is required by law to file a property statement with the Department, which includes historical costs incurred for the property. Trial Tr. Vol. II, 162:4-17; *See* 15 AAC 56.005. Furie, as it is referred to prior to HEX's acquisition in 2020, is "Old Furie."
[37] Trial Tr. Vol. I 130:10-25:131:1-3; ROA 239-555 Kenai Peninsula Borough's Hearing Brief, n. 32 (May 11, 2021).
[38] Trial Tr. Vol. I 130:10-25:131:1-3.
[39] ROA 35-42, Ex. 1, Alaska Department of Revenue Decision No. 21-56-02, 1 (Mar 30, 2021).

replacement cost less depreciation method.[40] The Department used the property statement filed by Furie, which reported the previous year's capital costs, and the historical record of property statements representing up to date costs that were then adjusted to current prices.[41] The Department applied 15 AAC 56.100 to depreciate the production and pipeline property.[42] The department applied a "standard" depreciation deduction under 15 AAC 56.100(a)(3)(B) for the reservoir in decline.[43] The Department also found that reservoir related circumstances warranted the use of proven reserves-based depreciation under 15 AAC 56.100(a)(5)(A) to account for an immediate and significant underperformance relative to expectations.[44] Total depreciation of the Property amounted to approximately 70% of the RCN.[45]

34. The Department rejected Furie's[46] argument on appeal to be that the basis of the assessment should be the sale price Furie paid for the Property in bankruptcy. In response, the Department stated:

> "[i]n requiring sole reliance on the cost approach, the legislature and the Alaska courts have recognized that Alaska is a limited market and its oil and gas properties are special purpose in nature. With no active market to look to, and a values standard of use[47] rather than market principals, the legislature required sole reliance on the cost approach for production property under AS 43.65.060(d)(2) and the Alaska courts have determined for pipelines under AS 43.56.060(e)(2).[48] The State Assessment Review Board has already

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[40] *Id.* at 5.
[41] *Id.*
[42] *Id.*
[43] *Id.*
[44] *Id.*
[45] *Id.*
[46] The Property was acquired by HEX, "Furie," June 2020.
[47] *Id.* at 6 (citing The Appraisal of Real Estate, 14th Ed., page 62).
[48] *Id.* (citing *BP Pipelines* (Alaska), 2010 WL 5195925 at 36 ¶ 95, 45 ¶ 113 through 50 ¶ 128).

determined that the legal standard for production properties under AS 43.56.060(d) is not market value and that sales price cannot be used as the starting point of the RCN valuation for oil and gas production property."[49]

35. Furie appealed the ICD to SARB and the Borough intervened in support of the Department's valuation.[50] SARB held a hearing beginning May 17, 2021.[51] SARB took evidence from Furie regarding its purchase of the Property in bankruptcy and heard testimony on the limits of the reserves Furie could economically produce without additional investment and the risk and uncertainty associated with bringing additional reserves online.[52] Furie argued the value of the Property was approximately $19.3 million.[53]

36. Furie's primary argument in its 2021 appeal was that the law requires the Department to consider the "economic life" of the Property as no more than the value of its enterprise—that is, the full and true value of the taxable property cannot exceed the value it contributes to the enterprise, especially when the property is special use property.[54] Furie argued that the difference between the value of the enterprise and the adjusted replacement cost of the taxable property equals the depreciation of the taxable property.[55] Furie argued the assessment on the basis of replacement cost new precludes any incorporation of fair market data and the market value cannot be wholly ignored

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[49] *Id.* (citing ITMO Caelus Natural Resources Alaska, LLC, OAH Nos. 14-0589-TAX, & 16.0362-TAX, SARB Certificate of Determination, 2016 WL 3592408 *13 (Alaska Dept. Rev. May 27, 2016)).
[50] ROA 827-831 Certificate of Determination OAH N0. 21-0591-TAX, 1 (May 24, 2021).
[51] *Id.*
[52] *Id.*
[53] ROA 95-110 Furie Operating Alaska, LLC Prehearing Brief OAH No. 21-0591-TAX, 1 (May 11, 2021).
[54] *Id.* at 2.
[55] *Id.* at 4.

when Alaska law requires the valuation of taxable property to be based on the economic life of proven reserves.[56] Furie argued that the Department disregarded all economic considerations related to the "market," which it believes is improper.[57]

37. At the conclusion of the 2021 hearing, SARB found the Department's ICD was not unequal, excessive, or improper.[58] Specifically, SARB found it would be improper to deviate from its accepted practice (citing *ITMO Caelus*) and Alaska law in order to accommodate for the risk and additional expense associated to access additional reserves or to regard Furie's purchase price for the Property as a proxy for replacement cost new.[59] SARB noted that Furie failed to provide all of is available reserves information at the hearing, which had an impact on the credibility of its arguments and in meeting its burden of proof.[60]

38. For tax year 2022, the Department assessed the Property at approximately $81.7 million.[61] Furie appealed to the Department arguing the full and true value of the Property was approximately $20.4 million.[62] The Department affirmed its valuation in its ICD.[63] Furie appealed the ICD to SARB, arguing the full and true value of the

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[56] *Id.*
[57] *Id.*
[58] ROA 827-831 Certificate of Determination OAH No. 21-0591-TAX, 1 (May 11, 2021).
[59] *Id.* at 3-4.
[60] *Id.*
[61] ROA Ex. 1 Department of Revenue Decision No. 22-56-01, 6 (Mar. 29, 2022).
[62] ROA 1267-1286 Appeal of Assessment by Furie Operating Alaska, 3 (Mar. 17, 2022).
[63] ROA Ex. 1 Department of Revenue Decision No. 22-56-01 (Mar. 29, 2022); ROA 2267-2272 Certificate of Determination OAH No. 22-0326-TAX (May 23, 2022).

Property to be approximately $18 million.[64] The Borough intervened in this appeal in support of the Department's valuation.[65]

39. SARB held a hearing beginning May 17, 2022.[66] At this time, Furie argued that the value of the Property was $7.8 million.[67] Furie again argued the Property cannot be valued more than the entire enterprise.[68] Furie argued that the Property only represents the operating assets of the enterprise.[69] Furie also argued that a replacement cost new figure must already account for and incorporate the three traditional types of depreciation: physical deterioration, functional obsolescence, and economic obsolescence.[70] Furie argued the Department did not account for inutility and superadequacy of the Property, which requires a unique and in-depth review of obsolescence.[71] Furie argued replacement cost new is best represented by the cost of the asset in a sales transaction.[72] Furie argued that this does not involve a determination based on fair market value because it accounts for the above described obsolescence.[73]

40. At the conclusion of the 2022 hearing, SARB found the Department's ICD was not unequal, excessive, or improper.[74] Specifically, SARB concluded: the value of Furie's business, with its obligations and liabilities, is not taken into account to value

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[64] ROA 1-29, Appeal of Department of Revenue Decision No. 17-56-03, 3 (Apr. 15, 2022).
[65] ROA 73-83, Kenai Peninsula Borough's Notice of Intervention (Apr. 26, 2022).
[66] ROA 2267-2272 Certificate of Determination OAH No. 22-0326-TAX (May 20, 2022).
[67] *Id.* at 2; ROA 2179-2200 Furie Operating Alaska, LLC Prehearing Brief, 2 (May 11, 2022).
[68] ROA 2179-2200 Furie Operating Alaska, LLC Prehearing Brief at 3-8.
[69] *Id.* at 3.
[70] *Id.* at 5-6.
[71] *Id.* at 6.
[72] *Id.* at 9.
[73] *Id.*
[74] ROA 2267-2272 Certificate of Determination OAH No. 22-0326-TAX, 4 (May 20, 2022).

production property under Alaska law; decreasing inutility is accounted for in the second phase of the Department's valuation methodology, not the first; overriding royalty interest (ORRI) payments have no bearing on depreciation calculations; dismantlement, removal, and restoration (DR&R) obligations are not unique to the Property and are not an aspect of proven reserves depreciation, and; Furie failed to demonstrate that the Sterling reservoir is no longer a proven reserve for the purpose of assessing the value of the Property.[75]

41. Furie appealed the 2021 and 2022 CODs to this Court for trial *de novo* pursuant to AS 43.56.130(i).[76]

42. Trial *de novo* was held July 24 to August 2, 2023.

43. State Petroleum Property Assessor, James Greely, testified. Mr. Greeley testified he has served in his role since March, 2007.[77] Mr. Greeley testified that he has assessed thousands of properties working for the Department and each year, the Department sees over 500 property IDs on the assessment roll, which can sometimes consist of multiple properties.[78] Mr. Greeley took part in the assessment of the Property for both tax years at issue. Mr. Greeley was qualified as an expert witness.[79]

44. Borough expert, Tom Anderson, testified in support of the Department's assessments. Mr. Anderson has 28 years' experience a professionally licensed appraiser and a

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[75] *Id.* at 3-4.
[76] 3AN-21-06462CI; 3AN-22-06774CI.
[77] Trial Tr., Vol. I, 62:3.
[78] Trial Tr., Vol. I, 66:11-12.
[79] Trial Tr. Vol. I, 69:13.

certified general appraiser in Utah.[80] Mr. Anderson served as the local assessor for the Kodiak Island Borough and Kenai Peninsula Borough and was an analyst and assessor at the Salt Lake County Assessor's office.[81] As assessor in Kenai, Mr. Anderson oversaw assessments for over 60,000 parcels and certified 60 assessment rolls.[82] Mr. Anderson was qualified as an expert witness.[83]

45. William "Bill" VanDyke, testified on behalf of the Borough. Mr. VanDyke worked for the Alaska Department of Natural Resources for 29 years in various management and engineering roles before becoming acting director of the Division.[84] Mr. Van Dyke testified before the Alaska Oil and Gas Conservation Commission.[85] Mr. VanDyke become an oil and gas consultant after leaving the Alaska DNR.[86] Mr. VanDyke provided two expert opinions on proven reserve and production forecasting on behalf of the Municipalities involved in the TAPS case.[87] Mr. VanDyke was qualified as an expert in petroleum and reservoir engineering.

46. Tom Walsh testified for Furie as a reserve analyst. Mr. Walsh is a geophysicist who has worked in the oil and gas industry in Alaska for 43 years.[88] Mr. Walsh currently works

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[80] Trial Tr. Vol. III, 392:7-8.
[81] Trial Tr. Vol. III, 392:3-24.
[82] Trial Tr. Vol. III, 393:24 - 394:1
[83] Trial Tr. Vol. III, 392:7-8.
[84] Trial Tr. Vol. II, 492:13-16.
[85] Trial Tr. Vol. II, 492:20-22.
[86] Trial Tr. Vol. II, 493:2-4.
[87] Trial Tr. Vol. II, 493:2-4.
[88] Trial Tr. Vol. VI, 1037:9-18.

in consulting and has testified as an expert in several court cases.[89] Mr. Walsh was qualified as an expert.

47. Kathy Spletter testified for Furie. Ms. Spletter received a bachelor's of science in chemical engineering.[90] Ms. Spletter later went into consulting where she specialized in assisting companies in improving operations and ownership optimization.[91] Ms. Spletter represented clients in mergers and acquisitions where she valued facilities and helped with negotiations.[92] Ms. Speltter then began appraising properties for ad valorem property tax purposes and was certified as a senior appraiser and accredited with the American Society of Appraisers.[93] Ms. Spletter specializes in machinery and technical specialties.[94] Ms. Spletter was qualified as an expert in appraisal and valuation.

48. Dennis Mandell has a background in accounting and tax.[95] Mr. Mandell has experience in property tax of oil and gas infrastructure.[96] Mr. Mandell was offered as an expert in business enterprise and use valuation.[97] The Court accepted Mr. Mandell's opinion as it relates to business valuation, generally, however he was not found to have a credible expert report as it related to the Property.[98]

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[89] Trial Tr. Vol. VI, 1038:17-24
[90] Trial Tr. Vol. VII, 1119:15-17.
[91] Trial Tr. Vol. VII, 1120:10-17.
[92] Trial Tr. Vol. VII, 1120:18-21.
[93] Trial Tr. Vol. VII, 1120:22-24; 1121:1-2.
[94] Trial Tr. Vol. VII, 1121:3.
[95] Trial Tr. Vol. VI, 924:6-9.
[96] Trial Tr. Vol. VI, 927:21-928:2.
[97] Trial Tr. 940:12-14.
[98] Trial Tr. Vol. VI., 1033:3-9.

49. Kevin Hemenway testified as a fact witness. Mr. Hemenway became Furie's CFO in July, 2020.[99]

50. John Hendrix is CEO, president, and owner of Furie.[100] Mr. Hendrix testified as a fact witness.

51. Jay Busch is Furie's exploration and development manager.[101] Mr. Busch testified as a fact witness.

52. Daniel Robertson is a consultant engineer for Furie.[102] Mr. Robertson conducts well and reservoir performance analyses.[103] Mr. Robertson testified as a fact witness.

III. DESCRIPTION OF THE PROPERTY

a. Development History

53. The Kitchen Lights Unit (KLU) is located in the middle of the Cook Inlet.[104] The KLU is approximately 83,000 acres, and considered the largest oil and gas unit in the Cook Inlet Basin.[105] From approximately 1962 to 1993, there were multiple wells drilled into the KLU, which proved oil and gas reserves, but were not pursued at the at time.[106]

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[99] Trial Tr. Vol. V, 814:1-6.
[100] Trial Tr. Vol. V, 671:14-15.
[101] Trial Tr. Vol. VI, 858:10-11.
[102] Trial Tr. Vol. VI, 905:15.
[103] Trial Tr. Vol. VI, 905:18.
[104] Trial Tr. Vol VI, 1039:10-13.
[105] Trial Tr. Vol. VI, 1039:14-17.
[106] Trial Tr. Vol. VII, 1165:1-4.

54. The initial exploration in the KLU eventually to be associated with the Property occurred in 2011.[107] At that time, the original owner, Escopeta, publicly announced it had discovered approximately 3.5 trillion cubic feet (TCF) of gas in the Cook Inlet.[108]

b. Ownership

55. The Furie project began to be developed by Escopeta Oil Company[109] and Deutsche Oel und Gas A.G. (DOGAG), in 2012.[110] Furie Operating Alaska was established in 2011 and serves as the operating company for DOGAG.[111]

56. HEX LLC acquired Furie in a bankruptcy sale in June 2020 and began management in July 2021.[112]

c. Physical Description

57. The Department determined the Property was classified as pipeline and production property for ad valorem tax purposes.[113]

58. The Furie Property, as it is installed and present today, consists of an offshore platform—the Julius R. Platform—six well slots, four wells, one pipeline that runs from the platform to an onshore production facility.[114]

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[107] Trial T. Vol. VII, 1165:12-14.
[108] Trial Tr. Vol. VI, 1041:9-13.
[109] Trial Tr. Vol. VI, 1041:9-13.
[110] Trial T. Vol. VII, 1165:15-1166:2.
[111] Trial T. Vol. VII, 1165:24-25.
[112] Trial Tr. Vol. I, 140:8-12.
[113] ROA 65-72, Department of Revenue Decisions No. 21-56-02, at 2.
[114] Trial Tr. Vol. IV, 497:15-23.

59. The original design for the Property was to have two pipelines, each with a capacity to transport 100 million cubic feet per day.[115] The onshore facility has a processing capacity of 45 million cubic feet of gas per day.[116]

60. The gas in the Kitchen Lights Unit is found in two layers—the shallower layer is the Sterling formation and the deeper layer is called the Beluga formation.[117] The Sterling formation is approximately 3,000-5,000 ft below the earth's surface and the Beluga formation is 5,000 ft. and deeper.[118] These formations produce natural gas.[119] They are the predominant gas-producing formations in the Cook Inlet.[120]

a. Bankruptcy Sale to Present

61. Several events appear to have contributed to Old Furie's bankruptcy.

62. Construction of the Property was completed in 2015.[121] Old Furie began production and sale of natural gas in November 2015.[122]

63. Following a drop in oil and gas prices, in 2016, State funding for oil and gas tax credits significantly reduced.[123] As of the bankruptcy petition date, Furie held approximately $105 million in tax credits eligible to be repurchased by the State.[124]

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[115] Trial Tr. Vol. VI, 1042:5-10.
[116] Trial Tr. Vol. IV, 498:2-6.
[117] Trial Tr Vol. IV, 496:22-24.
[118] Trial Tr. Vol. IV, 497:1-3.
[119] Trial Tr. Vol. IV, 497:3-5.
[120] Trial Tr. Vol. IV, 497:6-9.
[121] Trial Tr. Vol. I, 134:1-3.
[122] Trial Tr. Vol VII 1195:12; 1196:1-6; Furie Trial Ex. 39.
[123] Department of Revenue and Kenai Peninsula Borough's Proposed Findings of Fact and Conclusions of Law, 22 (Oct. 30, 2023).
[124] *Id.*

64. Old Furie contracted to sell gas to Homer Electric, Enstar, and CEA, which were to begin around 2018.[125] Delays in production led Old Furie to outsource gas supplies from other entities in order to meet the terms of these contracts.[126] Old Furie then began to experience high volumes of water in their production from the Sterling reservoir (wells A1, A2, and A4), which had to be brought to the onshore facility, separated, and disposed of.[127] The Property does not have a disposal well, so Old Furie paid to truck the separated water to Hilcorp's disposal well, which amounted to approximately $600,000 by November 2016.[128] Because of the influx of water into the production, Old Furie also experienced issues with freezing of the pipeline.[129] In order to unfreeze the line, Old Furie had to cease production from all of its wells—including KLU 3, which produced from the Beluga reservoir.[130]

65. Old Furie declared force majeure on their contracts until the line could be cleared of ice, which took approximately 2 ½ months.[131]

66. In 2018, the Department engaged in discussions with Old Furie on the apparent reservoir underperformance, which included meetings with Old Furie's reservoir engineers and those involved in formulating the reserve's production forecasts.[132] The Department required the CFO of Old Furie to attest to the facts and circumstances

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[125] Trial Tr. Vol. VII, 1200:8-10.
[126] Trial Tr. Vol. VII, 1200:11-14.
[127] Trial Tr. Vol. VII, 1201:3-9; 1203:5-8.
[128] Trial Tr. Vol. VII, 1201:10-12.
[129] Trial Tr. Vol. VII, 1202:18-21.
[130] Trial Tr. Vol. VII, 1203:9-16.
[131] Trial Tr. Vol. VII, 1204:5-8.
[132] Trial Tr. Vol. I 130:23-25; 131:4-8.

discussed in these meetings.[133] In 2019, the Department "began deploying" 15 AAC 56.100(a)(5) depreciation to the property.[134] In 2020, the Department "fully deployed" subsection (a)(5), which became the "new basis" for the valuation of the Property.[135]

67. Old Furie filed for Chapter 11 bankruptcy and the Court overseeing the sale laid procedures for selling the assets in a 2019 order.[136] The sale included a process where over 140 entities received information on the Property assets and business opportunity.[137] Eighteen of those entities signed a nondisclosure agreement in order to gain access to Old Fuire's virtual data room.[138] The field of potential buyers narrowed down to three active bidders.[139]

68. HEX, LLC eventually became the successful bidder. The acquisition occurred under a court-approved reorganization, which HEX met those conditions and the sale closed June 30, 2020.[140] The acquisition price totaled $34.2 million.[141] Management of the Property by HEX began July 1, 2020.[142]

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[133] Trial Tr. Vol. I 131:9-13.
[134] Trial Tr. Vol. I 131:1-3; 132:1-4 (Mr. Greeley characterized this as "partial deployment" of depreciation under 15 AAC 56.100(a)(5)).
[135] Trial Tr. Vol. I 131:1-3.
[136] Trial Tr. Vol. VII, 1208:3-5.
[137] Trial Tr. Vol. VII, 1208:10-14.
[138] Trial Tr. Vol. VII, 1208:20-22.
[139] Trial Tr. Vol. VII, 1209:7-9.
[140] Trial Tr. Vol. I 140:8-9.
[141] ROA 2267-2272 SARB Certificate of Determination, 1 (Mat 23, 2022).
[142] Trial Tr. Vol. I 140:10-12.

69. Furie is currently operating and maintaining the Property.[143] Since acquisition, A1 Beluga has been decommissioned[144] and the oil and gas separator and one of the compressors have been taken out of service.[145]

IV. PREMISE OF VALUE

70. A premise of value is included in all appraisals of property.[146] "Assessed value applies in ad valorem taxation and refers to the value of a property according to the tax rolls."[147]

71. The Alaska Constitution directs the Legislature to prescribe assessment standards.[148]

72. Alaska Statute 43.56.060(d)(2) directs the Department to value production property by its "replacement cost less depreciation based on the economic life of proven reserves."

73. Department regulation, 15 AAC 56.100, implements AS 43.56.060(d)(2), which provides production property "will be valued on a use value standard. . .determined on a replacement cost less depreciation basis[.]" The method prescribed by regulation to value the replacement cost of a production property for those subsequent years after commencement of regular production is "by the use of accepted appraisal techniques or other acceptable methods and will reflect the full current cost of a modern replacement for the production property physically present and installed as of the assessment date[.]"[149]

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[143] Trial Tr. Vol. V, 792:16-17.
[144] Trial Tr. Vol. V, 792:23-25.
[145] Trial Tr. Vol. V, 793:7-17.
[146] *BP Pipelines* (2010) at 11 (citing American Soc'y of Appraisers, Valuing Machinery and Equipment: The Fundamentals of Appraising Machinery and Technical Assets 2 (2d ed. 2005)); *BP Pipelines* (2011) at 13.
[147] *BP Pipelines* (2010) at 11.
[148] AK Const. art. IX, § 3; see BP Pipelines (2010) at 11.
[149] 15 AAC 56.100(a)(3).

74. The Department and SARB strive to value property at its "full and true value" as required by Alaska law.

a. Limited Market/Special Use Property

75. The parties do not dispute that the Property has a limited market.[150] A limited market and special purpose property are valued based on its current or existing use.[151] The highest and best use of a special use property as improved is the continuation of its current use if that use remains viable.[152] The evidence established that the Property's continuing use of producing gas from the KLU is viable.

76. The parties do not dispute that the Property is a special use property.[153] The Property—wells, platform, onshore facility, and pipeline—were put in place to serve production and transportation of natural gas from the KLU reservoir and is dedicated to this purpose. The Property has no alternative uses and there are no substitute properties or properties with like utility.

b. Use Value Approach

77. The parties do not dispute that the premise of value for production property in operation and pipeline property in operation is a "use value standard" under 15 AAC 56.100 and 15 AAC 56.110.[154]

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[150] Trial Tr. Vol. I, 144:3-21, 258:25-259:1-6; Trial Tr. Vol. VIII, 1355:21-22.
[151] *BP Pipelines* (2012) at 15 (citing the Appraisal of Real Estate at 294 (13th ed. 2008)).
[152] *Id.*
[153] Trial Tr. Vol. I, 145:2-8; Trial Tr. Vol. VIII, 1358:2-4.
[154] Trial Tr. Vol. I, 146:10-17; Trial Tr. Vol. VIII, 1246:17-20.

78. The 14th edition of the Appraisal of Real Estate (TARE) is an accepted appraisal treatise that was relied on by all parties at trial.[155] TARE defines "use value" as "the value a specific property has for a specific use."[156] "In estimating use value, an appraiser focuses on the value the real estate contributes to the enterprise of which it is a part or the use to which it is devoted, without regard for the highest and best use of the property or the monetary amount that might be realized from its sale."[157] The parties dispute the meaning of this definition.

79. Mr. Greeley testified that use value is the value a specific property has for a specific use.[158] Mr. Greeley testified that the Department finds a property's "highest and best use" is the current use.[159]

80. Mr. Greeley testified the "use value" is the utility of the Property, which is determined by how depreciation relates to the replacement cost.[160] Mr. Greeley testified the real estate's contribution to the enterprise is the replacement cost of the platform, pipeline, and onshore facility.[161] Mr. Greeley testified the value is expected peak production at 100% utility.[162] Mr. Greeley testified that "[r]eplacement cost should be a similar new property having the nearest equivalent utility as the property being appraised."[163] Mr.

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[155] See ROA 2022 643-645, Ex. jj; The Appraisal of Real Estate at 62 (14th ed. 2015).
[156] *Id.*
[157] *Id.*
[158] Trial Tr. Vol. I, 146:8-9.
[159] Trial Tr. Vol. I, 147:4-5.
[160] Trial Tr. Vol. I, 148:11-13.
[161] Trial Tr. Vol. I, 148:3-7.
[162] Trial Tr. Vol. I, 148:8-10.
[163] Trial Tr. Vol. I, 147:6-8.

Greeley said, when a property does not perform as expected, Mr. Greeley testified the use value is the relationship between its current utility and current production rates.[164]

81. Furie argues that the law requires the Department to value production property "based on economics" and the use value premise arises from economic principles.[165] Furie argues the premise of value in the context of AS 43.56.060(d) is based on a system that seeks to determine the replacement cost for equipment needed to develop oil and gas resources in light of the value received from the resource's production.[166]

82. Ms. Spletter testified that, taking into account economic principles, there are two ways to appraise a property; either at its highest and best use or on its use value.[167] Ms. Spletter characterized the use value and highest and best use concepts as either capturing a property's intended purpose and valuing it based on that use versus an alternative purpose that yields the most profit for that property and valuing it based on that use.[168] Ms. Spletter testified that the use value of a special use property is the same as the highest and best use of that property because it has no alternative use.[169] In this case, Ms. Spletter said the use value of such a property is its highest, and best use and when those align, market value is the same as the use value.[170]

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[164] Trial Tr. Vol. I, 148:16-18.
[165] Furie Proposed Findings of Fact and Conclusions of Law, 45 (Oct. 30, 2023).
[166] *Id.*
[167] Trial Tr. Vol. VIII, 1244:18-20.
[168] Trial Tr. Vol. VIII, 1244:21-25; 1245:1-19.
[169] Trial Tr, Vol. VIII, 1246:2-5.
[170] Trial Tr, Vol. VIII, 1246:6-9.

83. Ms. Spletter testified the use value of a piece of property is defined by what it contributes to the enterprise it is a part of or use to which it is devoted.[171] Ms. Spletter referenced the *BP Pipelines* cases and the Superior Court's finding that "[a]n appraiser may consider the income generated by the entire integrated economic enterprise and then allocate a portion of that income and resulting value back to the parts of the integrated enterprise for which a value is to be determined."[172] Ms. Spletter explained that this concept is regarded as an integrated income approach, which is a form of unit valuation where the assessor values a group of integrated assets functioning as one economic unit. Ms. Spletter's opinion is that in *BP Pipelines*, the Court rejected the tariff income approach in valuing TAPS because, alone, it was not an appropriate proxy for the income stream that should be considered when valuing the pipeline's contribution to the entire TAPS integrated enterprise—the value of the reserve in the North Slope, plus the pipeline in Valdez.[173] Ms. Spletter's opinion is that in Furie's case, "the acquisition of the entire enterprise validates the value of all of the pieces when viewed together, and what was purchased by Furie was really the value of the proven reserves…The use value recognizes the value of the property as it's currently used, and the property's value based on its contribution. And the use value cannot be a value greater than the value of the entire enterprise."[174]

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[171] Trial Tr, Vol. VIII, 1247:14-19.
[172] Trial Tr, Vol. VIII, 1252:1-5.
[173] Trial Tr. Vol. VIII, 1249:5-11.
[174] Trial Tr. Vol. VIII, 1253:22-25-1254:8-10.

84. Though Furie's argument is not fundamentally incorrect, it is misguided when put in context of Alaska law and the findings of the *BP Pipelines* cases. There, the Court considered whether the Department could apply a use value standard to TAPS using the replacement cost new method. Although the Court found the law did not exclude a tariff income approach, the Court found the use value standard best captures the "economic value" of the pipeline for its specific and limited purpose of transporting oil from the North Slope to the market when its value can only be realized as a part of an integrated system designed for a specific purpose.[175]

85. This Court finds the premise of value under the use value standard as it is used in AS 43.56.060(d) does not include business value or business enterprise value. In contrast to TAPS and the Superior Court's findings in *BP Pipelines* with respect to use value, production property is valued by the ability of the wells, platform, pipeline, and onshore facility to produce natural gas at its expected peak production at 100% utility.

V. VALUATION METHODOLOGY

a. Replacement Cost

86. The legislative history of AS 43.56.060 clearly shows that the legislature intended AS 43.56.060(d) require exclusive use of the cost approach to value production property.[176]

87. There are three generally recognized starting points for the application of the cost approach: original cost, reproduction cost, or replacement cost.[177]

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[175] *BP Pipelines* (2010) at 14-15.
[176] *See BP Pipelines I* at 484.
[177] *Id.* at 487.

88. The Alaska Supreme Court has held, and this court agrees, that the cost approach is an acceptable valuation methodology for oil and gas pipeline property under AS 43.56.060(e).[178] The parties agree that AS 43.56.060(d)(2) requires sole reliance on the replacement cost method, and therefore a jurisdictional exception to Uniform Standards of Professional Appraisal Practice (USPAP)[179] applies to the Department's appraisals of oil and gas production properties.[180] The parties disagree as to the application of the replacement cost method—namely whether the "starting point" of replacement cost new under Alaska law must incorporate, or at the very least, reconcile significant disparities in the Department's valuation and market data.

89. On a Motion for Partial Summary Judgment, this Court found that replacement cost less depreciation is the required starting point for the assessment of production property under AS 43.56.060(d)(2) and the Legislature clearly did not intend production property be valued based on fair market value. However, the court found "insofar as whether fair market value data must be wholly excluded from the replacement cost assessment and

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[178] *See BP Pipelines II* at 1059-60.

[179] USPAP is governed by the Appraisal Foundation and the Appraisal Qualifications Board and the Appraisal Standards Board. USPAP requires appraisers maintain a licensure through qualifications of education and experience and enforces regulations at the federal and state level. The purpose of USPAP is to promote and maintain a high level of public trust in appraisal practice by establishing requirements for appraisers. USPAP addresses the ethical and performance obligations of appraisers through definitions, rules, standards, and statements, even though there are currently no active statements in the USPAP document. There are 10 total Standards in USPAP. USPAP sets forth generally accepted appraisal methodologies that certified assessors may employ in making assessments. USPAP is the guidance for all certified appraisers. An appraiser first applies the law of the jurisdiction, then methodologies that are consistent with USPAP. An appraiser "must cite to the portions of USPAP that they are not about to comply with and why, and then they have to comply with the rest of the USPAP that they are still able to comply with." See Trial Tr. Vol III 397-99.

[180] Trial Tr. Vol. I, 75:18-20; Trial Tr. Vol. III, 442:9-12; Trial Tr. Vol. VIII, 1349:12-1350:2.

how fair market value data was used in the assessment of Furie's property remains a genuine issue of material fact."

90. Neither statute nor regulation define "replacement cost." In *BP Pipelines*, the Superior Court determined through relevant literature that replacement cost new may be defined as "the current cost of a similar new property having the nearest equivalent utility as the property being appraised, as of a specific date."[181] The Superior Court also found it may be defined as "the estimated cost to construct, as of the effective date, a substitute for the [property] being appraised using contemporary materials, standards, design, and layout."[182] In *BP Pipelines II*, the Alaska Supreme Court found, "under the replacement cost new less depreciation approach, 'the appraiser starts with the current replacement cost new of the property being appraised and then deducts for the loss in value caused by physical deterioration, functional obsolescence, and economic obsolescence.'"[183]

91. The Department adjusts original cost to current cost using the Marshall & Swift Petroleum index.[184] Marshall & Swift is a nationally recognized company widely used as a reliable appraisal tool.[185]

92. Mr. Greeley testified that the Department uses "proven reserves depreciation" to account for all forms of depreciation.[186] Mr. Greeley testified that physical deterioration

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[181] *BP Pipelines* (2010) at 22; *BP Pipelines* (2011) at 27 (*citing* Am. Soc'y of Appraisers, Valuing Machinery and Equipment at 186 (2d ed. 2005)).
[182] *BP Pipelines* (2010) at 22 (*citing* The Appraisal of Real Estate at 385 (13th ed. 2008)); *BP Pipelines* (2011) at 27 (*citing* The Appraisal of Real Estate at 385 (13th ed. 2008)).
[183] *BP Pipelines II* at 1057, n.9 (citing Am. Soc'y of Appraisers, Valuing Machinery and Equipment: The Fundamentals of Appraising Machinery and Technical Assets, 561 (2d ed. 2005)).
[184] Trial Tr. Vol I, 93:1-9.
[185] Trial Tr. Vol I, 93:1-9.
[186] Trial Tr. Vol I, 95:16-100:14.

is not accounted for in newer properties because this type of deterioration will not result in a shut-in of the well, decreasing production.[187] Mr. Greeley testified that functional obsolescence, a structural flaw, is also not relevant under use value, reserves-based depreciation.[188] He said, if the flaw affects production, and it is not economic to fix the flaw, the well will be shut-in as a result.[189] However, the Department regards a flaw that does not affect production as merely a cost of doing business.[190]

93. Ms. Spletter testified she relied on the Department's replacement cost figures to arrive at her opinions of value for both tax years at issue.[191] Ms. Spletter testified that her discrepancy with the Department's assessment is in regard to depreciation.[192] Ms. Spletter testified that the cost approach is based on a theory of substitution—that depreciation should measure the inferiority, or "superadequacy," of the subject property because "a prudent buyer will not pay more for a property than the cost of acquiring a substitute property of equivalent utility."[193] Ms. Spletter testified that based on this concept, a starting point for replacement cost new must account for obsolescence and deterioration, otherwise it is merely a reproduction cost.[194] Ms. Spletter testified that the trending cost method is a way of estimating a property's reproduction cost, merely

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[187] Trial Tr. Vol. I, 95:17-96:11.
[188] Trial Tr. Vol. I, 96:12-97:8.
[189] *Id.*
[190] Trial Tr. Vol. I, 96:21-25.
[191] Trial Tr. Vol. VIII, 1418:8-10.
[192] Trial Tr. Vol. VIII, 1400:1-6.
[193] Trial Tr. Vol. VIII, 1255:8-13.
[194] Trial Tr. Vol. VIII, 1261:2-9.

indexed to current cost.[195] Ms. Spletter again referenced the Superior Court's conclusions in *BP Pipelines* to support her opinion.[196]

94. Ms. Spletter said the literature defines historical cost is the cost of a property when it is first placed into service by its first owner as is distinguished from original cost, which is the initial cost of the property in the hands of its present owner. Ms. Spletter testified based on this concept one can either start with a reproduction cost, or its sale price.[197] Ms. Spletter agreed that the Marshall & Swift Index is widely recognized, however she advocated for the use of the IHS capital cost index Upstream Operating Cost Index. Ms. Spletter testified that the index is widely used to measure cost inflation in the upstream oil and gas sector.[198] Ms. Spletter could not testify to the exact breakdown of data to apply the index, but her opinion is that the index better reflects the Property's replacement cost because it is reflective of a capital investment made during a high-cost period and therefore indicates an excessive total cost to construct.[199]

95. Mr. Greeley testified that the principle of substitution, as it is applied under the cost approach, is the most a buyer will pay for a property is the cost to construct it themselves and represents the ceiling of a sale price, not the replacement cost.[200] Mr. Greeley quoted the Property Appraisal and Assessment Administration Handbook from the International Association of Assessing Officers, who set assessing standards for

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[195] *Id.*
[196] Trial Tr. Vol VIII, 1255:8-13.
[197] Trial Tr. Vol. VIII, 1261:10-19.
[198] Trial Tr. Vol., 1307:9-14.
[199] Trial Tr. Vol. VIII, 1307:3-1309:12
[200] Trial Tr. Vol. I, 149:22-25.

assessment jurisdictions, which read: "[i]n the cost approach, the cost of building a similar property will serve as a ceiling on the price of an existing property."[201] Mr. Greeley testified that as such, the acquisition price cannot represent full and true value or even a market value, but more of a discounted price as a result of a bankruptcy sale.[202] Ms. Spletter testified that the cost approach is still rooted in economic valuation of the types of depreciation that sustain the property and provides a different way of looking at loss in value using economic criteria.[203]

96. Mr. Anderson testified that although Alaska law does not specifically prohibit the use of the market extraction approach, the specific term "market extraction" likely would not qualify because it does not directly measure depreciation based upon the economic life of proven reserves because it's not the sale component of a sale price that would be used for a market extraction method.[204]

97. Mr. Anderson testified that in his opinion, the Department's assessment is consistent with the use value standard and complied with AS 43.56.060(d) and 15 AAC 56.100 as well as USPAP Standard 5 with a jurisdictional exception.[205] Mr. Anderson testified that the Department's valuation was consistent with the standard of value—its full and true value—which is not necessarily the same as market value.[206] Mr. Anderson

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[201] Trial Tr. Vol. I, 150:1-9.
[202] Trial Tr. Vol. I, 150:19-24.
[203] Trial Tr. Vol. VIII, 1241:4-17.
[204] Trial Tr. Vol. III, 471:2-3; 482:6-14; 483:19-20.
[205] Trial Tr. Vol. III, 442:6-12.
[206] Trial Tr. Vol. III, 442:23-25; 443:1.

testified that the Department's use of the Marshall & Swift Index is an acceptable practice and commonly used by appraisers.[207]

98. The Court finds the use of fair market value data under the replacement cost new approach does not alter its application, or invite sale or income approach methods into consideration. The Department is not required by law to reconcile a valuation that is consistent with Alaska law against comparable sale or income approaches. This finding is consistent with Legislative intent and the Department and SARB's longstanding practice.[208]

99. Based on testimony and evidence taken at trial *de novo* and review of the agency record, the use of market data to adjust the replacement cost of an existing property is not violative of AS 43.56.060(d) or fundamentally wrong. The Department's use of the Marshall & Swift index, albeit derived from market value principles, aligns with the Legislature's intent to "capture" the value of a production property for ad valorem tax purposes when it is constructed and in operation for a particular use. Use of such information does not then permit inclusion of fair market value information or the principle of substitution to reconcile against the Department's methodology and legal obligation under AS 43.56.060(d). The value of production property in operation is its

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[207] Trial Tr. Vol. III, 466:18-20.

[208] *See BP Pipelines I* at 484; Minutes, H. Fin. Comm. Hearing on H.B. 1, 8th Leg., 1st Spec. Sess. 51 (Oct. 22, 1973) (comments of Homer Burrell, Director, Division of Oil and Gas remarking fair market value would not be appropriate for production property); See In the Matter of: Caelus Natural Resources Alaska, LLC, 2016 WL 3592408 (SARB found the sales price Caelus paid for Pioneer Natural Resource USA, Inc.'s interest in the Oooguruk project did not represent a reasonable proxy for replacement cost. SARB said, "[r]eplacement cost new is not equivalent to fair market value" because the legislature did not intend production property to be assessed at the price it would bring into the open market between knowledgeable buyers and sellers.).

historic cost scaled to current value using a petroleum index, here the Marshall& Swift index. Inutility of production property has no bearing on the replacement cost and is appropriately accounted for in the Department's depreciation calculations.

100. Mr. Hemenway testified that January 2021, he filed a complete, true, and correct property tax statement and historical book values of Furie's Property to the Department.[209] Furie reported historical book values from 2012 to 2020 for tax year 2021. Mr. Hemenway was not questioned as to Furie's filings for tax year 2022.

101. Mr. Greeley testified he relied on Furie's property statements to arrive at the historic cost to construct the Property to date at $683,141,915.[210] The Department deducted intangible drilling expenses from the cost pursuant to AS 43.56.060(f) and 15 AAC 56.120.[211] After inflating using the Marshall & Swift Petroleum index, the Department determined the cost total replacement costs for 2021 and 2022 were $258,456,823 and $277,059,580, respectively.[212]

102. The Court finds the Department's replacement cost valuation reliable and in accordance with Alaska law. Furie did not present sufficient evidence to show that the Department's method is fundamentally wrong.

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[209] Trial Tr. Vol. I, 161:14-166:21.
[210] Trial Tr. Vol. II, 166:11-15; See KPB-5 2021 Furie Assessment; See KPB-22 2022 Furie Assessment (The Department separates costs associated with onshore facilities, wells, pipeline, and platform and does an individual replacement cost calculation for each and sums these values for a total replacement cost.).
[211] Trial Tr. Vol. II 170:4-7; Intangible drilling expenses pertain to expenses on wells. The Department sets a dollar-per-foot standard for the North Slope and the Cook Inlet and apply that standard to the well depth. The non-tangible dollar-per-foot standard in 2021 was $115.57 per foot, and $124.59 per foot in 2022. Trial Tr. Vol II, 170:8-23.
[212] Trial Tr. Vol., II 172:15-16.

b. Depreciation

103. Alaska law requires the Department to depreciate the replacement cost of production property "based on the economic life of proven reserves."[213]

104. Department regulations provide, depreciation of property in production decline must be determined by application of a percent good factor to the replacement cost.[214] Per regulation, the Department may "deviat[e] from the methodology" to account for additional depreciation when it deems necessary.[215] The Department may use "other acceptable methods" to account for an immediate and significant underperformance of the property's production relative to "documented expectations," and/or non-reservoir related circumstances that significantly alter production.[216]

105. Neither statute or regulation define the term "economic life," "documented expectations," or "other acceptable methods." The parties disagree as to these definitions.

i. Proven Reserves

106. The parties do not disagree that the Alaska Supreme Court has established precedent as to the definition of "proven reserves." Discovered reserves, whether they are proven or probable, must be technically recoverable, economically recoverable, and legally deliverable to the property's pipeline in order to be taxable.[217]

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[213] AS 43.56.060(d)(2).
[214] 15 AAC 56.100(a)(3)(B).
[215] 15 AAC 56.100(a)(5).
[216] *Id.*
[217] Trial Tr. Vol. IV, 503:20-25; 504:1-3.

107. Mr. VanDyke testified in most detail about the different categories of reserve estimates. Mr. VanDyke testified that there are different Subclasses of proven reserves. He testified, there are proven developed producing reserves; developed, not-producing reserves; proven undeveloped reserves; and probable reserves. Proven, developed-producing reserves are those that are online, producing today.[218] Proven developed not-producing reserves are reserves where a well has been drilled and the resource is ready to produce, but is not producing yet.[219] Proven undeveloped reserves are reserves that are reasonably certain to exist because they can be supported by proven estimates, but there is no well to access and develop them.[220] Mr. VanDyke testified that the reserves in between two existing wells are an example of proven undeveloped reserves.[221] A "reasonable certainty" is a high degree of certainty, at approximately 90%.[222] Finally, probable reserves are undeveloped reserves supported by at least a 50% certainty.[223]

108. Society of Petroleum Engineers (SPE) is an international petroleum engineering society. The SPE articulates a generally accepted process to describe proven reserves, contingent gas resources, and undiscovered resources.[224] Mr. VanDyke testified that according to the Society of Petroleum Engineers' definitions, the difference in the categories between proved, probable, and possible is the level of certainty of the

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[218] Trial Tr. Vol. IV, 502:4-5.
[219] Trial Tr. Vol. IV, 502:6-13.
[220] Trial Tr. Vol. IV, 502:14-18.
[221] *Id.*; 510:2-4.
[222] Trial Tr. Vol. IV, 502:19-24.
[223] Trial Tr. Vol. IV, 502:25; 503:1-3.
[224] Trial Tr. Vol. IV, 500:18-23.

estimate.[225] He said, regardless of any degree of certainty, they are all considered "proven reserves" under Alaska law because support for the mere existence of a resource meets the conditions of technically recoverable, economically recoverable, and legally deliverable.[226]

109. Mr. VanDyke testified that contingent resources are reserves that have been discovered, but "some contingency [] doesn't allow you to move them up to the next category."[227] He said it may be unknown if the reserve is economically recoverable yet, so discovery wells are drilled to ascertain the volume of the reserve.[228] Mr. VanDyke testified it may be that the appropriate technology to access the reserve has not been ascertained yet.[229]

110. The Petroleum Resources Management System states contingent resources have "an associated chance of development. Contingent resources may include, for example, projects for which there is no currently viable market, where commercial recovery is dependent on technology under development, or where evaluation of the accumulation is insufficient to clearly assess commercially."[230]

111. The Property has access to two separate geologic formations: Sterling and Beluga. The reserve reports prepared for the Property list the formations separately. Furie

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[225] Trial Tr. Vol. IV, 504:13-18.
[226] Trial Tr. Vol. IV, 504:13-18.
[227] Trial Tr. Vol IV, 510:15-18.
[228] Trial Tr. Vol. IV, 506:5-10; 510:20-22.
[229] Trial Tr. Vol IV, 510:19-20.
[230] Trial Tr. Vol IV, 516:14-21.

commissioned various third-party entities to prepare proven and probable reserves estimates:

- The Sierra Pine Resources International reserve report uses data from 2013. It is a proven reserve report. This report forecasted a peak rate of 53 MCF to be reached by 2015.
- The Deloyger and MacNaughten reserve report, also prepared in 2013, shows proven reserves of 59 BCF.
- Netherland, Sewell & Associates prepared reserves reports that showed 59.5 BCF of proven reserves as of December 31, 2013 and 56.5 BCF of proven reserves as of December 21, 2014.
- Global Energy Consultancy, LLC prepped a reserve report dated October 23, 2019. The report provided for proven reserves of 56.4 BCF.
- Eastex Petroleum Consultants prepared a reserve report March 1, 2021. The report provided for proven reserves at 59.8 BCF.
- Eastex Petroleum Consultants provided a second report as of December 31, 2021 in its report dates March 15, 2022. Eastex did not include the Sterling formation in this report, which was requested by Furie. Eastex estimed 23.7 BCF for this report
- Eastex provided a third report dated January 26, 2022, which included the Sterling formation. The report estimated 60.6 BCF.

112. Mr. VanDyke testified that relying on reserve reports is a reasonable way to forecast production rates and reserve estimates. The reserve reports the Department relied on were all signed by a certified petroleum engineer.

c. Economic life of Proven Reserves

113. Furie argues that the cost approach requires appraisers to account for all "economic burdens" that affect the reservoir's performance, such as: the excessive water production from the Sterling reservoir; sand production; "high" ORRI obligations; DR&R obligations; "excessive" and "imprudent" capital expenditures made by Old Furie; and the Department's failure to reconcile comparable sales data with the actual cost of the Property as an indicator of economic obsolescence.[231]

114. Mr. Anderson testified that royalty rates may impact the economic life of a reserve.[232]

115. Mr. Walsh testified property taxes have an important influence on funding for a project and anticipating economic field life where production cannot pay for operating costs and taxes.[233]

116. Mr. Greeley testified that what is produced is "economic" by definition.[234] The Court agrees. This view is consistent with the Court's view of TAPS in the *BP Pipelines* case. There, the Court recognized that under the use value approach, the pipeline's

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[231] Furie Proposed Findings of Fact and Conclusions of Law at 89-96.
[232] Trial Tr. Vol. III,475:15-22.
[233] Trial Tr. Vol VI 1048:3-10.
[234] Trial Tr. Vol. I, 100:15-18.

economic value" is derived from its purpose of transporting oil from the North Slope to Market, not what may be realized merely by the sale of that resource or capital costs associated with regulated tariffs.

117. There is no question, here, that the law requires production property be valued relative only to the reservoir it serves, which does not include the going concerns of the business that operates it. Furie's argument that the Department must consider the "economic burdens" to the developer in ad valorem tax valuation is not persuasive. There is no indication in Alaska law or regulations or Legislative history of AS 43.56.060(d) that the Department must consider the going economic concerns of a business when it calculates the "economic life" of a reservoir. The Property's "economic life" is derived from its use in developing the KLU.

i. Depreciation of reservoir in production decline

118. The Department determines a property is in production decline if production in the preceding year is 90% or less of the historic peak.[235] The Department relies on production data compiled by the Alaska Oil and Gas Conservation Commission (AOGCC).[236] Taxpayers are required to report production to AOGCC.[237]

119. Mr. Greeley testified that when property is brand new and no reserves have been produced, there is 0% depreciation, or 100% good.[238] Mr. Greeley testified that proven

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[235] 15 AAC 56.100(c)(2).
[236] Trial Tr. Vol. II, 182:4-8.
[237] *Id.*
[238] Trial Tr. Vol. I, 100:2-4.

reserves depletion occurs from the production of the proven reserves over its economic life.[239] He said by definition, what's produced is "economic," therefore measuring the amount of inception-to-date proven-reserve depletion each year measures reserves-based depreciation for the property that serves that reservoir.[240]

120. Mr. Greeley testified that production rates and proven reserves are highly correlated—the more the reserve, the higher the production rate, and vice versa—therefore the Department's use of actual production rates as compared to the previous year's peak is an appropriate indication of any inutility of the property serving those reserves.[241]

121. Mr. Van Dyke agreed that the Departments current formula that relies on the previous year's production is a good indicator of declining reserves.[242] Mr. VanDyke testified that, in the past, the Department calculated the remaining life of proven reserves by doing a production forecast.[243] He said the Department's method of estimating the remaining life of a reserve is a good proxy for executing a full-blown production forecast of a declining reservoir.[244]

122. Mr. Greely testified to the Department's use of scaled production methodology. Mr. Greeley testified that the scaling factor of .69 is a cost engineering concept that reflects

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[239] Trial Tr. Vol. I, 100:9-11.
[240] Trial Tr. Vol. I, 100:15-18.
[241] Trial Tr. Vol. I, 100:23-101:3.
[242] Trial Tr. Vol. IV, 519:22-520:1.
[243] Trial Tr. Vol. IV, 519:14-21.
[244] *Id.*

the nonlinearity between cost of a property and volumetric throughput.[245] Mr. Greeley testified this means that the Department accounts for project size (cost) relative to its throughput—that a development that produces twice as much as another will not typically cost twice as much.[246]

123. Mr. Greely said the scaling factor the Department uses for production property was the result of an industry study the Department conducted prior to his appointment.[247] In 2018, the Department amended its regulations to include the scaled production methodology, which included input from municipalities and developers.[248]

124. Mr. VanDyke testified that the Department's use of the scaled production methodology is consistent with Alaska law requiring depreciation be based on the economic life of the proven reserves.[249] Mr. VanDyke testified the method is a good indicator of declining reserves and underperformance of a well.[250]

125. The Court finds the Department's use of the scaled production methodology reliable.

126. For both assessment years at issue, the Department divided the prior calendar year's production rate by the historic peak production rate reached in 2018 and scaled the

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[245] Trial Tr. Vol. II, 203:8-204:2.
[246] Trial Tr. Vol. II, 203:18-204:2.
[247] Trial Tr. Vol II, 205:4-6.
[248] Trial Tr. Vol., II, 205:18-206:1.
[249] Trial Tr. Vol. IV, 519:7-13.
[250] Trial Tr. Vol. IV, 519:22-520:8; 525:22-526:2.

quotient to determine percent good.[251] The replacement cost is then multiplied by the percent good to determine replacement cost less depreciation.[252]

ii. Additional Depreciation relative to Documented Expectations/Proven Reserves

127. The parties do not disagree that additional depreciation was required for the Property. The parties disagree as to how depreciation is applied.

128. Again, Furie's position is that standard appraisal practice requires the appraiser to take into consideration all forms of depreciation. The parties also disagree on the value of the proven reserves that served as a basis for Old Furie's expected production.

129. In pursuit of capturing all forms of depreciation, Ms. Spletter separately applied a market extraction analysis and the economic age-life method to the Department's replacement cost figures and then reconciled these approaches to form her opinion of value.[253] Ms. Spletter testified that these methods are in accordance with the cost approach.[254] Ms. Spletter also justified her opinion of value based on the language of 15 AAC 56.100(a)(5) that permits the use of "other acceptable methods" when the Department deviates.[255]

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[251] See KPB-5 2021 Furie Assessment; See KPB-22 2022 Furie Assessment (Again, the Department does a separate depreciation calculation for each item of property—onshore facilities, wells, platform, and pipeline).
[252] *Id.*
[253] Trial Tr. Vol. VIII, 1325:20-1336:2.
[254] See Trial Tr. Vol. VIII, 1332:15-20.
[255] Trial Tr. Vol VIII, 1242:3-6.

130. In her application of the economic age life method, Ms. Spletter accounted for Furie's ORRI obligations as a form of external obsolescence.[256] She found a net loss of $114.3 million as a result.[257] Ms. Spletter also accounted for Furie's DR&R obligations in the reserve's depreciation.[258] Ms. Spletter's analysis resulted in a valuation of $14 million in 2021 and $15.1 million in 2022.[259]

131. Ms. Spletter applied the market extraction method to the Property. Ms. Spletter used the purchase price allocation provided by Grant Thornton and adjusted the sales price to reflect the proven reserves estimated at the time of acquisition.[260] Ms. Spletter testified the reserves were stated as being 59.6 BCF in the Grant Thornton analysis, which supported the purchase price, and concluded there was no basis to adjust the purchase price allocation.[261] Ms. Spletter's analysis under this method resulted in a valuation of $19.6 million.[262]

132. Ms. Spletter used her opinion of Furie's documented expectation of 750 BCF as a backdrop for her conclusions of value. Ms. Spletter made reference to several newspaper articles reporting on the Furie project as well as a pitch book developed by the Boston Consulting Group and testimony before the Senate Resources Committee. Ms. Spletter used these documents as demonstrative to piece together a timeline of

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[256] Trial Tr. Vol. VIII, 1325:20-1327:15.
[257] Trial Tr. Vol. VIII, 1327:13-1328:15.
[258] Trial Tr. Vol. VIII, 1328:22-25
[259] Trial Tr. Vol. VIII, 1329:1-14.
[260] Trial Tr. Vol. VIII, 1332:10-14.
[261] Trial Tr. Vol. VIII, 1331:14-20.
[262] Trial Tr. Vol. VIII, 1332:15-20.

development for the Property. Ms. Spletter testified that the documents, articles, Old Furie's plan of development, and testimony before the Senate, taken together, commonly point to 750 BCF of proven reserves, or "documented expectations."[263]

133. Ms. Spletter reconciled her conclusions of value using the depreciation and obsolescence method. She gave more weight to the market extraction method.[264] For 2021, Ms. Spletter concluded the total value of the Property to be $18 million and $18.5 million for 2022.[265] Ms. Spletter's valuation depreciates the Property to approximately 92%.

134. The Department invokes 15 AAC 56.100(a)(5)(A) when a reservoir immediately or significantly underperforms relative to expected production. Mr. Greeley testified that this refers to a "superadequacy," or a "a single and limited proven reserves-based circumstance that's not uncommon and can be efficiently addressed."[266] Mr. Greeley testified that usually production forecasts that form the basis for development are close in reality to what developers and State agencies expect, however "you don't know until you start producing what you're actually going to get."[267] Mr. Greeley testified that when the Department applies additional depreciation it does not deviate from the statutory criteria of replacement cost, proven reserves-based depreciation, or use value.[268] As such the formula is similar to that of the depreciation formula under 15

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[263] Trial Tr. Vol. VIII, 1333:2-5.
[264] Trial Tr. Vol. VIII, 1332:24-1333:7.
[265] Trial Tr. Vol. VIII, 1334:9-13; 1335:23-1336:2.
[266] Trial Tr. Vol. I, 121:24-122:2.
[267] Trial Tr. Vol. I, 123:1-2.
[268] Trial Tr. Vol. I, 125:25-126:4.

AAC 56.100(a)(3), by scaling the quotient of historic peak production over expected production.[269]

135. The Department relied on certain pieces of information to form its original opinion of additional depreciation it would apply to the Property under 15 AAC 56.100(a)(5)(A) for the tax years at issue.[270] The Department first considered an affidavit of Furie's then CFO, David Elder.[271] The affidavit was provided to the Department in 2019 during its assessment process.[272] Mr. Elder's affidavit stated that Furie's expected production over the life of the field would be 99 BCF.[273] This reserve estimates was prepared by Sierra Pine International and Netherland & Sewell Associations as reviewed and accepted by Old Furie's lenders it sought out in 2014.[274] The Department also considered what is referred to as the Wildcat Spreadsheet—a reserve report based on a production forecast prepared by Furie Alaska Cornucopia in 2014, which was around the time of the Furie project's sanctioning and development.[275] The Department summed the sold quantities to arrive at a projected volume of 99 BCF. The Department also determined the report reflected expected peak production in 2018 at 79,500 MCF per day.[276] The Department referred to AOGCC for actual production rates for the tax years at issue—2020 rates for the 2021 assessment and 2021 rates for the 2022

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[269] Trial Tr. Vol. I, 126:8-12.
[270] Trial Tr. Vol. II, 182:17-23; 181:4-8 (In 2019, the Department depreciated the Property under 15 AAC 56.100(a)(5)(B)).
[271] SOA Ex. 7.
[272] Trial Tr. Vol. II, 184:14-16.
[273] Trial Tr. Vol. II, 183:22-184:1.
[274] Trial Tr. Vol. II, 184:2-9.
[275] Trial Tr. Vol. II, 187:15-25; SOA Ex. 70.
[276] Trial Tr. Vol. II, 188:24-189:6.

assessment.[277] The Department divided actual production by the expected peak production of 79,500 MCF and applied the scaling factor to find 65.47 percent of additional depreciation to account for the significant underperformance and inutility of the Property.[278] The Department applied this additional depreciation to depreciation determined under 15 AAC 56.100(a)(3) to determine a total depreciation of 69.95 percent for 2021 and 71.25 percent in 2022.[279]

136. Mr. Greeley testified actual production is used as a proxy for proven reserves once production begins.[280] Mr. Greeley testified the relationship between actual production of proven reserves and expected peak production as the basis for the design capacity of any project is therefore reliable in determining that project's inutility when it immediately or significantly underperforms.[281] Mr. Greeley testified he is confident in the Department's conclusions because the relationship between the most recent proven reserves report of expected production over the life of the reserve (60 BCF, provided by Eastex in 2022) and the expected volume (99 BCF projected in the Wildcat Spreadsheet) produce nearly the same result.[282]

137. Mr. VanDyke testified that the Department's method of additional depreciation captures underperformance. Mr. VanDyke also testified that the Department's use of 99 BCF as expected proven reserves is within range of the total reserves expectation to

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[277] Trial Tr. Vol II, 196:25-197:6.
[278] Trial Tr. Vol II, 197:17-21.
[279] Trial Tr. Vol II, 197:22-198:7.
[280] Trial Tr. Vol. I, 100:2-101:18.
[281] *Id.*; Trial Tr. Vol II, 193:12-14.
[282] Trial Tr. Vol. II, 193:20-194:4.

date—90 BCF, or the sum of what the Property has produced (approximately 30 BCF) and the most recent Eastex reserves report of reserves that still remain (approximately 60 BCF).[283]

138. Mr. VanDyke testified that the figures the Department used derived from the Wildcat Spreadsheet are reliable and are of the type that would form the basis of a development project.[284] He also testified that the Wildcat Spreadsheet provides a higher value of depreciation than using 60 BCF.[285]

139. Mr. VanDyke testified he would not rely on newspaper articles to inform his opinion.[286] Mr. VanDyke also testified that the Senate Resource Committee meeting minutes that cite 750 BCF as the expectation of reserves is attributed to a report drafted by Doug Waters, a local geologist who did not testify.[287] Mr. VanDyke's opinion was that 1) as a geologist, Mr. Waters could issue a proven reserves report, but it could not be certified as coming from a petroleum engineer,[288] and 2) Mr. Waters' report includes contingent gas resources.[289]

140. The Court finds Furie's has failed to establish by a preponderance of the evidence that 750 BCF must serve as the basis for Furie's expected proven reserves. Furie's experts refer to unreliable sources that cite 750 BCF and make inferences as to the basis

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[283] Trial Tr. Vol. IV, 527:12-528:8.
[284] Trial Tr. Vol IV, 537:13-15.
[285] Trial Tr. Vol IV, 537:7-9.
[286] Trial Tr. Vol. IV, 531:22-23.
[287] Trial Tr. Vol. IV, 570:11-15; 568:12-14.
[288] Trial Tr. Vol IV, 569:2-5.
[289] Trial Tr. Vol. IV, 566:8-10; Mr. VanDyke did not review Mr. Waters' report because it was not publicly available, but he spoke to Mr. Waters personally about his figures. Trial Tr. 566:22-567:7.

of the original investment in the Furie development. The Court finds the Department's use of 99 BCF as expected proven reserves reliable. The reports that the Department relied on are certified by a petroleum engineer. This figure is also within range of Furie's actual production to date and its most recent reserves report.

141. The Court also finds that Furie has failed to show that the Department's method for calculating additional depreciation under 15 AAC 56.100(a)(5)(A) is fundamentally wrong.[290] The evidence and testimony show that the Department utilizes proven reserves-based depreciation for production property. Ms. Spletter formed her own opinions of value, but did not provide a specific review of the Department's valuation methodology. The term "other acceptable methods" does not invite approaches to depreciation that are not rooted in the relationship between production and the volume of the reservoir it serves. The Department's use of the scaled production methodology is a reliable way to adjust a property's value based on the nonlinear relationship between a property's cost and production rates.

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[290] The Court will note the disagreement between the parties regarding Department regulation, 15 AAC 56.100(a)(4). The regulation provides that production property in operation may never exceed 80% depreciation and production property no longer in operation may not exceed 90% depreciation. The Court addressed this issue in a pretrial motion for partial summary judgment filed by the Borough, and joined by the Department, that the Court find as a matter of law that subsection (a)(4) applies when the Department deviates from its depreciation methodology under subsection (a)(5). The Court found there is a reasonable basis for the Department's interpretation of the regulation, however the Court needed additional facts from at trial to determine whether the regulation constitutes a fundamentally wrong principle of valuation. The Court has determined that Furie has failed to meet its burden to show that the Department's assessment is incorrect. The Department's valuations for the tax years at issue do not exceed the 80% threshold for property in operation. Therefore, the Court declines to opine on the issue as to the application of subsection (a)(4) when subsection (a)(5) is invoked because it is not a live controversy.

d. Conclusions of Value

142. Based on the foregoing, the Court finds Furie has failed to show that the Department's valuation methodology under AS 43.56 is fundamentally wrong. Furie has failed to show by a preponderance of the evidence that the Department's valuation is inconsistent with Alaska law.

143. The Court's determination of the replacement cost new less depreciation of the Property for 2021 is $81,835,300.

144. The Court's determination of the replacement cost new less depreciation of the Property for 2021 is $81,747,510.

Dated this 17th day of May, 2024, at Anchorage Alaska.

Hon. Herman G. Walker, Jr.
Superior Court Judge

I certify that on _____
a copy of the above was emailed to:

C. Knix / F. Mahoney / S. Kelley /
J. Dillon / G. Holden / Z. Durst

CHess, Judicial Law Clerk