

CIVIL CASE INFORMATION STATEMENT  
CIVIL CASES

In the Circuit Court of Wetzel County, West Virginia

FILED  
18 MAR 13 PM 1:14  
LORIE MCCOY  
CIRCUIT CLERK  
WETZEL COUNTY, WV

I. CASE STYLE:

Plaintiff

SWN PRODUCTION COMPANY, LLC

vs.

Defendant

The Honorable Dale Steager

1001 Lee Street East

Street

Charleston, WV 25301

City, State, Zip

The Honorable Scott Lemley, Assessor of Wetzel County

210 Main Street

Street

New Martinsville, WV 26155

City, State, Zip

The County Commission of Wetzel County

200 Main Street

Street

New Martinsville, WV 26155

City, State, Zip

Case # 18-AA-21

Judge: Cramer

Days to  
Answer

20

Type of Service

20

20

Original and \_\_\_\_\_ copies of complaint furnished herewith.

PLAINTIFF: SWN Production Company, LLC	CASE NUMBER:
DEFENDANT: The Honorable Dale Steager, et al.	18-AA-

II. TYPE OF CASE:

TORTS	OTHER	CIVIL
<input type="checkbox"/> Asbestos	<input type="checkbox"/> Adoption	<input type="checkbox"/> Appeal from Magistrate Court
<input type="checkbox"/> Professional Malpractice	<input type="checkbox"/> Contract	<input type="checkbox"/> Petition for Modification of Magistrate Sentence
<input type="checkbox"/> Personal Injury	<input type="checkbox"/> Real Property	<input type="checkbox"/> Miscellaneous Civil
<input type="checkbox"/> Product Liability	<input type="checkbox"/> Mental Health	<input checked="" type="checkbox"/> Other
<input type="checkbox"/> Other Tort	<input type="checkbox"/> Appeal of Administrative Agency	

III. JURY DEMAND: ☐ Yes ☒ No

CASE WILL BE READY FOR TRIAL BY (Month/Year): \_\_\_\_\_

IV. DO YOU OR ANY OF YOUR CLIENTS OR WITNESSES IN THIS CASE REQUIRE SPECIAL ACCOMMODATIONS DUE TO A DISABILITY OR AGE? ☐ Yes ☒ No

- ☐ Wheelchair accessible hearing room and other facilities.
- ☐ Interpreter or other auxiliary aid for the hearing impaired.
- ☐ Reader or other auxiliary aid for the visually impaired.
- ☐ Spokesperson or other auxiliary aid for the speech impaired.
- ☐ Other: \_\_\_\_\_

Attorney Name: Craig A. Griffith (WV Bar #8549)  
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Charleston, WV 25326-1588

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Representing:  
☒ Plaintiff ☐ Defendant  
☐ Cross-Complainant ☐ Cross-Defendant

Dated: March 13, 2018

  
Signature

☐ Pro Se

**IN THE CIRCUIT COURT OF WETZEL COUNTY, WEST VIRGINIA**

**SWN PRODUCTION COMPANY, LLC,**

**Petitioner,**

**v.**

**Civil Action No. 18-C-21**  
**The Honorable Cramer**

**THE HONORABLE DALE STEAGER,**  
**West Virginia State Tax Commissioner,**

**THE HONORABLE SCOTT LEMLEY,**  
**Assessor of Wetzel County, and**

**THE COUNTY COMMISSION OF WETZEL COUNTY,**  
**Sitting as a Board of Assessment Appeals,**

**Respondents.**

**COMPLAINT OF PETITIONER SWN PRODUCTION COMPANY, LLC**

**I. INTRODUCTION**

SWN Production Company, LLC ("SWN") is a producer of oil and natural gas throughout the state of West Virginia, with 56 Marcellus wells located in Wetzel County.

Those wells are appraised by the West Virginia Department of Revenue, State Tax Department, Property Tax Division (the "Tax Department" or "State") based on a mass appraisal system, state-wide. Certain variables are used by the State to value producing oil and natural gas wells, including, notably for this Brief, operating expenses. Specifically, the Tax Department periodically circulates a survey by which it solicits data from oil and natural gas producing taxpayers regarding operating expenses for their wells, and based on that, the Tax Department determines the operating expense variables used in its mass appraisal system. The amount of



operating expenses applied to a well using the mass appraisal system is based on a percentage of the well's gross receipts not to exceed a maximum amount, and the percentage and maximum vary by the type of well (typical or conventional, Marcellus, etc.). The operating expense calculations are included in a natural resources "valuation variables" document that the Tax Department releases annually.

In addition to the valuation variables document, the Tax Department releases an annual administrative notice that lists the percentages and maximum amounts for operating expense calculations. In prior years, the Tax Department invited taxpayers to submit actual operating expenses that exceed the percentages and maximum amounts listed in the valuation variables document. The 2016 and 2017 administrative notices, unlike administrative notices from 2000 through 2015, however, did not include language that invites taxpayers to submit actual expenses, despite no changes to the West Virginia Code or the Tax Department's Legislative Rule that governs the valuation of producing natural gas wells. The same administrative notice indicates that for Marcellus horizontal wells, the allotted maximum operating expense will vary between \$5,750 and \$175,000 depending upon the percentage of gas versus oil receipts involved.

In this matter, SWN evaluated its actual operating expenses for calendar year 2015, and determined that for Marcellus wells in the county, the amount of operating expenses that it was incurring significantly exceeded the percentages and maximum amounts set by the State. For property tax purposes, the operating expense data from calendar year 2015 is used to value the wells for tax year 2017.

SWN, like many mineral producers, reported its operating expenses to the Tax Department on a state-wide basis for the Tax Department's review and comparison to variables

published for tax year 2017. For 2015, SWN's average operating expense per well was 56.4% of revenue, or \$765,283, which includes all operating expenses, necessary to get the gas to the point of sale including lease operating expenses, gathering, compression and transportation expenses and processing expenses.

The goal of the State's calculation is to determine the value of the reserves using a projected net income calculation for the wells. The producer provides revenue and well formation data to the Tax Department and the Tax Department assigns the operating expense allowance. SWN reports its revenue, for taxation purposes, at the point of sale, which is at the tailgate of a Mark West processing plant after the natural gas has been gathered, compressed, transported and processed. Allowed operating expenses should reflect the expenses incurred to get this gas to the point of sale. Under the current system, all taxpayers are assigned the same operating expense allowance regardless of this point of sale. If two producers have the same production/reserves but one sells at the wellhead and the other sells to a market further away (with the producer that sells the gas further away reporting higher revenues, but receiving the same operating expense allowance), the reserves of the producer who sells to a further market are valued substantially higher, which undermines the goal of the State's calculation.

For tax year 2017, the Tax Department calculates operating expenses at the lesser of 20% of gross receipts or \$175,000 for Marcellus wells (the "maximum amount" of \$175,000 of operating expenses per Marcellus well will be referred to alternatively throughout this complaint as the "maximum amount" or "cap"). This cap unduly restricts the amount of operating expenses that should be allowed for each well, and the imposition of a "cap" is not supported by the Tax Department's legislative rule regarding the valuation of producing oil and natural gas properties.



The legislative rule, instead, requires that the Tax Department use “average annual industry operating expenses per well” in valuing producing wells, and does not authorize the Tax Department to “cap” operating expenses at a certain amount. In sum, the Tax Department incorrectly and unfairly ignored the actual operating expenses and instead relied on the maximum calculations found in its valuation variables document and administrative notice. By failing to consider SWN’s actual operating expenses, the Tax Department overvalued SWN’s wells and did not assess them at their true and actual value.

Additionally, the Tax Department overvalued SWN’s Wetzel County wells by employing a “weighting” methodology for wells that produced both oil and natural gas that significantly decreased the amount of operating expenses that were allowed for the entire well, rather than applying the operating expenses allowed for the oil production and the operating expenses allowed for the gas production separately. This weighting methodology also factored into the Tax Department’s overvaluation of SWN’s wells, leading to the wells not being assessed at their true and actual value.

On October 6, 2017, SWN protested the Tax Department’s valuation (as adopted by the Wetzel County Assessor) to the Wetzel County Commission sitting as the Wetzel County Board of Assessment Appeals (the “Board”). SWN presented clear and convincing evidence that the Tax Department failed to consider SWN’s actual operating expenses in determining the valuation for the wells assessed for Wetzel County. SWN presented a complete analysis of its actual operating expenses from the state and local tax firm Altus Group US, Inc. (“Altus”), supported by testimony from an Altus Director, Kirsten Evans, that correctly applies the approach to arrive at allowable operating expenses. SWN also proved by clear and convincing evidence that the

State erroneously calculated average operating expenses at the lesser of 20% of gross receipts or \$175,000. SWN demonstrated that its actual operating expenses, and the operating expenses of other WVONGA members, were far in excess of the Tax Department's allowances. SWN's actual operating expenses per well are 56.4% of gross receipts or \$765,283, on average. SWN also demonstrated that the Tax Department had improperly weighted the operating expenses associated with oil produced by Marcellus wells with the operating expenses associated with natural gas produced by Marcellus wells, and the Tax Department conceded that SWN was correct on this point, but only agreed to fix the issue in subsequent tax years. The Board, however, made no adjustment to the Tax Department's valuation.

SWN timely petitioned the Court for appeal of the Board's decision. As explained below, the Tax Department has abused its discretion by failing to consider SWN's actual and allowable operating expenses in a manner contrary to the statutes, regulations and official releases from the Tax Department governing valuation of personal property. Moreover, the Tax Department has failed to support its valuation with substantial evidence. SWN, on the other hand, presented clear and convincing evidence for its allowable operating expenses to be used in valuing its wells for tax year 2017.

## **II. FACTUAL BACKGROUND**

### **A. SWN's Property.**

SWN owns 56 Marcellus wells in Wetzel County. (Certified Transcript of October 6, 2017 Hearing before the Wetzel County Board of Assessment Appeals, See Exhibit A, p. 6 (hereinafter "Hr'g Tr.")). SWN pays significant taxes to Wetzel County for its oil and gas wells.



## **B. SWN's 2015 Operating Expenses.**

Kirsten Evans of Altus testified that the Tax Department's operating expense survey that was provided to Marcellus well oil and gas producers in 2014 was essentially a carryover of the survey that had been used for conventional well producers in prior years and included line items solely focused on traditional lease operating expenses that are incurred in "lifting" the oil and natural gas out of the ground. (Hr'g Tr. pp. 31:9-34:17; Hr'g Tr. Exh. 7). The 2014 survey included no line items for gathering and compression, transportation, or processing costs, which are necessary to get the gas to the market. (Hr'g Tr. pp. 31:9-34:17; Hr'g Tr. Exh. 7).<sup>1</sup> The Tax Department's original calculation of a \$150,000 cap with an operating expense percentage of 20% was based on this inadequate survey.<sup>2</sup> The Tax Department circulated a new survey in 2017 in order to fix the deficiencies associated with the 2014 survey; however, the Tax Department did not amend the \$175,000 cap figure following the receipt of updated survey information from Marcellus producers. (Hr'g Tr. pp.34:18-35:8; Hr'g Tr. Exh. 8). Tellingly, the Tax Department refuses to provide Marcellus producers with details regarding how the \$175,000 calculation was made, and offered no cogent testimony before the Board in regards to the calculation. (Hr'g Tr. pp.105:2-106:19, 113:2-23). It is clear that the State's cap of \$175,000 in operating expenses was borne out of the faulty 2014 survey, and does not truly represent the average operating expenses for the industry, as shown by the operating expense information provided by the West Virginia Oil and Gas Association ("WVONGA") in public comments submitted by that group in 2016 and 2017 and by SWN's operating expense percentage of 56.4%

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<sup>1</sup> SWN had not entered the West Virginia market at the time of the 2014 survey and did not submit a survey in 2014. (Hr'g Tr. pp.34:13-17).

<sup>2</sup> The Tax Department increased the \$150,000 cap used from 2014-16 to \$175,000 for tax year 2017.



for tax year 2017 with an average of \$765,383 of expenses per well. (Hr'g Tr. pp. 28:14-17, 38:15-21, 40:14-41:10, 43:20-44:3, Hr'g Tr. Exhibits 6, 11A and 12A-12B.

Furthermore, the Tax Department does not attempt to differentiate between different business models in its survey, administrative notice, or the legislative rule. As a result, certain producers are penalized through an understated amount of operating expenses. As required by the State Tax Department, SWN reports its gross receipts based on the point of sale, and the allowed operating expenses should reflect the expenses incurred to get the gas to the point of sale. Requiring gross receipts to be reported based on the point of sale, while not recognizing the substantial expenses incurred to get the gas to the point of sale, results in overvaluation of the produced natural gas.

SWN submitted proof of its actual operating expenses from 2015 to the Tax Department and the Board for consideration for tax year 2017. (See Hr'g Tr. pp.13-52, 74-83, Hr'g Tr. Exhibits 3, 4, 6, 7, 9A-9E, 14, 17A, 18). SWN's average operating costs for Marcellus wells is approximately 56.4% of gross receipts, or \$765,283. (Hr'g Tr. at p. 28:14-17, 38:15-21, Hr'g Tr. Exh. 6). Ultimately, neither the Tax Department nor the Board adjusted the operating expenses used to value SWN's wells in Wetzel County for tax year 2017.

**C. The Tax Department's Calculation of SWN's Operating Expenses.**

The Tax Department prepares annual natural resource property valuation variables for appraising oil and gas. Further, the Tax Department makes determination of those valuation variables pursuant to Series 1J of Title 110, a legislative rule of the Tax Department, promulgated pursuant to W. Va. Code §§ 11-1C-5(b), 11-1C-5a, and 11-1C-10(d). In order to

determine the amount of SWN's operating expenses, and, in turn, the value of SWN's oil and gas wells, the Tax Department further is governed by Administrative Notices.

In the past, the Tax Department included a statement in its Administrative Notices indicating that it was willing to consider actual operating expenses if a taxpayer thought that the value of their wells was overstated. (Hr'g Tr. at pp. 25:8-26:1, Hr. Tr. Exh. 5C). In 2016, the Tax Department decided that it would no longer consider actual operating expenses, despite no change in the law. (Hr'g Tr. at pp. 26:2-5; Hr. Tr. Exh. 5A).

The State calculates the allowed operating expenses at the lesser of 20% of gross receipts, or \$175,000, for Marcellus Wells. (Hr'g Tr. Exh. 10B). SWN's operating expenses for Marcellus wells are on average \$765,283. Due to the State's failure to take into account SWN's actual operating expenses, the value of SWN's wells is significantly overstated. The State valued SWN's wells in Wetzel County at \$163.9 million, whereas SWN, using the State's mass appraisal model and SWN's actual operating expenses, appraised them at \$73.9 million. (Hr'g Tr. at pp. 51:20-52:17; Hr'g Tr. Exh. 1).

SWN timely noticed the Wetzel County Commission with its Notice of Protest on February 15, 2017, and updated the amount of overvaluation of its wells with a letter dated September 22, 2017. (Hr'g Tr. Exh. 1). The Wetzel County Commission, sitting as the Wetzel County Board of Assessment Appeals, held a hearing on October 6, 2017.

At the hearing, the Tax Department offered no credible evidence as the basis for its refusal to accept SWN's calculation of its operating expenses, except to argue that the State's current procedures are in accordance with the legislative rules and the law, and that the Tax



Department did not have sufficient “backup data” regarding SWN’s actual expenses, despite the abundance of documentation SWN presented. (Hr’g Tr. at pp. 98-115).

**D. SWN’s Expert Analysis and Testimony.**

SWN’s expert, Altus, a leading independent state and local tax firm, by Director Kirsten Evans, testified before the Board on October 6, 2017, and showed that a correct application of the allowable operating expenses demonstrated that the Tax Department had erred by failing to allow the operating expenses documented by SWN. (See Hr’g Tr. pp. 13-52). Detailed charts and documentation of actual operating expenses, with numbers specific to Wetzel County, were also submitted to the Board. (See Hr’g Tr. Exhibits 3, 4, 6, 7, 9A-9E, 14, 17A, 18).

Altus explained that by artificially capping operating expenses at \$175,000, which is not permitted by the legislative rule, the State is grossly overvaluing the fair market value of SWN’s wells. (Hr’g Tr. at pp. 14:14-18, 17:15-17, 28:21-22, 38:5-8, 101:20-102:6). The State also does not take into account SWN’s point-of-sale, and the operating expenses incurred to get the gas downstream to market. (Hr’g Tr. at p. 45:24-49:3; Hr. Tr. Exh. 16).

Ms. Evans also testified that the Tax Department’s application of a “weighting methodology” to Marcellus wells that produce both oil and natural gas lead to an overvaluation of SWN’s wells in Wetzel County. (See Hr’g Tr. 17:3-20:17, Hr’g Tr. Exh. 4A-4F). Ms. Evans explained that Tax Department’s weighting methodology leads to a lower amount of operating expense for a well just because oil happens to be produced by a well, and that the proper methodology would be to apply operating expense separately to the oil revenue and the natural gas revenue. (See Hr’g Tr. 17:3-20-17, Hr’g Tr. Exh. 4A-4F). Additionally, Cody Cormier, senior accountant for SWN, testified that he had raised the weighting issue with the Tax



Department in July of 2017, and that the Tax Department had agreed to begin applying operating expenses separately to oil and natural gas beginning with tax year 2018, but the Tax Department did not make the change for tax year 2017. (*See* Hr'g Tr. 26:10-27:1, 41:11-15, 82:5-83:17, Hr'g Tr. Exh. 5B). The issue was first brought to the attention of the Tax Department by WVONGA pursuant to public comments submitted to the Tax Department in July of 2016, but the Tax Department did not amend the methodology for tax year 2017. (*See* Hr'g Tr. 41:11-15; 115:11-23, Hr'g Tr. Exh. 11A). The weighting issue represents approximately \$2.5 million of the \$90 million of overvaluation for SWN's Wetzel County wells for tax year 2017. (*See* Hr'g Tr. 20:5-15, 51:20-52:17, Hr'g Tr. Exh. 4F).

**E. SWN's Protest to the Wetzel County Board of Assessment Appeals.**

On February 15, 2017, SWN submitted to the Wetzel County Assessor and the Wetzel County Commission sitting as the Board of Assessment Appeals an Application for Review of Property Assessment with regard to its gas wells, and SWN appeared on October 6, 2017, by counsel, before the Board. (*See* W. Va. Code § 11-3-24). SWN hired a third-party court reporter to produce a certified transcript of the hearing at which it and the Tax Department presented evidence. Exhibits introduced at the hearing and provided to the Board will be transmitted to the Court within thirty (30) days, as provided by West Virginia Code § 11-3-25. The original transcript of the proceeding was attached to SWN's Petition as Exhibit A. (*See* W. Va. Code § 58-3-4.). SWN requested that Petitioner's Exhibit 18 be kept under seal by the Wetzel County Clerk, and the Board granted the request. (*See* Hr'g Tr. 85:5-86:6).

By an Order received following the October 6, 2017 hearing, the Board determined to make no adjustment to the State Tax Department's valuation of SWN's gas wells for the 2017 tax year. (See Ex. B to SWN's Petition). SWN timely petitioned this Court for relief from the Board's erroneous determination within thirty (30) days of service of the Order, which occurred on March 2, 2018. (See W. Va. Code § 11-3-25).

### III. ANALYSIS

#### A. Applicable Legal Standards.

All property in the State of West Virginia is required to "be assessed annually at its true and actual value . . . ." W. Va. Code § 11-3-1. The West Virginia State Tax Commissioner<sup>3</sup> is charged with determining "the fair market value of all natural resource property in the State" and then providing the values to county assessors to use in assessing the property. W. Va. Code § 11-1C-10(d).

Pursuant to this responsibility to value producing mineral property and reserves, the Tax Commissioner promulgated Title 110, Series 1J of the West Virginia Code of State Rules, State Tax Department Legislative Rule for Valuation of Producing and Reserve Oil & Natural Gas for Ad Valorem Property Tax Purposes, which explains the mechanisms to be utilized in valuing taxable property.

To determine the fair market value of producing oil and natural gas property, the Tax Department applies "a yield capitalization model to the net receipts (gross receipts less royalties paid less operating expenses) for the working interest. . . ." W. Va. Code R. § 110-1J-4.1. The

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<sup>3</sup> Elsewhere in Brief, the Tax Commissioner is variously referred to as the Tax Department or simply the State. All terms refer to the same entity.



methodology set forth in § 110-1J-4.1 is reflected in Tax Department's 2017 Administrative Notice, in which the Tax Commissioner states that the Tax Department primarily relies upon the income approach in valuing producing oil and gas property.

The Tax Department should consider actual operating expenses to offset the presumed valuation of expenses for each well. According to the Tax Department's legislative rule, the Tax Commissioner considers "operating expenses" to be "the "ordinary expenses which are directly related to the maintenance of production of natural gas and/or oil. These expenses do not include extraordinary expenses, depreciation, ad valorem taxes, capital expenditures, or expenditures relating to vehicles or other tangible personal property not permanently used in the production of natural gas or oil." W. Va. Code R. § 110-1J-3.16. Based on the testimony of SWN's expert, Kirsten Evans from Altus, its senior accountant, Cody Cormier and the documents submitted to the Tax Department and the Board, the operating expenses submitted by SWN are those contemplated in Section 3.16.

SWN's burden before the Board was to show by clear and convincing evidence that the Tax Department's valuation (and, hence, the County's assessment) of its gas well operating expenses was erroneous. Syl. pts. 5-6, *Stone Brooke*, 224 W. Va. 691, 688 S.E.2d 300. On appeal to this Court, the Court relies on the record developed before the Board and determines whether the challenged property valuation is supported by substantial evidence.<sup>4</sup> See W. Va. Code § 58-3-4; syl. pts. 1-2, *Stone Brooke*, 224 W. Va. 691, 688 S.E.2d 300.

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<sup>4</sup> Furthermore, "[p]ursuant to *In Re Pocahontas Land Co.*, 172 W. Va. 53, 61, 303 S.E.2d 691, 699 (1983), once a taxpayer makes a showing that tax appraisals are erroneous, the Assessor is then bound by law to rebut the taxpayer's evidence." *Mountain Am., LLC v. Huffman*, 224 W. Va. 669, 786 n.23, 687 S.E.2d 768, 785 n.23 (2009). While the Court in *In Re Pocahontas Land Co.* suggested that a county assessor could meet that burden by introducing the State Tax Department's valuation, in this case, SWN



In this case, the Tax Department failed to apply the demonstrated actual operating expenses supplied by SWN in both informal and formal testimony. Accordingly, SWN now petitions this Court to find (1) that the Board incorrectly made no changes to the Tax Department's valuation, (2) that the State's "cap" of \$175,000 in operating expenses be removed, and (3) that the value of SWN's Wetzel County oil and gas wells for the 2017 tax year be set at \$73,911,129, based on the value calculated by applying SWN's average operating expense of 56.4% by SWN's gross receipts, and by applying operating expenses to oil receipts and gas receipts based on a combined amount of operating expenses for the oil and gas, rather than by calculating a weighted average for the oil and natural gas operating expenses.

**B. The Tax Department Failed to Consider the Actual Operating Expenses of SWN's Oil and Gas Wells and, Thus, Failed to Correctly Value that Property; SWN, on the Other Hand, Introduced Clear Evidence of the Allowable Operating Expenses.**

While the State Tax Department has discretion to select the appraisal method that it determines should provide the most accurate valuation of personal property, once it chooses a method, it must correctly apply the method.

For SWN's Marcellus wells in Wetzel County, the Tax Department has not followed its own rules regarding average industry operating expenses, as set forth in SWN's Exhibits and testimony at the hearing before the Board on October 6, 2017, and the Tax Department has, therefore, failed to properly calculate the fair market value of SWN's Marcellus wells. It is also improper for the Tax Department to place a cap on operating expenses, another factor resulting in an inflated value for SWN's Marcellus wells. As demonstrated at the hearing, the survey used by the Tax Department to calculate average industry operating expenses for Marcellus wells was

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showed that the State Tax Department's valuation itself is incorrect, so it was incumbent on the State Tax Department to rebut SWN's evidence.

poorly drafted and misleading and resulted in the Tax Department calculating an operating expense “cap” well below the amount of operating expenses actually required to operate a Marcellus well. SWN avers that not only is a “cap” not supported by law, but that the Tax Department also calculated a wildly inaccurate “cap.” As a result, SWN’s wells were overvalued.

Additionally, by calculating the allowed operating expenses at the lesser of 20% of gross receipts or \$175,000, the Tax Department treats similarly situated tax payers differently in violation of United States Constitution and the West Virginia Constitution, as the “cap” of \$175,000 only adversely affects tax payers that have wells with gross receipts over a certain threshold.

**C. The Tax Department’s Methodology of Weighting Allowable Operating Expenses for Oil and Natural Gas Together, Rather Than Applying Allowable Operating Expenses to the Each of the Revenue Streams Separately for Wells That Produce Both Oil and Natural Gas, Results in Overvaluation of SWN’s Wells.**

Finally, the Tax Department’s valuation of SWN’s wells did not properly apply operating expenses to the oil produced by the Marcellus well and the natural gas produced by the Marcellus well. The Tax Department employed a “weighting” methodology that significantly decreased the amount of operating expenses that were allowed for the entire well, rather than applying the operating expenses allowed for the oil production and the operating expenses allowed for the gas production separately. The Tax Department has acknowledged that it is changing its methodology for tax year 2018 to reflect the suggestions received from WVONGA and SWN; however, the Tax Department has indicated that it will not apply the change to SWN’s 2017 taxes.



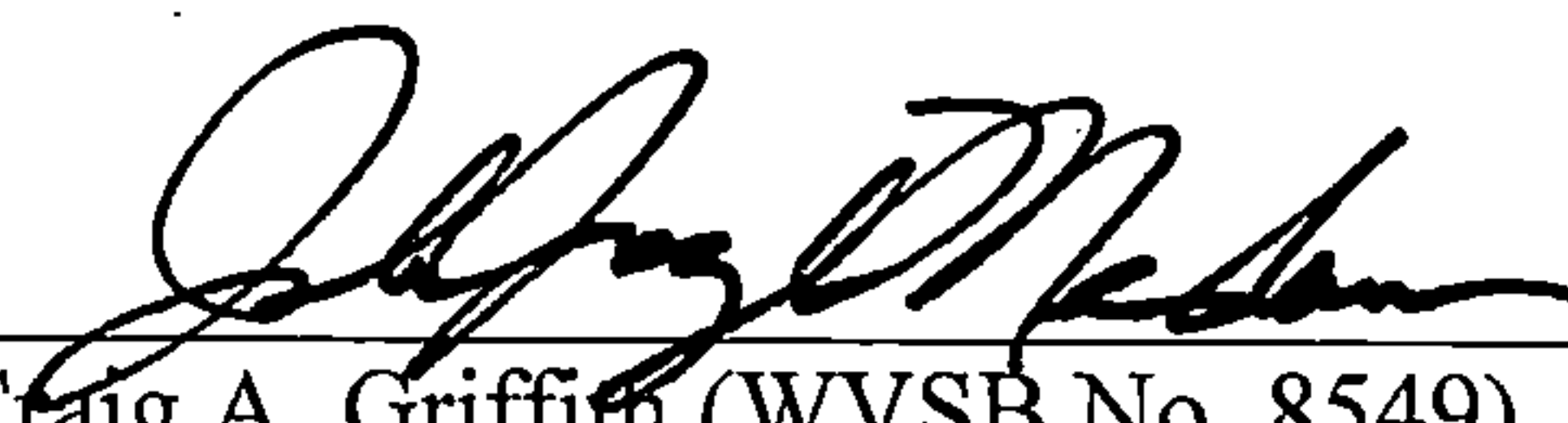
#### IV. CONCLUSION

WHEREFORE, SWN Production Company, LLC respectfully requests that the Court:

- (i) Find that the Wetzel County Board of Assessment Appeals incorrectly upheld the valuation of SWN's Wetzel County gas wells by the West Virginia Department of Revenue, State Tax Department, Property Tax Division for the 2017 tax year;
- (ii) Fix the value of SWN's Wetzel County gas wells for the 2017 tax year at \$73,911,129, based on the value calculated by applying SWN's 56.4% operating expense percentage by SWN's gross receipts and by separately calculating operating expenses for oil receipts and natural gas receipts for Marcellus wells, rather than calculating a weighted average for these two separate revenue streams; and
- (iii) Order such other relief as the Court deems appropriate.

**SWN PRODUCTION COMPANY, LLC**

**By Counsel**

  
\_\_\_\_\_  
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