West Virginia Board of Public Works
December 5, 2011 – 10:00 a.m.
Governor's Cabinet and Conference Room
Minutes

Attendees:

Members

Commissioner of Agriculture Gus R. Douglass
Secretary of State Natalie E. Tennant
Attorney General Darrell V. McGraw, Jr.
State Treasurer John D. Perdue
State Superintendent of Schools Dr. Jorea Marple
Mack Parsons for State Auditor Glen B. Gainer
Kurt Dettinger for Governor Earl Ray Tomblin

Guests

Jeff Amburgey, Tax Department
Scott McNeil, Tax Department
Cindy Hoover, Tax Department
Dawn Warfield, Attorney General's Office
Kathy Schultz, Attorney General's Office
Wayne Williams, Attorney General's Office
David Neil, Division of Highways
John McHugh, Division of Highways
Alex Macia, WV Oil Gathering Corp.
Danny Ellis, Treasurer's Office
Russ Rollyson, Auditor's Office
Sandy Marinacci, Department of Agriculture
Ashley Summitt, Secretary of State's Office
Ashley Parsons, Secretary of State's Office
Phil Kabler, WV Gazette

The West Virginia Board of Public Works met on Monday, December 5, 2011 at 10:00 a.m. in the Governor's Cabinet and Conference Room, Building 1, Suite 10 of the State Capitol Complex. The meeting was called to order and chaired by Commissioner Douglass. A quorum of elected officials was established.

The first item on the agenda was the approval of the minutes from the November 2, 2011 West Virginia Board of Public Works meeting. Treasurer Perdue made a motion to approve the minutes with Kurt Dettinger seconding. The motion carried.

The second item on the agenda was the receiving and approval of the final tax assessments for public utilities for tax year 2012. Jeff Amburgey, Director of the Property Tax Division, addressed the Board concerning the two protests that were made at the November 2, 2011

hearing plus some other issues that have arisen since the tentative assessments. The first protest concerns WV Oil Gathering Corporation. Alex Macia, representing the company, suggested their tentative valuation should be modified because they have about $2.3 million of capitalized investments that the company thought qualified as a pollution control facility and should be assessed at salvage value. A listing of the property in question was provided to the Department of Environmental Protection. The DEP advised the Tax Department that they believe that the listed items meet the property tax definition of pollution control facilities. The Tax Department recommends that the tentative assessed valuation for West Virginia Oil Gathering Corporation of $7,313,300 be finalized at $6,100,800. Attorney General McGraw asked Mr. Amburgey if he had the documentation on that concurrence from DEP. Mr. Amburgey said it was an email from one of their employees and he could provide it to the Board. The second protest was from Beckley Water Company. Doug Ramsden appeared on behalf of the company and suggested the tentative assessment should be modified for two reasons. One was that the income estimate in the income approach was too high and should be adjusted down. The second suggestion was that more weight should be applied to the income approach to value. At the November meeting, he compared the company to the other large water company operating in West Virginia and should be afforded similar weighting. With regard to the first suggestion, the Tax Department requested additional information and reviewed Beckley Water's income for the past several years and does recommend that the income estimate be reduced. With regard to the second suggestion, the Tax Department believes that the overall value for rate base regulated utilities should be based on a blending of the cost approach and the income approach. After a review of the weighting applied to other rate base regulated utilities, the Tax Department recommends that weightings for Beckley Water Company be adjusted to be more closely in line with other similar companies. Based on those two adjustments, the Tax Department recommends that the tentative assessed valuation of $17,000,000 be reduced and finalized at $13,800.00. In addition to the two protests, there were also some companies that filed their returns late and provided additional information after the tentative values were sent out. The Tax Department recommends that the additional adjustments be made to reflect the actual data filed. The recommendations decrease the total tentative value from about 8.5 billion by approximately 41 million to an aggregate final value of $8,460,701,440. The Tax Department recommends that the Board finalizes the public utility assessments for tax year 2012 at this amount. Commissioner Douglass asked if there was any discussion about the recommendation. Dr. Marple stated she had a couple of questions in terms of process.

Dr. Marple stated she wants to make sure processes are in place to make sure values are assessed fairly and correctly. Dr. Marple requested a report from the Tax Department to determine how much weight is given to the different approaches of assessing value and to explain the process used. She also had concerns about the auditing of production values from oil, gas and other types of industry in a structured manner. She requested clarity on whether there actually are auditors that are separate from the company looking at production records. Dr. Marple would like to have the reports before making a decision on the assessed values. Mr. Amburgey stated that the Tax Department could provide those reports. He stated that the values being considered at this meeting are not related to oil and gas company production. Mr. Amburgey explained that previously the Tax Department had auditors that did audit the oil and gas companies, but currently they do not have auditors for that purpose. Secretary Tennant asked why there were no longer any auditors. Mr. Amburgey stated that the positions had become vacant and had not

been refilled. Commissioner Douglass asked what percentages of the taxes go to the counties and to the schools. Russ Rollyson addressed the Board. He stated a majority of any levies go to the school boards. This holds true for public utilities. If values go up, collections go up. If collections go up, more goes to the schools across the state. Kurt Dettinger asked Mr. Amburgey for clarification on the issue of auditing production of oil and gas companies. He asked if this issue applies to the assessed values being considered today. Mr. Amburgey stated that the oil and gas values are done separately by a different section of the State Tax Department. Those values do not flow in to the public utility values. Mr. Amburgey said the companies included in the tax assessments are in the business of transporting, not producing. Attorney General McGraw stated that they transport a quantity. He noted they are transporting a commodity that would relate to their value. Mr. Amburgey explained that it is a separate valuation. He said the companies included in the assessment currently before the Board are considered public service companies. Kurt Dettinger asked what tax production would relate to. Mr. Amburgey said there is a property tax on the well and a severance tax. Secretary Tennant asked about the pollution-control facilities. If they didn't have any production, then it doesn't relate to the facility. She asked if you need to measure production against one piece of equipment that they might have. Alex Macia addressed the Board. He stated that WV Oil Gathering does not have production. The Attorney General asked what the facility does. Mr. Macia said it all relates to the transportation and disposal of brine. He referenced WV Code §11-6a-2. Commissioner Douglass suggested that due to the discussion and pending action from the Legislature, the Board of Public Works schedule a hearing with the industries to facilitate activities. The Attorney General had a question. He stated a long standing issue with the Board is that there is no staff to give an independent view on anything done. Dr. Marple stated that this is a highly technical issue that requires technical expertise. She asked how to obtain that. Secretary Tennant stated it depends on the area in which information is needed. If legal assistance is needed, the Board goes to the Attorney General. For Tax issues, the Board goes to the Tax Department. The Attorney General stated that the issue is that a representative from somewhere in the government comes to the Board and states a position and the Board does not have anyone to analyze that position. Dr. Marple stated that she is not questioning the professionalism of the Tax Department. She thinks that a body that has a heavy responsibility requires some type of independent analysis of the process to make sure things are done correctly. Secretary of State Tennant stated that her office would be willing to craft legislation for the purpose of obtaining funding to acquire a staff member who would serve the Board of Public Works. Attorney General McGraw asked if the Executive Department has the authority to employ a staff. Dr. Marple asked as the Executive Department, how the Board gets staff. Treasurer Perdue suggested getting help from the Legislature. Kurt Dettinger asked what the timeline is to get the assessments finalized. Russ Rollyson stated he wasn't sure what the deadline was for the counties to get their levies in, but there are timelines in order for the Auditor's office to get their assessed values out for the counties to set their levy rates. Treasurer Perdue questioned if the independent assessment that is being asked for wasn't already coming from the State Tax Department. He stated they are the eyes, ears and voice to advise the Board of the independent evaluation of the assessed values of the State. The Board relies on the Tax Department as a professional organization in State Government to advise them. They evaluate protests by different companies, come back to the Board and make recommendations. Treasurer Perdue stated that they are utilizing staff all over the State Government to do these evaluations. Dr. Marple stated that audits are done in all State agencies. It's about process and having checks and balances. Treasurer Perdue stated that if the

Board does not feel that the Tax Department is doing independent evaluation of the assessments of the public utility companies, then the Board can ask the Legislative Auditors to audit the Tax Department. There are already checks and balances in place in government. Kurt Dettinger had questions for Mr. Amburgey. First, he wanted to know what the statute was in regards to pollution control facilities. Do they automatically get assessed at salvage value? Alex Macia addressed the Board and referenced WV Code §11-6a-1. He also referenced WV Code §11-6a-3 with regards to tax treatment of pollution control facilities.

Dr. Marple made a motion that prior to approving the assessed values that the Board receive at the minimum a report from the State Tax Department that defines the process for determining the weight as it pertains to the three approaches for determining the assessed values that are identified in statute and furthermore, even though it has been said that the auditing function is not part of this, she would also like to see a report on auditing of production. The Attorney General seconded the motion. Commissioner Douglass asked for discussion of the motion. Secretary Tennant asked if the information could be obtained in a timely manner without throwing everything off schedule. Russ Rollyson stated that it would depend on how soon it could be settled. The values have to get to the counties by around March 1. Secretary Tennant had a concern that although auditing the production levels doesn't really affect the assessed values, the fact that there are no auditors is an issue. By a 4 -3 vote, the motion passed.

Kurt Dettinger stated the need for a short time frame for the matter to be brought to a resolution. Secretary Tennant made a motion to have a Board of Public Works meeting next week to receive the reports from the Tax Department and have a vote on the final tax assessments for tax year 2012. Kurt Dettinger seconded the motion. The motion carried.

The next item on the agenda was approval of the following deeds:

1. Between the Putnam County Board of Education and the WV Department of Transportation, Division of Highways, dated October 3, 2011, approved as to form by the Attorney General's office October 31, 2011.

2. Between The Board of Education of the County of Kanawha and the WV Department of Transportation, Division of Highways, dated October 20, 2011, approved as to form by the Attorney General's office November 16, 2011.

3. Between the Wood County Airport Authority and the West Virginia Department of Transportation, Division of Highways, dated November 9, 2011, approved as to form by the Attorney General's office November 21, 2011.

John McHugh addressed the Board to answer questions concerning the three deeds. Treasurer Perdue made a motion to approve all three deeds as they have been presented. Commissioner Douglass asked if there were any objections. Secretary Tennant stated that one of the deeds needed clarification. The wrong plan sheet was attached to deed number 2. Mr. McHugh said they would quickly send over the correct one. Treasurer Perdue restated his motion to approve all three deeds as presented with the correction of the Board of Education of Kanawha County

plan sheet attachment with Mack Parsons seconding. Secretary Tennant stated that she will vote on this, but prefers to vote on deeds separately. The motion carried.

Treasurer Perdue made a motion that the Board asks the Governor's office to work with the Tax Department to fill the two positions needed to do the proper auditing and evaluating of the public utilities. Secretary Tennant seconded the motion. The motion carried.

Treasurer Perdue made a motion that the Board go in to Executive Session for the discussion of pending legal matters with Secretary Tennant seconding. The motion carried. The Board went in to Executive Session.

Treasurer Perdue made a motion to come out of Executive Session with Attorney General McGraw seconding. The motion carried.

Treasurer Perdue requested that the Governor be at next week's meeting.

With no further business, Treasurer Perdue made a motion to recess the meeting with Kurt Dettinger seconding. The motion carried. The meeting was recessed.

Natalie E. Tennant

Natalie E. Tennant,
Secretary of State
and Ex-Officio Secretary of the
WV Board of Public Works