

**JUDITH COLLETT, Assessor of Taylor County,
Respondent.**

COALQUEST DEVELOPMENT, LLC,

Petitioner,

vs.

**CASE NO. 11-P-17
Judge: Alan D. Moats**

**THE HONORABLE JUDY COLLETT,
ASSESSOR OF TAYLOR COUNTY, and
THE COUNTY COMMISSION OF
TAYLOR COUNTY,**

Respondents.

FINAL ORDER

On January 12, 2012, the above-styled cases came on for appeal hearings pursuant to West Virginia Code § 11-3-25 before this Court. The Petitioners in Case Numbers 10-P-12/13 and 11-P-17, Coalquest Development, LLC and Patriot Mining Company, Inc., appeared by their counsel, David Goddard. The Petitioner in Case Number 10-P-11, West Virginia Coal Mine, LLC, appeared by its counsel, Herschel Rose. The Petitioners in Case Number 10-P-14, Trio Petroleum Corp., Waco Oil and Gas, and Mike Ross, appeared by their counsel, Floyd Sayre. The Respondents in the above styled cases, Judith Collett and the Taylor County Commission, appeared by their counsel, Stephen Sluss.

The Court heard arguments from counsel, and then took the appeals under advisement.

The Court then issued an Order on January 23, 2012 which granted Petitioner's Petitions for Appeal, and directed that counsel for the Petitioners submit proposed Orders.

The Court has received and reviewed all proposed Orders, the Respondent's response to the proposed Orders in Case Numbers 10-P-12, 10-P-13, 10-P-14, and 11-P-17, and Respondent's Motion to Alter or Amend Judgment filed in Case Number 10-P-11. The Court has also reviewed the record in the above styled cases.

The Court hereby **ORDERS** that the Order entered on February 24, 2012, in Case Number 10-P-11 is hereby **RESCINDED** and **VACATED**.

The Court now makes the following **FINDINGS OF FACT** and **CONCLUSIONS OF LAW** in the above styled cases:

FINDINGS OF FACT

1. The Petitioner in Case Number 10-P-11, Eastern Royalty, LLC, as successor petitioner to West Virginia Coal Mine, LLC ("Eastern"), is the owner of certain reserve coal properties located in Taylor County, West Virginia. Prior to February 1, 2010, the Assessor, acting in her official capacity, completed her assessment of Eastern's property and made up her official copy of the land books based upon the appraisal amount of \$119,634 provided to her by the State Tax Commissioner.

2. Thereafter, Eastern (West Virginia Coal Mine, LLC at the time) was noticed of a proposed increase in the 2010 appraisal by notice received in its St. Louis, Missouri offices on Tuesday, February 16, 2010 notifying it of a hearing before the Taylor County Board of Equalization and Review ("the Board") at 9:00 A.M. on Monday, February 22, 2010. The proposed increase in assessment was from \$119,634 to \$1,449,447. The Board ordered the increase in value to \$1,449,447 after the hearing.

3. Eastern's assessment by the Board was \$1,329,813.00 more than the initial value

provided by the State Tax Commissioner to the Assessor, which she had accepted and entered into the property books.

4. The Petitioner in Case Number 10-P-12, Coalquest Development, LLC ("Coalquest"), is the owner of certain reserve coal properties in Taylor County, West Virginia. At issue are six Coalquest Tax Accounts:

- a. 46-04-9999-0000-1130-0000
- b. 46-03-9999-0000-7540-0000
- c. 46-05-9999-0000-4000-0000
- d. 46-03-9999-0000-7750-0000
- e. 46-07-9999-0000-0430-0000
- f. 46-05-9999-0000-3610-0000

5. After holding a hearing on February 12, 2010 to hear evidence and arguments regarding these tax accounts, the Board voted to increase the State Tax Department appraisals for tax accounts 46-04-9999-0000-1130-0000, 46-03-9999-0000-7540-0000, 46-03-9999-0000-7750-0000 and to decrease the appraisal for tax account 46-05-9999-0000-4000-0000. Coalquest argued that tax accounts 46-07-9999-0000-0430-0000 and 46-05-9999-0000-3610-0000 should be reduced. The Board did not reduce those appraisals and Coalquest appealed. This Court has taken no action regarding those two accounts and this Order does not affect them as Counsel for Coalquest withdrew his appeal on those two accounts at the January 12, 2012 hearing. Counsel also stipulated to having the tax accounts which had been reduced by the Board restored to the values supplied by the State Tax Commissioner.

6. In a letter signed and dated March 2, 2010, the Board ordered the following revisions

to the four Coalquest tax accounts for the year 2010:

Account	Coal Seam ¹	Original Appraisal	Revised Appraisal
46-03-9999-0000-7540-0000	MKT	\$708,443	\$8,581,820
46-03-9999-0000-7540-0000	LKT	\$1,193,376	\$98,180
46-05-9999-0000-4000-0000	UKT	\$55,220	\$667,500
46-05-9999-0000-4000-0000	MKT	\$699,564	\$54,498
46-03-9999-0000-7750-0000	CLA	\$55,795	\$677,861
46-03-9999-0000-7750-0000	LKT	\$490,912	\$40,399
46-04-9999-0000-1130-0000	UKT	\$4,758	\$4,758
46-04-9999-0000-1130-0000	MKT	\$11,548	\$241,656
Total Increases			\$7,147,056

7. The Petitioner in Case Number 10-P-13, Patriot Mining Company, Inc. ("Patriot") is the owner of certain reserve coal properties located in Taylor County, West Virginia. This appeal centers on tax account 46-06-9999-0000-2850-0000.

8. After holding a hearing on February 22, 2010 to hear evidence and arguments regarding this tax account, the Board voted to increase the State Tax Department's appraisal for tax account 46-06-9999-0000-2850-0000.

9. In a letter signed and date March 2, 2010, the Board ordered the appraisal for Patriot's tax account 46-06-9999-0000-2850-0000 be increased from \$13,791 to \$153,586.

10. Patriot's assessment by the Board was \$139,795.00 more than the initial value provided by the State Tax Commissioner to the Assessor, which she had accepted and entered into the property books.

11. The Petitioners in Case Number 10-P-14, Trio Petroleum Corporation, Waco Oil &

¹ Upper Kittanning (UKT), Middle Kittanning (MKT), Lower Kittanning (LKT), Clarion (CLA)

Gas, Inc. and Mike Ross, I.L. Morris & Mike Ross, Inc. (hereinafter collectively referred to as "Trio") are the owners of 2 tracts of real property, set forth in 6 property accounts, to wit:

46-06-9999-0000-1030-0000	3/4 Interest in 640.50 Acres Coal
46-06-9999-0000-0390-0000	1/8 Interest in 3,466.52 Acres Coal
46-06-9999-0000-1010-0000	1/8 Interest in 3,466.52 Acres Coal
46-06-9999-0000-1840-0000	1/8 Interest in 3,466.52 Acres Coal
46-06-9999-0000-2770-0000	1/8 Interest in 3,466.52 Acres Coal
46-06-9999-0000-3130-0000	1/4 Interest in 3,466.52 Acres Coal

12. The State Tax Commissioner determined the appraised value of the subject Trio property as follows:

46-06-9999-0000-1030-0000	3/4 Interest in 640.50 Acres Coal	\$44,260.00
46-06-9999-0000-0390-0000	1/8 Interest in 3,466.52 Acres Coal	\$39,166.00
46-06-9999-0000-1010-0000	1/8 Interest in 3,466.52 Acres Coal	\$39,116.00
46-06-9999-0000-1840-0000	1/8 Interest in 3,466.52 Acres Coal	\$39,116.00
46-06-9999-0000-2770-0000	1/8 Interest in 3,466.52 Acres Coal	\$39,116.00
46-06-9999-0000-3130-0000	1/4 Interest in 3,466.52 Acres Coal	\$78,234.00

13. The Tax Commissioner forwarded the values of Trio's property to the Assessor of Taylor County on or before January 15, 2010. The Assessor received and accepted the values of the State Tax Commissioner and entered the same on the land books.

14. On or about February 12, 2010, the Assessor, without notice to Trio, requested the Board to consider new valuations for the subject property, to wit:

46-06-9999-0000-1030-0000	3/4 Interest in 640.50 Acres Coal	\$537,486.00
46-06-9999-0000-0390-0000	1/8 Interest in 3,466.52 Acres Coal	\$477,894.00
46-06-9999-0000-1010-0000	1/8 Interest in 3,466.52 Acres Coal	\$477,894.00
46-06-9999-0000-1840-0000	1/8 Interest in 3,466.52 Acres Coal	\$477,894.00
46-06-9999-0000-2770-0000	1/8 Interest in 3,466.52 Acres Coal	\$477,894.00
46-06-9999-0000-3130-0000	1/4 Interest in 3,466.52 Acres Coal	\$955,787.00

15. On February 13, 2010, the Board mailed Trio notice of its intent to consider new proposed valuations. The notice stated that the hearing would be held on February 22, 2010.

16. At the conclusion of the February 22, 2010 hearing, a decision was rendered by the Board, rejecting the valuations of the State Tax Commissioner and substituting the new proposed valuations.

17. Trio's assessment by the Board was \$3,125,891.00 more than the initial value provided by the State Tax Commissioner to the Assessor, which she had accepted and entered into the property books.

18. The Court has combined all these matters into one order because of the similarity of the issues, and because all increases were discussed at combined hearings before the Board and dealt with in combined hearings before this Court.

19. At the hearing on February 12, 2010, Judith Collett, the Assessor of Taylor County, presented witnesses before the Board, those parties being Scott Burgess, Assistant Director of Property Tax from the State Tax Department, and Jerry Knight of Knight Consulting. (February 12, 2010 Transcript at Page 7, Line 2-4 and at Page 7, Line 22-24). Scott Burgess appeared on behalf of the State Tax Department, but was not present with counsel. Jerry Knight presented seven (7) exhibits on behalf of the Assessor, which were labeled as State's Exhibits, the Tax Department presented one (1) exhibit, and the Assessor presented one (1) exhibit.

20. At the February 12, 2010 hearing, David Goddard, counsel for ICG and Coalquest, argued against the procedures used to bring these matters before the Board. Jerry Knight, of Knight Consulting, in response, testified as follows (February 12, 2010 Transcript, Page 128, Line 24-Page 131, Line 12)

“Mr. Knight: It's number 9? In referencing taxpayer Exhibit No. 9, you'll note that – that once the tax commissioner does determine the estimates of fair market value, the tax

commissioner's to forward those to the county assessor. The county assessor has one of two options as taxpayer's representative indicated. The assessor either accepts those or applies to the Property Valuation Training and Procedures Commission for an alternate valuation plan.

I'm familiar with that process having been chairman of the Property Valuation Training and Procedures Commission for the last 11 years of my employment with the state tax department. The – the word accept there really is the assessor puts in on the property books.

What Ms. Collett did was, she received the values. She placed them on the property books. One of the reasons she did so was because she received them in January; 10% notices had to go out in the beginning of January. She had little, if any, time to review these values to present the issue to the Property Valuation Training and Procedures Commission. I'll call it the PVC for short; because that's what everybody does. To present it to the PVC mid-January. So Ms. Collett put the value on the books. She accepted the appraised value and put them on the books.

Now the issue here is the appeal of those values under a different statute, totally different statute. The statute is 11-3-24, the Board of Equalization and Review statute. This particular statute, bear with me a moment till I get there, indicates that generally that any person can apply to the board of review and equalization for the correction of the assessment. There's supreme court case law on that that suggests that any individual can appeal any entry on those books. It's the Tug Valley Recovery case. And the assessor, in exercising her right just like any other person in the State of West Virginia who has that right, is presenting these issues before this board so that the board can carry out it's duty of examining the information and correcting any and all errors that are found in the property books.

So the assessor has accepted the tax commissioner's appraised value. She did so by placing them on the property books; on the land books and personal property books. This is – this is a – a review under a different statute that any person has the standing to come before this commission and bring information before this commission for their review; and their determination of whether an adjustment needs to be made to the property books so delivered by the assessor no later than the first day of February.”

21. The Assessor testified at the February 12, 2010 hearing (February 12, 2010 Transcript at Page 180, Line 15-Page 182, Line 24) and submitted exhibits before the Board.

22. The February 22, 2010 hearing concerned property owned by ICG (Patriot), Coalquest, Eastern (then West Virginia Coal Mines, LLC), and Trio. Judith Collett, the Assessor of Taylor County, presented witnesses before the Board, those parties being Scott Burgess, Assistant Director of Property Tax from the State Tax Department, and Jerry Knight of Knight Consulting. (February 22, 2010 Transcript at Page 7, Line 2-4 and at Page 7, Line 22-24). Scott Burgess appeared on behalf of the State Tax Department, but was not present

with counsel. The State presented one (1) exhibit, and the Assessor presented twenty four (24) exhibits.

23. At the February 22, 2010 hearing, Mr. Knight testified as follows regarding the issue of whether or not the Assessor accepted the values initially presented by the State Tax Department: (February 22, 2010 Transcript at Page 27, Line 12-Page 29, Line 19)

“Mr. Knight: As a – as a point of clarification, taxpayer alleged that the assessor somehow doesn’t have standing to bring these issues before the county commission. In previous testimony we – we had established that the assessor has the duty once the tax commissioner appraises either industrial or natural resource properties of either accepting the appraisals; placing them on the property books at 60% of the tax commissioner’s appraised value or going to the Property Valuation Training and Procedures Commission – appearing before that body and suggesting an alternate valuation plan.

The ins – in the instant – in this instance the assessor accepted the tax department’s appraisals and placed them on the books at 60% of market value. **The assessor isn’t – isn’t rejecting the appraisals. The assessor is suggesting that – that one factor, at the recommendation of the state tax department, should be changed.** (Emphasis added) And that changing of that one factor would result in a different value than that value that was linked on the property books.

The assessor’s suggestions to this body are fully in compliance with legislative rule Title 110 Series 11 as used by the state tax commissioner to appraise properties. And the exhibits that will be placed before this body will demonstrate that. In addition – my testimony, if you go back and look at my testimony a couple of weeks back, it was that the – the assessor had the authority to appear before this body. And as a matter of fact the assessor has a statutory duty under West Virginia Code 11-3-24 to assist this body in their deliberations concerning the compliance with state statutes – state regulations concerning the valuation of the property that’s on the property books that were presented to this commission for its – its review and consideration.

I did indicate that the Tug Valley Recovery case that’s annotated in 11-3-24 does indicate that any person or any taxpayer has the – has the right to appear here. I certainly don’t intend to indicate, and I don’t believe I did indicate, that the assessor was appearing here as a person. The assessor certainly is appearing here in her capacity as an assessor to assist the board under the provisions of 11-3-24, as that statute requires in its deliberation concerning these issues. Having – having said that, I’d like to call this Assessor’s Exhibit 1.”

24. Scott Burgess, Assistant Director of Property Tax for the State Tax Department, testified at the hearing on February 22, 2010, as follows, regarding his appearance that day:

(February 22, 2010 Transcript, Page 62, Line 12-Page 63, Line 8)

“Mr. Burgess: As I recall, and again this is subject to a very bad memory – recent and long term memory – sometime in January, I’m going to say mid to late January, Jerry, on behalf of the county, asked me to look at a number of parcels, some of which we talked about a couple of Fridays ago; some of which we’re here for today. And asked that we review those and he particularly directed us to the environmental because the environmental did increase on those properties from a 20 to a 40. And his question was why they’d be a T-20 if they had no increase.

And I said certainly we’ll do that. So I looked at the data; did some of the same screen prints Jerry has provided. I asked Pat White and her people to review that. And after considerable review it was suggested that this should not be a 40 environmentally; it should be a 20. Particularly given, you know, what’s going on in the county.”

25. As previously stated, Eastern, Coalquest, Patriot and Trio had their assessments raised by the Board from the values initially recorded on the property books. All parties timely appealed these matters to the Circuit Court of Taylor County.

26. A hearing was scheduled on July 19, 2010, at which time the Court issued a briefing schedule. The Appellants were to file any additional documentation by August 27, 2010, Appellees were to file their responses on or before October 25, 2010, and Appellants were to file their replies by November 15, 2010.

27. Eastern submitted a Memorandum of law on September 10, 2010.

28. Coalquest and Patriot did not submit additional documentation by the August 27, 2010 deadline, but it appears from the file that substantial memoranda were filed with their appeals initially.

29. Trio submitted a Memorandum of Law on August 30, 2010.

30. By Order entered September 21, 2010, the Court directed that these matters be mediated on or before December 1, 2010.

31. The Assessor, and the Taylor County Commission, by their counsel, Steven Sluss, filed a Response in 10-P-11, 10-P-12, 10-P-13, and 10-P-14 on October 26, 2010.

32. Eastern filed a Reply to the Response on November 16, 2010.

33. Coalquest and Patriot filed a consolidated Reply to the Response on November 15, 2010.

34. Trio filed a Reply to the Response on November 22, 2010.

35. A mediator's report was filed by John W. Cooper, Mediator, on December 16, 2010, stating that the matter was mediated on December 14, 2010, and that no settlement was reached between the parties.

36. On March 29, 2011, before the Court could set the matter for further hearing or take other action in Case Numbers 10-P-11, 10-P-12, 10-P-13, and 10-P-14, Case Number 11-P-17, Coalquest Development, LLC v. The Honorable Judy Collett, Assessor of Taylor County and The County Commission of Taylor County was filed, appealing the Board's decision from a hearing held on February 28, 2011. The Court then began dealing with all of the cases together, both the 2010 cases and the new case filed in 2011.

37. The Petitioner in Case Number 11-P-17, Coalquest, is the owner of certain reserve coal properties located in Taylor County, West Virginia.

38. The following fourteen Coalquest tax accounts are at issue in this appeal:

46-07-9999-0000-0260-0000
46-07-9999-0000-0430-0000
46-07-9999-0009-8300-0000
46-03-9999-0000-7540-0000
46-03-9999-0000-7750-0000
46-04-9999-0000-1130-0000
46-03-9999-0000-1520-0000
46-03-9999-0000-4630-0000
46-03-9999-0000-7420-0000
46-03-9999-0000-7970-0000
46-03-9999-0001-2440-0000
46-03-9999-0001-2450-0000
46-03-9999-0000-3200-0000
46-04-9999-0000-5890-0000

39. Coalquest first received notice of a proposed increase on the fourteen accounts on February 18, 2011, which advised of a hearing which would be held on February 28, 2011. Said notices contained no further information other than the account number and the time and date of the hearing. As stated at the hearing (February 28, 2011 Transcript, Page 54, Line 8-Page 55, Line 6).

“Mr. Goddard (counsel for Patriot and Coalquest): Mr. Sluss, if I could, being the taxpayer, counsel for the taxpayer, obviously, we have a lot at stake here. But before we even get to – I have a couple of follow up questions both ways here, but I just want to put on the record a general notice argument.

We got, and I think we did get it timely by fax – on February 18th, I was faxed a copy of the letter signed by Mr. Efaw listing 38 accounts, one by Patriot and 37 accounts owned by Coalquest, with nothing more, basically stating that a potential increase in the assessment of the following accounts will be considered here today at 10:00.

We didn't have any additional information whatsoever. And in my reading of the code and the rules, I believe additional information is required telling us which ones are actually going to be impacted, what the impact will be and what the increases would be, and then some information about why the increases are going to occur. So I just wanted to put that on the record.

Mr. Gobel: I don't think that's necessary, but you can have it on the record."

40. During the February 28, 2011 hearing, the Board heard arguments in favor of increasing the appraisals submitted by the State Tax Commissioner on the 14 accounts set forth above. The arguments were presented by an attorney in private practice, Steven Sluss, who was retained by the County Commission, and a tax consultant, Jerry Knight, who was also retained by the County Commission.

41. Arguing against the Board's proposed increases at the February 28, 2011 hearing were Coalquest and the West Virginia State Tax Department.

42. During said hearing, five individuals appeared on behalf of the West Virginia State Tax Department, Jan Mudrinich, attorney for the West Virginia State Tax Department, Michael Marlow, an attorney for the West Virginia State Tax Department, Jeffrey Kern, employee of Research Technologies Corporation, a consultant for the West Virginia State Tax Department, Tyler Bragg, GIS Program Analyst with the West Virginia State Tax Department, and Pat White, an employee of the West Virginia State Tax Department.

After all witnesses were sworn, the following argument was placed on the record by Mr. Mudrinich (February 28, 2011 Transcript, Page 7, Line 13-Page 8, Line 24.)

Mr. Efaw: Okay. We would like to start off here with – the Commission has a few questions here and just some things that we have found here.

The Class 2 property in 1994 was at 33.48% and the 2010 is at 49.56%, which was a 32% increase.

In 2010, the value of Coalquest coal was at 59 million – 59.1 million. In 2011 it's down to 26.9, a 54% decrease, when they're going to be mining the coal this year.

And we just wanted to ask the State Tax Department to give some answers.

Mr. Mudrinich: I'll give you a slight answer. I don't know if it's a definite answer. Is the decrease because it has not been increased by the County Commission as it was last year?

I know there's an appeal pending in the Circuit Court relating to last year. Now, there was an increase by the County Commission, so I don't know if that – if you're talking the number that came out of the State Tax Department, whether that has gone down, I don't know.

Mr. Sluss: The valuation last year that was put on by the Board of Equalization and Review was State Tax Commission's recommended number, as recommended by the then Director of the Property Tax Division.

So I guess that answered that question.

Mr. Mudrinich: I'll answer that question. Mr. Burgess was up here without an attorney. He was not authorized to come up here and make a change – recommend a change to the environmental factor or that valuation.

I believe we're trying to make that clear in the Circuit Court. I don't know. We're not a party to that, but that was not the Tax Department's position last year. He was up there unauthorized."

Later, during testimony from Jeffrey Kern, consultant for the State Tax Department, the following exchange took place (February 28, 2011 Transcript, Page 88, Line 20-Page 92, Line 14):

Mr. Gobel: How do you go from 60 million down to –

Mr. Kern: 29?

Mr. Gobel: – 26 in less than one year?

Mr. Kern: I would not have called it 60 million last year. I did not call it 60 million last year.

Mr. Gobel: The State Tax Department did.

Mr. Kern: The State Tax Department's one employee did.

Mr. Marlow: And I'm going to raise that again. It was a rogue employee no longer employed by the Tax Department, who has no official authorization by the Tax Commissioner.

He was up here on his own, not as an official representative of the Tax Department. He may have claimed to be, but he was not.

Lets make that clear for the record.

Mr. Sluss: No, lets not make that clear for the record.

Mr. Gobel: At the time, he did say he was the employee of the Tax Department.

Mr. Sluss: He was an employee. He was the deputy director.

This Commission had asked for a representative from the Tax Department, as every County Commission does in this state, and every year they send either a deputy director, they

send Ms. White, an appraiser, they send Mr. Knight. And every year, with every County Commission in the state, that has occurred. Now, when they're saying something that they want to disagree with later, for whatever reason, they're calling it a rogue employee, regardless of the fact he was the Deputy Director of Property Tax Commission. He was here in his official capacity as that. And he stated his opinion based on his position in that Department.

This Commission had every right to rely on that. And now to come back a year later and try to argue, "This is a rogue employee that's not working for us anymore" they're even suggesting that they fired him, and that's nowhere part of the record.

So we're not going to argue last year's - you know, they keep wanting to get on the record for what occurred last year. We've got that matter in litigation.

You know, I'm not interested in trying to assault the record and try to make a change in the record from what happened last year.

Last year's record stands on its own, and last year's record includes Mr. Burgess, and employee of the Tax Department, representing the Tax Department in that official capacity. And the Commission had a reasonable right to rely on that representation.

Mr. Goddard: Well, I'll just state I don't disagree.

Mr. Gobel: That's enough on that subject. We know its in litigation.

Mr. Goddard: I understand.

Mr. Gobel: Until the judge rules, correct?

Mr. Sluss: That's correct.

Mr. Goddard: That's correct. The only point I need to make is it's only relevant to the degree this Commission wants to rely on the taxes from last year.

If we rely on the taxes from last year, it becomes relevant. Now, if you don't, if you look at this year on its own in isolation, as you should, then it's irrelevant, and I agree with Mr. Sluss.

Mr. Sluss: But the point of the matter was, you know, they keep wanting to say he had no authority. The fact of the matter was he did state it. This was something the Commission had a right to rely on, and that's what the value was for last year, as set by this Commission.

Mr. Marlow: The only reason I even brought it up was the question was asked about 60 million dollar value from last year and how it dropped for this year.

We're providing an explanation to that direct question. Had it not been brought up, I would never have said anything, but the question of last year's value was brought up and the door was opened.

Mr. Mudrinich: And I want it on the record that I come here or delegate an attorney to come up here just about every year since ICG has started, and if you would have noticed, last year there was no attorney because we were never notified of that hearing where the increase was done. Always come up here, always."

During testimony by Mr. Knight, Mr. Marlow from the State Tax Department interrupted (February 28, 2011 Transcript, Page 105, Line 24-Page 107, Line 7):

Mr. Marlow: I'll raise another objection, I'm sick of this. Every time this comes, they want to jump up and jump in our face about not going back to last year.

As long as they're going to try and use the values from last year, we have the right to

argue what we're going to argue about the rogue employee.

Will you stipulate that all the values used last year were T-40 on the environmental factor until Scott Burgess came up and changed them?

Mr. Knight: I don't know about all these properties. I would have to go back and look at last year's information.

Mr. Mudrinich: Just put the whole transcript from last year instead of one of these pages, and then it will become evident on –

Mr. Marlow: Abundantly clear.

Mr. Sluss: I don't know what the issue is. I mean the Tax Commissioner last year said that this was –

Mr. Mudrinich: We've been down this road before.

Mr. Sluss: I know we have.

Mr. Mudrinich: Rogue employee came up.

Mr. Sluss: A rogue employee is what you're characterizing him. He was a representative of the State Tax Commissioner.

Mr. Mudrinich: No, he wasn't.

Mr. Sluss: Yes, he was.

Mr. Mudrinich: I answered that.

Mr. Marlow: The State Tax Commissioner didn't consider him an official representative, I can tell you that."

During testimony of Jeffrey Kerns, the following occurred (February 28, 2011

Transcript, Page 119, Line 3-Page 120, Line 10)

"Mr. Marlow: Mr Kern, there are a number of properties here that we're discussing right now regarding some environmental factors.

To the best of your knowledge and belief, when the appraised values were provided to the Assessor last year, previous to any Board of Equalization and Review hearings occurring, would the properties in question here have had environmental factors of 40 on them?

Mr. Kern: Yes.

Mr. Marlow: And those all got changed subsequent to a Board of Equalization and Review hearing, is that correct?

Mr. Kern: That's correct.

Mr. Marlow: Why were you not here for that hearing?

Mr. Kern: I was specifically told by the assistant department director that none of my personnel or myself were to be at this hearing. We normally come. One of my –

Mr. Sluss: I'm going to object to hearsay.

Mr. Marlow: There's no jury present. You can give it whatever weight you wish to consider.

Mr. Kern: Usually, the northern counties are counties that my staff come to because our office is in Pennsylvania. When the State Department staff is short, they will go to the southern counties and my staff will go to the northern counties.

We were planning on my calendars to have someone at Taylor County last year. We were specifically told not to come to Taylor County last year. I received that phone call.”

Finally, during argument by Mr. Sluss, the following occurred (February 28, 2011 transcript, Page 145, Line 16-Page 149, Line 7)

Mr. Sluss: The Commissioner earlier had asked a question of the State about why did it reduce from 59 million to 26.8 million and they went off on a rogue employee.

The actual fact of the matter is the Tax Department’s proposed numbers last year is 52 million, and from that number they reduced it to 26 point something million.

So the Commission – this is the screen print of the un – over – yeah, of the amounts before they were overridden last year.

Mr. Marlow: Can we see what you’re talking about here?

Mr. Sluss: No. They asked the question earlier about why it reduced from 59 to 52, and it was never answered. I’m giving them the exact numbers that we can answer why it was reduced from 52 million to 26 million.

They asked the question and it was never answered, and there was dialogue about a rogue employee. This has nothing to do with a rogue employee.

Mr. Marlow: 59 million was not a correct number. It was also determined that the 59 million –

Mr. Sluss: Yeah, I’m giving them the correct number.

Mr. Marlow: You opened the session by stating that.

Mr. Sluss: I’m sorry?

Mr. Marlow: You opened the session by stating that. I’d like to see what you’ve calculated here.

Mr. Mudrinich: We’ve got three – we’ve got 135,000, we’ve got 3.1 million, we’ve got 167,000, which based on my calculations, adds up to roughly 3.5 million in value, and then there’s just a line at the bottom, total 52 million, previous 26, difference –

Mr. Sluss: That’s the NRA screen from last year that printed out what value the tax had on it before this County Commission made any overrides in the values.

And I’m only offering it so that the question can be properly couched, why was it reduced from 52 million to 26, not the 59 which we established, and we agreed was the amount that –

Mr. Mudrinich: We have the answer. We have the answer. Mr. Kern can address it.

Mr. Kern: I have the answer to that question. I was on a train on my way to New York City and received a phone call from one of my employees who informed me that Mr. Scott Burgess was busy overriding numbers as quick as he could, which was illegal.

I testified to – I testified – I told the Director of the Department that I would not substantiate those numbers nor would I testify to their authenticity if they’re going to be played with by someone in the Department. That’s not consistent. That’s not meant to be what the Department is supposed to do.

You cannot go in there and inconsistently apply one number against one company

because you don't like them, and don't apply a number against another company because you do like them.

Mr. Sluss: I'm going to object, he's characterizing –

Mr. Kern: Those numbers were overridden by someone at that Tax Department that no one else in the Tax Department agreed with, and the consultant to the Tax Department specifically called and wrote a memo saying that we would not stand behind those numbers.

Mr. Gobel: But the 52 million was –

Mr. Kern: The 52 million, that's what Scott typed in the machine as an override to what the model produced.

Mr. Gobel: I thought it was from 52 to 59.

Mr. Kern: That's something you did when he got here.

Mr. Gobel: Seven million?

Mr. Kern: Yes.

Mr. Marlow: Does anybody not find it strange that every other year we had members of the Legal Division here, we had members of either the consulting firm here or somebody from the tax department's coal division here until last year when Scott was here by himself? We didn't even know he was here.

Does anybody not find it strange that every other year, we've fully covered these hearings; last year we didn't? Now, that's the year they want to try to run everything on and duntrod us about. It's ridiculous, absolutely ridiculous.”

43. In an Order dated March 1, 2011, the Board ordered the following revisions to the fourteen Coalquest reserve tax accounts for tax year 2011:

Account	Coal Seam	Original Appraisal	Revised Appraisal
46-07-9999-0000-0260-0000	UKT	\$24,533	\$277,427.00
46-07-9999-0000-0430-0000	LKT	\$83,939	\$947,854.00
46-07-9999-0009-8300-0000	UKT	\$29,551	\$336,804.00
46-03-9999-0000-7540-0000	MKT	\$540,036	\$6,133,931.00
46-03-9999-0000-7750-0000	MKT	\$81,932.00	\$932,010
46-04-9999-0000-1130-0000	MKT	\$11,408	\$129,806
46-03-9999-0000-1520-0000	MKT	\$29,233	\$330,750
46-03-9999-0000-4630-0000	MKT	\$44,854	\$505,963
46-03-9999-0000-7420-0000	MKT	\$4,843	\$54,773
46-03-9999-0000-7970-0000	MKT	\$12,097	\$136,307
46-03-9999-0001-2440-0000	MKT	\$11,742	\$133,584
46-03-9999-0001-2450-0000	MKT	\$20,009	\$227,792
46-03-9999-0000-3200-0000	MKT	\$1,154	\$13,044
46-04-9999-0000-5890-0000	MKT	\$753,666	\$8,570,944
Total Increases			\$9,095,569

44. The March 1, 2011 Order also decreased the values of several tax accounts in the “active” mine filings of Coalquest. These accounts were not a part of the appeal filed by Coalquest, but Counsel for Coalquest stipulated they should be restored to the values set by the Tax Commissioner.

45. The Order from the Board of Equalization and Review in 2011 notes the objections of the State Tax Commissioner to the increases proposed.

46. As these appeals are so closely intertwined factually, the Court is issuing this Order relating to all above styled appeals.

CONCLUSIONS OF LAW

1. Article 1, Section 10 of the West Virginia Constitution provides that “taxation shall be equal and uniform throughout the State, and all property, both real and personal, shall be taxed in proportion to its value to be ascertained and directed by law.”

2. *Killen v. Logan County Commission*, 170 W. Va. 602, 295 S.E.2d (1982) is instructive when considering the above styled appeals. The relevant syllabus points state as follows: 7. The tax commissioner's appraisal should be presumed to be correct and the assessed value should correspond to the appraisal value in the usual case. 10. It is the tax commissioner's duty to ensure that assessment occurs at market value. The tax commissioner must see that county officials are complying with the constitutional and statutory requirements of full value assessment. W.Va.Const. art. 10, § 1; W.Va.Code §§ 11-3-1; 18-9A-11.13. **Fifty-five sovereign entities do not exist within the sovereign state of West Virginia. Rather, 55 geographically-defined governmental organizations exist to carry out the**

purpose of state government. The counties are subdivisions of the state, and county officials and governments are generally subject to supervision by state officials acting for the state government. (Emphasis added).

3. West Virginia Code 11-1C-7(a) provides that “Except for property appraised by the state Tax Commissioner under section ten (§ 11-1C-10) of this article and property appraised and assessed under article six (§§ 11-6-1 et. seq.) of this chapter, all assessors shall, within three years of the approval of the county valuation plan required pursuant to this section, appraise all real and personal property in their jurisdiction at fair market value except for special valuation provided for farmland and managed timberland. They shall utilize the procedures and methodologies established by the Property Valuation Training and Procedures Commission and the valuation system established by the Tax Commissioner.” Therefore, according to this section, the appraisal and assessment of natural resources property such as active and reserve coal properties is solely the duty of the State Tax Commissioner.

4. West Virginia Code § 11-1C-10(d) provides: “Within three years of the approval date of the plan required for natural resources property required pursuant to section (e) of this section, the State Tax Commissioner shall determine the fair market value of all natural resources property in the state. The commissioner shall thereafter maintain accurate values for all such property.” West Virginia Code § 11-1C-10(d)(2) then states, in pertinent part, that “The Tax Commissioner shall forward each natural resources property appraisal to the county assessor of the county in which that property is located and the assessor shall multiply each such appraisal by sixty percent and include the resulting assessed value in the land book or the personal property book, as appropriate, for each tax year. The commissioner shall supply

support data that the assessor might need to explain or defend the appraisal.” Natural resources property is defined by West Virginia Code § 11-1C-10(a)(2) as “coal, oil, natural gas, limestone, fireclay, dolomite, sandstone, shale, sand and gravel, salt, lead, zinc, manganese, iron ore, radioactive minerals, oil shale, managed timberland as defined in section two of this article, and other minerals.”

5. West Virginia Code § 11-1C-10(g) provides: “The county assessor may accept the appraisal provided, pursuant to this section, by the State Tax Commissioner: Provided, that if the county assessor fails to accept the appraisal provided by the State Tax Commissioner, the county assessor shall show just cause to the valuation commission for the failure to accept such appraisal and shall further provide to the valuation commission a plan by which a different appraisal will be conducted.”

6. It is well-established that the word “shall”, in the absence of language in the statute showing a contrary intent on the part of the Legislature, should be afforded a mandatory connotation.” Syllabus Point 1 of *Nelson v. West Virginia Public Employees Insurance Board*, 171 W. Va. 445, 300 S.E.2d 86 (1982).

7. The requirements of West Virginia Code §11-1C-10(g) are mandatory. If an assessor disagrees with the appraisal of natural resource property provided to her by the State Tax Commissioner, she is required to apply to the Valuation Commission to show just cause for failure to accept the Commissioner’s appraisal and to provide the Valuation Commission a plan by which a different appraisal will be conducted. West Virginia Code § 11-1C-3(a) created the Property Valuation Training and Procedures Commission, and states as follows:

“There is hereby created, under the department of tax and revenue, a property valuation

training and procedures commission which consists of the state tax commissioner, or a designee, who shall serve as chairperson of the commission, three county assessors, five citizens of the state, one of which shall be a certified appraiser, and two county commissioners. The assessors, five citizen members and two county commissioners shall be appointed by the governor with the advice and consent of the Senate. For each assessor to be appointed, the West Virginia assessors association shall nominate three assessors, no more than two of whom shall belong to the same political party, and shall submit such list of nominees to the governor. For each of the two county commissioners to be appointed, the county commissioner's association of West Virginia shall nominate three commissioners, no more than two of whom shall belong to the same political party, and shall submit such list of nominees to the governor. Except for the tax commissioner, there may not be more than one member from any one county. No more than seven members of the commission shall belong to the same political party: Provided, That any member of the commission who is a direct party to any dispute before the board shall excuse himself or herself from any consideration or vote regarding the dispute. By the first day of November, one thousand nine hundred ninety, the governor shall appoint the fifth citizen member, who shall serve a two-year term.

The assessor failed to apply to the Valuation Commission with a plan for a different appraisal, but instead, her consultant, Jerry Knight, contacted Scott Burgess in January of 2010, immediately prior to the meeting of the Board of Equalization and Review.

8. West Virginia Code § 11-3-24 provides, in part: "At the first meeting [of the Board of Equalization and Review], the assessor shall submit the property books for the current year, which shall be complete in every particular, except that the levies shall not be extended. The assessor and his assistants shall attend and render every assistance possible in connection with the value of property assessed by them."

9. In the 2010 hearings, Jerry Knight, on behalf of the Taylor County Assessor, testified that "and the assessor, in exercising her right just like any other person in the State of West Virginia who has that right, is presenting these issues before this board so that the board can carry out it's duty of examining the information and correcting any and all errors that are found in the property books." He later recanted that testimony and stated "I certainly don't intend to indicate, and I don't believe I did indicate, that the assessor was appearing here as a person.

The assessor certainly is appearing here in her capacity as an assessor to assist the board under the provisions of §11-3-24, as that statute requires in its deliberation concerning these issues.”

The Assessor and the County Commission, sitting as the Board of Equalization and Review, have also argued that the Assessor was fulfilling her mandatory duties pursuant to West Virginia Code § 11-3-24. However, this argument is disingenuous, because the issue would not have been before the Board had the Assessor not challenged the State Tax Commissioner’s appraisals.

Regardless in what capacity the Assessor appeared before the Board, it was a violation of her mandatory statutory duty to fail to present the issue to the Property Valuation Training and Procedures Commission. Upon accepting the value and placing it on the land books, she was foreclosed from attempting to attack the assessment before the Board.

There are many reasons for this determination. First, West Virginia Code § 11-3-2a provides various mechanisms by which notice of an increased assessment is to be provided to a taxpayer prior to the meeting of the Board. The version of § 11-3-2a(a) in effect at the time of the 2010 hearings stated that “If the assessor determines the assessed valuation of any item of real property is more than ten percent greater than the valuation assessed for that item in the last tax year, the increase is one thousand dollars or more and the increase is entered in the property books as provided in section nineteen of this article, the assessor shall give notice of the increase to the person assessed or the person controlling the property as provided in section two of this article. The notice shall be given at least fifteen days prior to the first meeting in February at which the county commission meets as the board of equalization and review for that tax year and advise the person assessed or the person controlling the property of his or her right

to appear and seek an adjustment in the assessment. The notice shall be made by first class United States postage mailed to the address of the person assessed or the person controlling the property for payment of tax on the item in the previous year, unless there was a general increase of the entire valuation in any one or more districts in which case the notice shall be by publication of the notice by a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code. The area for the publication is the county." Said Code section was amended, effective June 11, 2010, and now requires that "If the assessor determines the assessed valuation of any item of real property is more than ten percent greater than the valuation assessed for that item in the last tax year, the increase is one thousand dollars or more and the increase is entered in the property books as provided in section nineteen (§ 11-3-19) of this article, the assessor shall give notice of the increase to the person assessed or the person controlling the property as provided in section two of this article. The notice shall be given on or before January 15 of the tax year and advise the person assessed or the person controlling the property of his or her right to appear and seek an adjustment in the assessment: *Provided, That this notification requirement does not apply to industrial or natural resources property appraised by the Tax Commissioner under article, six-k of this chapter which is assessed at sixty percent of its true and actual value.* (Emphasis added) The notice shall be made by first-class United States postage mailed to the address of the person assessed or the person controlling the property for payment of tax on the item in the previous year, unless there was a general increase of the entire valuation in one or more of the tax districts in which case the notice shall be by publication of the notice by a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code. The area for the publication

is the county.

By entering the initial assessment on the land books as being accepted, the Assessor prevented the notice required at that time from being sent to the taxpayer prior to the meeting of the Board.

Second, as expressed by § 11-1C-7a, the assessment of natural resources property is simply not within the jurisdiction of the Assessor. It is exclusively the jurisdiction of the State Tax Commissioner. Further, as provided by § 11-1C-10(d)(2), "The commissioner shall supply support data that the assessor might need to explain or defend the appraisal." The commissioner has a mandatory duty to provide data to the Assessor to support the Commissioner's appraisal. It is outside of the Assessor's duties to hire a separate consultant to review appraisals conducted by the State Tax Commissioner and to question the methods of the State Tax Commissioner when the Assessor has not followed the mandatory statutory duty to present these issues to the Property Valuation Training and Procedures Commission.

Third, while the Court wishes to make clear that it has, for the purposes of the instant order, excluded consideration of the testimony and argument of the State Tax Department in the February 28, 2011 hearings as it relates to any appeal from the 2010 tax year, the Court finds Mr. Burgess's presence without any type of representation highly suspect. As Mr. Burgess testified "As I recall, and again this is subject to a very bad memory – recent and long term memory – sometime in January, I'm going to say mid to late January, Jerry, on behalf of the county, asked me to look at a number of parcels, some of which we talked about a couple of Fridays ago; some of which we're here for today. And asked that we review those and he particularly directed us to the environmental because the environmental did increase on those

properties from a 20 to a 40. And his question was why they'd be a T-20 if they had no increase.

And I said certainly we'll do that. So I looked at the data; did some of the same screen prints Jerry has provided. I asked Pat White and her people to review that. And after considerable review it was suggested that this should not be a 40 environmentally; it should be a 20. Particularly given, you know, what's going on in the county."

It appears that at the eleventh hour, Mr. Burgess attempted to make changes to the appraisals without time to submit such appraisals to the Assessor for entry on the land books as is her mandatory duty. Even if Scott Burgess is assumed to be a representative with actual authority from the State Tax Department, such late changes would render parties nearly incapable of addressing the changed appraisals. Further, notice could not have been served as required by the version of West Virginia Code § 11-3-2a in effect at that time.

Regardless of whether Mr. Burgess did or did not have authority from the State Tax Commissioner to be present, the Court finds he had no authority under law to make changes to or override the appraisal of the Tax Commissioner, or to usurp the jurisdiction of the Property Valuation Training and Procedures Commission.

The Court is aware that West Virginia Code § 11-3-25 states that "If there was an appearance by or on behalf of the owner before the county court, or if actual notice, certified by such court, was given to the owner, the appeal, when allowed by the court or judge, in vacation, shall be determined from the evidence so certified. If, however, there was no actual notice to such owner, and no appearance by or on behalf of the owner before the county court, or if a question of classification or taxability is presented, the matter shall be heard de novo by the

circuit court.” The Court has considered the matters presented only on the record so certified in the above styled cases, but the Court is troubled by the statements of officials from the State Tax Department at the February 28, 2011 hearing. The Court is also aware that West Virginia Code § 11-3-25(c) now states “If there was an appearance by or on behalf of the taxpayer before either board, or if actual notice, certified by the board, was given to the taxpayer, the appeal, when allowed by the court or judge, in vacation, shall be determined by the court from the record as so certified: *Provided, That in cases where the court determines that the record made before the board is inadequate as a result of the parties having had insufficient time to present evidence at the hearing before the board to make a proper record, as a result of the parties having received insufficient notice of changes in the assessed value of the property and the reason or reasons for the changes to make a proper record at the hearing before the board, as a result of irregularities in the procedures followed at the hearing before the board, or for any other reason not involving the negligence of the party alleging that the record is inadequate, the court may remand the appeal back to the county commission of the county in which the property is located, even after the county commission has adjourned sine die as a board of equalization and review or a board of assessment appeals for the tax year in which the appeal arose, for the purpose of developing an adequate record upon which the appeal can be decided.*”(Emphasis added) Such amendment is only effective on tax years beginning after December 31, 2011, but given the numerous procedural defects and extremely short notice on changes in the appraisals regarding significant and complex issues, this Court would entertain a motion to develop the issues of the actual/apparent agency of Scott Burgess should this matter be reversed on appeal for consideration on the substantive issues, as the Court believes it would

be improper to accept that Scott Burgess had actual authority from the State Tax Department when considering the substantive issues set forth below having viewed the allegations against Mr. Burgess in the February 28, 2011 transcript.

10. The Court has declined to delve into the substantive arguments in these matters due to the substantial procedural defects, but it is clear that the model applied by the State Tax Commissioner in valuing active and reserve coal properties can only be applied in an equal and uniform manner by applying the various formulas in the exact same manner in each county in the state. If the Assessor wishes to change how the formula is applied or have factors adjusted, the Assessor must follow her mandatory duty to present the issue to the Property Valuation Training and Procedures Commission. A failure to do so, as in these instant appeals, would result in unequal taxation of properties in Taylor County as compared to similar properties in all the other counties of the state, and would thus violate the Taxpayer's constitutional rights. If the procedure used in this matter was proper, valuation of active and reserve coal properties in the State of West Virginia would devolve into chaos as each county hires its own consultant to fight the State Tax Commissioner's appraisals to increase and alter valuations. The only way that the system can function in a constitutional manner, even with flaws in the calculations, is to apply those flaws uniformly and correct issues year by year on a statewide basis.

11. The applicable standard of review was set forth by the West Virginia Supreme Court of Appeals in *In re Tax Assessment Against Am. Bituminous Power Partners, L.P.*, 208 W. Va. 250, 254-55, 539 S.E.2d 757, 761-62 (2000):

Upon receiving an adverse determination [concerning property valuation] before the county commission, a taxpayer has a statutory right to judicial review before the circuit court. W. Va. Code § 11-3-25. The statute provides little in the way of guidance as to the scope of judicial review, although it does expressly limit review to the record made before the county

commission. Given this limitation, we have previously indicated that review before the circuit court is confined to determining whether the challenged property valuation is supported by substantial evidence, see *Killen v. Logan County Comm'n*, 170 W. Va. 602, 295 S.E.2d 689 (1982), or otherwise in contravention of any regulation, statute, or constitutional provision, see *In Re Tax Assessments Against the Southern Land Company*, 143 W. Va. 152, 100 S.E.2d 555 (1957), overruled on other grounds, *In Re Kanawha Valley Bank*, 144 W. Va. 346, 109 S.E.2d 649 (1959). As this Court's previous cases suggest, and as we have recognized in other contexts involving taxation, e.g., *Frymier-Halloran v. Paige*, 193 W. Va. 687, 695, 458 S.E.2d 780, 788 (1995), judicial review of a decision of the board of equalization and review regarding a challenged tax-assessment valuation is limited to roughly the same scope as permitted under the West Virginia Administrative Procedures Act, W. Va. Code Chapter 29A.

West Virginia Code § 29A-5-4(g) provides that the Court "shall reverse, vacate or modify the order or decision of the agency if the substantial rights of the petitioner or petitioners have been prejudiced because the administrative findings, inferences, conclusions, decision or order are: (1) in violation of constitutional or statutory provisions; or (2) in excess of the statutory authority or jurisdiction of the agency; or (3) made upon unlawful procedures; or (4) affected by other error of law; or (5) clearly wrong in view of the reliable, probative and substantial evidence on the whole record; or (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion."

12. As the Board clearly initiated the February 2010 hearings as a result of actions in violation of statutory provisions and made upon unlawful procedures due to the failure of the Assessor to follow mandatory statutory guidelines, the Board's orders entered regarding the property at issue in Case Numbers 10-P-11, 12, 13, and 14 must be **REVERSED**. The proper values to be assigned to the properties at issue are those initially presented by the State Tax Commissioner and recorded on the land books of Taylor County.

13. As to the property at issue in Case Number 11-P-17, it is clear from the record before the Board that both the Taxpayer and the State Tax Commissioner object to the change in valuation agreed upon by the Board. The values were only reviewed because they differed from the values improperly assigned in 2010. As such, the Court has also concluded that the hearing on February 28, 2011 was in violation of statutory provisions and founded upon unlawful procedures. Therefore, the proper values to be assigned to the properties at issue are

those initially presented by the State Tax Commissioner and recorded on the land books of Taylor County.

14. The Court has also concluded that the procedures in all the above styled cases were in violation of constitutional provisions, as the method applied would result in unequal taxation that is not uniform across the State, as it would treat property in Taylor County vastly differently from similar natural resource property in the other 54 counties in the State.

ORDERS

Having concluded that the assessments in all of the above styled cases should be returned to the values originally provided by the State Tax Commissioner and recorded upon the land books of Taylor County, it is hereby **ORDERED** that all values in the above styled cases be returned to those initial values.

It is further **ORDERED**, pursuant to West Virginia Code § 11-3-26, that all Petitioners are hereby exonerated from the payment of so much of such taxes as are erroneously charged against them, if the same have not been paid; and if paid, that the sum so erroneously charged be refunded to them.

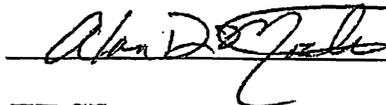
Said order, is to be delivered to the assessor, sheriff or other collecting officer and this order shall restrain him from collecting so much as is erroneously charged, and, if the same has been already collected, the money shall be refunded, if such officer has not already paid it into the treasury, and in either case, when indorsed by the person exonerated, it shall be a sufficient voucher to entitle the officer to a credit for so much in his settlement, which he is required to make. If what was erroneously charged has been paid into the state treasury, this order of the circuit court, attested by its clerk, shall entitle the claimant to a warrant on the state treasury for

the amount thereof, if application for the same be made to the auditor within one year after the date of such order.

The Clerk shall transmit certified copies of this order to the parties or their counsel of record.

ENTER:

5/10/2012



JUDGE

~~GD~~
ciding Attorney

A TRUE COPY FROM THE RECORD

ATTEST: VONDA M. RENEMAN

CLERK OF THE CIRCUIT COURT OF TAYLOR
COUNTY WEST VIRGINIA

BY:

