BEFORE THE STATE ASSESSMENT REVIEW BOARD
STATE OF ALASKA

In the Matter of:	)	
	)	Appeal of Revenue Decision
CONOCOPHILLIPS ALASKA, INC.	)	No. 21-56-01
(Kuparuk River Unit)	)	
	)	
Oil & Gas Property Tax (AS 43.56)	)	OAH No. 21-0590-TAX
2021 Assessment Year	)	

CERTIFICATE OF DETERMINATION

I. INTRODUCTION

The State Assessment Review Board ("Board") convened on May 17, 2021 to hear and appeals of Department of Revenue ("DOR") Informal Conference Decision ("ICD") number 21-56-01, which consolidated review of five different assessments of oil and gas production and transportation property owned by ConocoPhillips Alaska, Inc. ("CPAI") and its affiliates.[1] The Board consolidated the appeals for purposes of the hearing only.

This appeal concerns wells and facilities at the Kuparuk River Unit ("KRU Property"). Owner CPAI filed the appeal. The North Slope Borough intervened before the Board in support of DOR.

The parties' positions on the value of this property are as follows:

	DOR	CPAI	NSB
Kuparuk Facilities	$2,796,845,810	$2,646,924,830	$2,835,580,530
Wells – Kuparuk	$566,686,840	$526,167,258	[DOR value]
Wells – West Sak	$115,083,020	$108,773,754	[DOR value]
Wells – Tabasco	$3,557,710	$3,362,663	[DOR value]
Wells – Tarn	$42,239,690	$39,923,958	[DOR value]
Wells – Ugnu	$291,240	$275,273	[DOR value]
Wells – Meltwater	$8,954,480	$8,463,563	[DOR value]
Wells – Exploration	$7,526,320	$7,731,589	[DOR value]

The Board finds that the assessment is excessive. Because of non-reservoir related lower production rates attained, the Assessor chose to use a slightly higher number that he selected based upon the portion of the year when production was not curtailed. Because of the timing of

[1] Chair James I. Mosley and members Bradley Pickett, William Roberts, Bernard Washington, and William Westover heard the appeal. Administrative Law Judges Mark Handley and Rebecca Kruse from the Office of Administrative Hearings assisted the Chair.

that production, SARB believes the factor used was slightly high. Accordingly, the assessment should be adjusted.

II. BACKGROUND

KRU Property and Operations

CPAI owns wells and facilities — including pads, roads, production facilities, and other infrastructure — in KRU.[2] KRU is located in the North Slope Borough.

In 2020, multiple external events impacted CPAI's North Slope operations. In response to these events, CPAI made a business decision to curtail and defer some of its production predominantly in the months of May and June of 2020.[3]

2021 Assessment and Appeals

DOR is charged with assessing the value of oil and gas properties and determining their value as of the January 1 of the tax year. For production property, DOR applies replacement cost less depreciation and depreciation for declining fields.[4] The adjustment factor used by DOR is calculated using production numbers for the previous year.[5] The production property regulation does provide for DOR to legitimately deviate from these methods under certain circumstances, including when "a non-reservoir related circumstance occurs that significantly alters production relative to what would otherwise be a typical reservoir production."[6]

In the 2021 assessment, the DOR Tax Division's State Petroleum Property Assessor ("Assessor"), determined the value of the KRU Property using replacement cost less depreciation.[7] For depreciation, the Assessor used the methodology from the production property regulation.[8] Because CPAI made a business decision to curtail production in May and June, however, the Assessor determined it would be appropriate to deviate slightly from the methodology in 15 AAC 56.100. The Assessor did so by adjusting production and determining an average 2020 daily production rate for KRU based on actual production from the ~~ten~~ months when production was not curtailed or deferred.[9] The resulting valuation for the KRU Property broken down by the five KRU participating areas (Kuparuk, West Sak, Tabasco, Tarn, and

2 Ex. b at 4.
3 Ex. b at 8; Ex. o at 2.
4 15 AAC 56.100(a).
5 15 AAC 56.100(a)(3)(B).
6 15 AAC 56.100(a)(5).
7 Ex. b at 7-9.
8 Ex. rr at 2.
9 Ex. b at 9.

Meltwater), plus KRU wells targeting the Ugnu formation and other KRU exploration wells is as follows:[10]

Kuparuk Facilities	$2,796,845,810
Wells – Kuparuk	$566,686,840
Wells – West Sak	$115,083,020
Wells – Tabasco	$3,557,710
Wells – Tarn	$42,239,690
Wells – Ugnu	$291,240
Wells – Meltwater	$8,954,480
Wells – Exploration	$7,526,320

CPAI appealed to DOR and argued that the adjustment was unfair because the Assessor used a number that was calculated without considering the influence or the effects of the historically lower-production months of May and June.[11] DOR consolidated this appeal with four others from CPAI and its affiliates. The ICD affirmed the KRU Property assessment.[12]

The CPAI parties each appealed the ICD to SARB, raising essentially the same arguments in each of the five appeals. The Board consolidated the appeals for purposes of the hearing only.

CPAI raised two discrete issues to the Board: (1) that DOR misapplied 15 AAC 56.100(a)(5)(b) by using a value that was weighted by not considering the historically documented lower than normal production months; and (2) that CPAI was deprived of having an impartial decision maker review its appeal.

Prehearing Motions

The parties filed several prehearing motions seeking to exclude or compel certain information or arguments. The Board advised the parties by email that it would not rule on any motions prior to the hearing. The parties were also given an opportunity to address the motions at the hearing, but for the most part chose not to do so.

As a general matter, SARB hearings are informal administrative proceedings designed to provide the Board with information to review property tax appeals. The Board's role is not to dictate how a party chooses to make its case; the Board reviews the evidence that is provided and determines if parties have met their burden of proof.

[10] *Id.* at 2.
[11] Ex. o.
[12] Ex. b.

NSB moved to dismiss an argument CPAI raised in a footnote questioning the validity of portions of 15 AAC 56.100, arguing that the Board lacks authority to invalidate a regulation.[13] CPAI responded by stating that it was merely preserving this argument, not asking the Board to invalidate the regulation.[14] The Board agrees that it is not its role to declare a regulation invalid. But by merely mentioning its concerns with the regulation in a footnote, CPAI has not asked the Board to invalidate it. NSB's motion is denied.

NSB also moved for the Board to preclude CPAI's witnesses from testifying about facts and opinions not provided in exhibits.[15] A SARB hearing is an administrative proceeding, not a trial. Court rules about expert testimony and submission of expert reports do not apply. It is up to the parties to decide what evidence to provide the Board, and whether to provide that evidence in the form of exhibits, testimony, or both. Accordingly, NSB's motion is denied.

CPAI submitted a cross-motion in limine asking the Board to exclude NSB testimony and exhibits for failure to properly intervene. CPAI pointed out valid deficiencies in NSB's notice of intervention, but raising them for the first time just days before the hearing was untimely. CPAI's motion is denied.

III. DISCUSSION

A. NSB's Proposed Adjustment is Untimely and Unsupported by Evidence.

The NSB argued that Central Processing Facility 1 ("CPF1") was left out of the total value being assessed and that it was appropriate to include that value. Just days before the hearing, NSB claimed for the first time that DOR should have included CPF1, which would have resulted in a total valuation for all KRU facilities of $2,835,580,530.[16] The testimony provided did identify that DOR did not include CFP1 in its calculations.

CPAI argues that NSB should not be able propose an adjusted assessment because it is untimely and because NSB intervened instead of appealing.[17] Whether NSB was an appellant or an intervenor, raising an appeal point and proposing a different assessment at the time of a

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13 North Slope Borough's Motion to Dismiss.

14 Opposition to NSB's Motion to Dismiss at 1-2.

15 North Slope Borough's Expedited Request for Taxpayer Disclosure.

16 North Slope Borough's Pre-Hearing Brief at 24-25.

17 SARB regulations provide for a party to intervene, but do not otherwise specify the rights that come with intervention. 15 AAC 56.030. In other contexts, intervenors enjoy the same rights as original parties. *See, e.g., U.S. ex re. Eisenstein v. City of New York, New York*, 556 U.S. 928, 933 (2009) ("[I]ntervention is the requisite method for a nonparty to become a party to a lawsuit."); *Barber v. Barber*, 915 P.2d 1204, 1209 (Alaska 1996) (referring to denial of intervention as denial of "official party status").

prehearing brief is untimely. NSB intervened at the ICD-level, but did not raise this issue at that time, when CPAI would have had notice and an opportunity to develop a record before the agency and the Assessor could have considered addressing it in the ICD. NSB did not raise this issue when it intervened before the Board, when CPAI would have had notice and an opportunity to name witnesses and provide exhibits to address whether CPF1 processes fluids associated with certain production. NSB raised this new appeal point and proposed assessment in its prehearing brief. This is untimely.

NSB's argument is also unsupported. NSB witness Dudley Platt testified that, based on a process flow diagram in a third party report that predates Oooguruk production by several years, Oooguruk production must be processed at CPF1.[18] Mr. Platt did not offer any basis for first hand knowledge of current CPF1 operations or whether Oooguruk production is in fact processed there. Mr. Platt's speculation, even if well founded, is still speculation. NSB did not provide evidence that CPF1 processes Oooguruk production.

Mr. Greeley testified that he did not include CPF1 based on information from previous years. There is no evidence in the record to indicate whether circumstances have changed since then or that CPF1 processes Oooguruk production. This is an issue the Assessor should clarify and address for future assessments. For the January 1 of 2021 assessment, NSB has not met the burden of showing that DOR should have included CPF1 or that the resulting assessment is unequal, excessive, or improper.

B. DOR Appropriately Deviated from Considering Actual 2020 Production, But Did So in a Way That Resulted in an Excessive Assessment.

DOR explained in its prehearing brief and in testimony that it normally calculates adjustment to assessed value using an adjustment factor that is based on production for the previous year.[19] The previous calendar year production is a useful component, but only when the production is typical.[20] Because CPAI curtailed KRU production for business reasons, the Assessor determined that actual 2020 production was atypical and that it was appropriate to deviate from considering actual production.

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18 Ex. AC.
19 DOR Prehearing Br. at 3.
20 *Id.*; Greeley's testimony.

At the hearing, CPAI provided evidence that production historically drops in summer months for scheduled maintenance and because the warmer weather impacts certain equipment.[21] CPAI, as the KRU operator, did curtail production more than usual in May and June 2020, but even without that curtailment, these months would have been lower production months.[22] CPAI did not provide precise evidence of how much of a decrease in May and June 2020 production is attributable to typical seasonal decreases and how much was curtailment in response to COVID-19 and oil prices. CPAI witnesses explained that internal production forecasts changed throughout the year, as did maintenance plans with the curtailment providing an opportunity to conduct some maintenance sooner than planned.[23]

Based on the evidence, the Board finds that DOR correctly determined that KRU production in May and June was lower than what would have been predicted and that CPAI curtailed production in those months for business reasons. It was therefore appropriate to deviate from considering just the actual production for the calendar year 2020 production as the component of the depreciation calculation for the property being appealed.

The SARB Board takes issue with how DOR chose to calculate the adjustment factor used to deviate from calendar year 2020 production. As CPAI witnesses testified, May and June are historically lower production months in any given year because of scheduled maintenance and the impacts of warmer weather. By simply disregarding these months, DOR not only eliminated the impact of the business-related curtailment, but also the typical seasonal drop in production. DOR thus derived a daily rate by averaging only higher-production months. This resulted in a higher adjustment factor than a typical year of production, which in turn results in a slightly higher assessment for the Property.

There are a number of different approaches DOR could have taken to account for CPAI's business-related production curtailment without removing normal seasonal fluctuations. The Assessor may want to consider other approaches in future tax years. For purposes of the 2021 assessment, the Board instructs DOR to do the following: where the Assessor calculated the adjustment factor based on using ten months of KRU 2020 production without taking into account the impact of historically lower month production rates, the Assessor will replace the numerator used in that calculation with the production DOR forecasted for KRU for 2020, as reflected in the

[21] Braun testimony; Smith testimony.
[22] *Id.*
[23] *Id.*

appropriate Fall Revenue Sources Book.[24] DOR's forecast for 2020 reflected typical production that would have been expected from KRU. Using DOR's forecast for deviating from the actual production rates with forecasted rates avoids production numbers skewed by CPAI's business-related curtailment without losing the seasonal variations for a typical year.[25]

Substituting DOR's forecasted KRU calendar year 2020 production is the only adjustment DOR should make to the assessment. All other numbers and methods will remain the same.

C. CPAI Has Not Met Its Burden to Show the Assessor Was Biased.

CPAI argues that by the Assessor reviewing his own assessment was inappropriate and violated due process. The Board disagrees.

First, the arguments untimely. DOR has a longstanding practice of the Assessor conducting the ICD-level review of his assessment. CPAI was aware the Assessor was conducting the ICD process and even addressed its informal conference appeal directly to the Assessor. Yet it does not appear from the record that CPAI objected to the Assessor deciding the appeal. Failure to raise a due process objection like this during an administrative proceeding waives the objection.[26]

Second, CPAI's due process argument is unsupported by evidence. "[A]gency personnel are presumed to be impartial until a party shows actual bias or prejudgment."[27] To overcome that presumption, CPAI "must show that the hearing officer had a predisposition to find against a party or that the hearing officer interfered with the orderly presentation of the evidence."[28] Here, CPAI has offered nothing more than the fact that the Assessor decided both the underlying assessment and the ICD. Property assessment is a specialized field, so it makes sense for DOR to task its resident expert with reviewing assessment issues, even when that means the Assessor is

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[24] DOR's Fall Revenue Source Books and supporting data can be found at http://www.tax.alaska.gov/programs/sourcebook/index.aspx. These forecasts are broken down by State of Alaska fiscal year, which starts July 1. The Assessor may thus need to incorporate underlying data from two fiscal years for DOR's forecast on a calendar year basis.

[25] CPAI provided testimony that the May and June shut-ins recharged the reservoirs causing increased "flush production" in the following months and that this flush production will continue for the next few years. Mr. Smith explained, though, that this is a temporary increase that does not ultimately extend the life of a well. By instructing DOR to use its forecasted production, the Board need to determine whether or not the parties have demonstrated that flush production did or did not occur or what, if any, impact flush production could have on the 2021 assessment.

[26] *Trustees for Alaska v. State, Dep't of Nat. Res.*, 865 P.2d 745, 748 (Alaska 1993) ("a party must raise an issue during the administrative proceedings to preserve the issue for appeal."); *Storrs v. Lutheran Hosp. and Homes Soc. of America, Inc.*, 609 P.2d 24, 28 (Alaska 1980) (objection to decision maker waived by not raising it until appeal).

[27] *Gottstein v. State, Dep't of Natural Res.*, 223 P.3d 609, 628 (Alaska 2010).

[28] *AT&T Alascom v. Orchitt*, 161 P.3d 1232, 1246 (Alaska 2007).

reviewing his own decision. Doing so is akin to "reconsideration" where a judge or other decision-maker reviews their own decision. Agencies often use reconsideration as a form of appeal. Here, it is DOR's longstanding practice for the Assessor to conduct the ICD review. That practice addresses information sharing to try and avoid an official SARB appeal. SARB believes the Assessor was simply doing his job.

Third, CPAI has appealed before SARB. A due process violation in an initial administrative proceeding is cured when due process is afforded on review.[29] The Board review and this appeal process further moots any possibility of a due process violation by the Assessor deciding the ICD.

IV. CONCLUSION

As chair and on behalf of the State Assessment Review Board, and in accordance with AS 43.56.130(b), I certify to the Department of Revenue that the Board has determined the value of the KRU Property on January 1, 2021 is to be adjusted by changing the calculation to reflect use of DOR's forecasted 2020 production for KRU as reflected in the Fall Revenue Sources Book(s) that correspond to calendar year 2020. In all other respects, the assessment will remain the same.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED: May 24, 2021.

By: *Signed*
James I. Mosley, Chair
State Assessment Review Board

[This document has been modified to conform to the technical standards for publication.]

[29] *See, e.g.*, *Gold Country Estates Pres. Group, Inc. v. Fairbanks North Star Borough*, 270 P.3d 787, 798 (Alaska 2012) (due process violations in initial proceeding mooted by due process provided in review proceeding); *City of North Pole v. Zabek*, 934 P.2d 1292, 1298 (Alaska 1997) (same); *McMillan v. Anchorage Cmty. Hosp.*, 646 P.2d 857, 866-67 (Alaska 1982) (same).