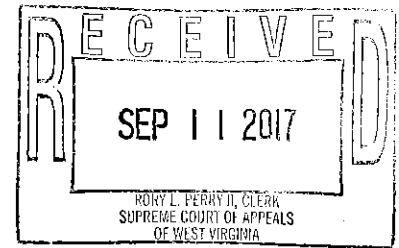


WEBER & WEBER
ATTORNEYS AT LAW
239 MAIN AVENUE
POST OFFICE BOX 270
WESTON, WEST VIRGINIA 26452



AREA CODE 304
TELEPHONE 269-2228
FACSIMILE 269-7938

GEORGE I. DAVISSON (1899-1980)
W.T. WEBER, JR.
W.T. WEBER, III

September 7, 2016

The Honorable Gerald Fogg
Barbour County Circuit Clerk
Barbour County Courthouse
8 North Main Street
Philippi, West Virginia 26416

COPY

RE: Denex Petroleum Corporation v. Mark Matkovich,
West Virginia State Tax Commissioner, et al.,
Barbour County Civil Action No. 16-AA-1

Dear Mr. Fogg:

Enclosed, please find original "*Reply Memorandum of Petitioner Denex Petroleum corporation to Judicial Motion to Refer to Business Court*" in regard to the above referenced action.

Please place same in the appropriate file.

If you have any questions, please let me know.

I am,

Sincerely yours,

W. T. Weber, III

WTWIII/caa

Enclosures

xc: R. Dennis Xander-Denex Petroleum Corp.
Katherine A. Schultz, Esq.
Stephen C. Sluss, Esq.
Hon. Alan D. Moats, Judge
✓ Rory L. Perry, II-Clerk WVSCA
Carol A. Miller, Executive Director WVBC

IN THE CIRCUIT COURT OF BARBOUR COUNTY, WEST VIRGINIA

DENEX PETROLEUM CORPORATION,
a West Virginia Corporation,

Petitioner,

v.

Civil Action No. 16-AA-1
The Honorable Alan D. Moats

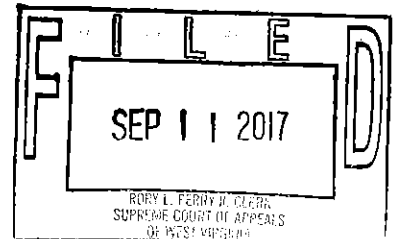
THE HONORABLE MARK MATKOVICH,
West Virginia State Tax Commissioner,

THE HONORABLE JOHN CUTRIGHT,
Assessor of Barbour County, and

THE COUNTY COMMISSION OF BARBOUR COUNTY,
Sitting as the Barbour County Board of Review and Equalization,

Respondents.

**REPLY MEMORANDUM OF PETITIONER
DENEX PETROLEUM CORPORATION
TO JUDICIAL MOTION TO REFER TO BUSINESS COURT**



Comes now, Petitioner Denex Petroleum Corporation, (hereinafter “Denex”), and in reply to the Circuit Court of Barbour County’s *Motion to Refer Case to Business Court*, offers the following:

In its *Motion to Refer to Business Court*, the Circuit Court of Barbour County, West Virginia, includes the issues presented in the action as “very similar” to those issues presented by Consol Energy, Inc. d/b/a CNX Gas Company, (hereinafter “CNX”), in its Barbour, Harrison, McDowell, Lewis and Doddridge County actions.

Denex disagrees. The issues presented by Denex only involve conventional oil and gas wells, not Marcellus wells, or other types of oil and gas wells being litigated by CNX. Moreover, the Denex issues are only pertinent to Barbour County, West Virginia.

Denex contends that the application of the Tax Commissioner's rules and regulations in regard to the valuation of oil and gas assets does not result in the "true and actual" value of the asset as required by constitutional and statutory mandate.

The Tax Department ignored actual operating expenses and instead relied upon outdated averages and estimates found in its valuation variables document and administrative notices, resulting in calculated expenses that were significantly less than the actual operating expenses incurred. By understating operating expenses, the appraised value of the property is overstated, resulting in excess and unfair taxes.

Summarily, the issue presented to the Circuit Court in the Denex action avers that the named Respondents have failed to follow statutory and regulatory mandates in the determination of "true and actual value" by utilizing a mass appraisal system that does not fairly nor accurately value natural resource properties. It is more or less an elaborate estimate that inappropriately ignores actual operating expenses and instead relies upon averages (usually outdated) and estimates contrived from its own "valuation variables document" and "administrative notices".

However, Denex is advised that the CNX cases have not been fully briefed and that there have been no appeal hearings before the Circuit Court of Barbour County, and upon belief, in any of the other named counties. It may take many months or years to fully litigate the issues presented by CNX in the other counties.

The issues presented by Denex may be a small part of the case presented by CNX, but they are nowhere near the scale of the *mense* issues raised by CNX in its multi-county litigation.

Consolidation of the Denex case with the CNX cases presents no judicial economy for Denex. The actions are very different in scale and complexity.

Denex further avers that its action is ready for a decision. Denex timely filed its appeal of the adverse decision from the Barbour County Board of Review and Equalization on or about March 23, 2016. All appeal brief and reply briefs having been submitted timely by all parties as set out in the Circuit Court's docket schedule.

A full hearing on the Denex appeal was held before the Circuit Court of Barbour County on April 7, 2017.

There is nothing left for the parties to file or argue.

West Virginia Code § 11-3-25(d), as amended, mandates, in part, that:

“The circuit court shall review the record submitted from the board. If the court determines that the record is adequate, it shall establish a briefing and argument schedule that will result in the appeal being submitted to the court for decision within a reasonable time, but not to exceed eight months after the appeal is filed”. (Emphasis added).

In the present action, the court has exceeded its jurisdictional time limit for decision, it now being more than seventeen (17) months since Denex timely filed its appeal.

Denex is entitled to entry of an order in its favor in that the circuit court has failed to rule in the mandated time frame.

Denex does not object to the referral to business court.

However, Denex objects to any consolidation with the CNX cases in that Denex will be prejudiced by the time it will take to bring the CNX cases to resolution.

Denex continues to be prejudiced in that the Respondents continue to fail to properly assess the Denex assets as set forth in the pleading in this action.

WHEREFORE, in reply to the Motion to Refer to Business Court, as filed by the Circuit Court of Barbour County, West Virginia, Petitioner Denex Petroleum Corporation prays that if this action is referred to business court, that this action not be consolidated with the CNX actions,

that Denex be awarded the relief sought in its Petition in this action due to the Circuit Court's jurisdictional failure to render a decision within the statutory time frame, for its attorney fees and costs expended, and for any other relief the Court deems necessary.

DENEX PETROLEUM CORPORATION,
A West Virginia Corporation
Petitioner, By Counsel

A handwritten signature in black ink, appearing to read 'W. T. Weber, III', with a stylized flourish extending from the end.

W. T. Weber, III, Esquire (State Bar Id 6108)
Weber & Weber
239 Main Avenue
P. O. Box 270
Weston, West Virginia 26452
304-269-2228
Counsel for Petitioner

CERTIFICATE OF SERVICE

I, W. T. Weber, III, Weber & Weber, and do hereby certify that I served a true copy of its *Reply Memorandum of Denex Petroleum Corporation to Judicial Motion to Refer to Business Court*, upon the following individuals at the following address by mailing the same to them in a sealed envelope, United States mail, postage prepaid, this the 7th day of September, 2017:

Katherine A. Schultz, Esquire
Senior Deputy Attorney General
West Virginia Attorney General's Office
Bldg. 1, Room W-435
1900 Kanawha Blvd., East
Charleston, WV 25305
Counsel for Respondent Mark Matkovich

Stephen C. Sluss, Esquire
421 Midland Trail
Hurricane, WV 25526
Counsel for Respondent Barbour County Assessor
and Respondent Barbour County Commission

Hon. Alan D. Moats
Judge, Circuit Court of Barbour County, West Virginia
Taylor County Courthouse
214 West Main Street
Grafton, WV 26354

Supreme Court of Appeal of West Virginia
Rory L. Perry, II, Clerk of Court
State Capitol, Room E-317
Charleston, WV 25305

Carol A. Miller, Executive Director
Business Court Division
Berkeley County Judicial Center
380 W. South Street, Suite 2100
Martinsburg, WV 25401



W. T. WEBER, III