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**MONTANA DEPT. OF REVENUE  
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NANCY SWEENEY  
CLERK DISTRICT COURT  
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**MONTANA FIRST JUDICIAL DISTRICT COURT  
LEWIS AND CLARK COUNTY**

<p>MUSSELSHELL COUNTY, a political division of the State of Montana, by and through its Board of County Commissioners,  Plaintiff,</p> <p>v.</p> <p>YELLOWSTONE COUNTY, a political division of the State of Montana, by and through its Board of County Commissioners; and MONTANA DEPARTMENT OF REVENUE,  Defendants.</p>	<p>Cause No. BDV-2010-836</p> <p><b>ORDER ON COMPLAINT FOR DECLARATORY JUDGMENT</b></p>
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This case involves the Montana Department of Revenue's (MDOR) apportionment of coal gross proceed taxes (CGPT) between Musselshell and Yellowstone Counties from the Bull Mountains Mine (mine). Plaintiff Musselshell County requests a declaratory ruling that MDOR improperly apportioned the CGPT generated by underground coal mining under applicable statutes, or, in the alternative, in a manner that was not just or proper. Musselshell County also seeks a summary

1 ruling that all impact resulting from the mine occurred in that county. Finally,  
2 Musselshell County seeks to disqualify MDOR from making any future determination  
3 as to the relative impacts of the mine on the counties. That motion presupposes that  
4 the issue of impacts is relevant to the determination of the CGPT.

5 Defendants MDOR and Yellowstone County seek a ruling that MDOR  
6 properly allocated the CGPT between the two counties and, alternatively, requests a  
7 summary ruling that impacts of the mine result to both counties. If impacts are  
8 relevant to the assessment of the CGPT, then issues of fact clearly exist as to the  
9 relative impacts which result to each county from the mine and how those impacts  
10 would be applied in calculating the CGPT.

11 Oral argument was held on December 22, 2012, and the matter is ready  
12 for decision.

### 13 BACKGROUND

14 The applicable facts are not at issue. The surface facilities of the Bull  
15 Mountains Mine are located on federal land in Musselshell County, while the  
16 underground operation of the mine extends into federal land in Yellowstone County.  
17 In 2009, coal was taken from underground coal seams located beneath the surface of  
18 both counties.<sup>1</sup> The raw coal is crushed into pieces which are six inches or less in  
19 diameter, and transported to the surface facilities of the mine.<sup>2</sup> Coal is stockpiled on  
20 the surface, where it is further compressed to less than two-inches and transported by  
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23 <sup>1</sup> See Musselshell County's Combined Resp. Br. Opp'n Yellowstone County & MDOR's  
24 Mot. Summ. J. & Supp. Pl.'s Mot. Summ. J., at 4, Ex. 1, U.S. Dep't of Interior, Bureau of Land  
Mgmt., Evtl. Assess. Bull Mtns Mine. No. 1, Musselshell County, Montana, April 2011.

25 <sup>2</sup> Id. at 2-9, § 2.1.2.

1 train.<sup>3</sup> Of the raw coal that is removed from each county, approximately 85 percent is  
2 marketable, while the remainder is disposed of in Musselshell County.<sup>4</sup> From the  
3 portion of the April 2011 environmental assessment which was provided to the Court,  
4 it appears the mine will be required to, and is capable of, mitigating subsidence and all  
5 other damages caused by the underground mine.<sup>5</sup> Because of subsidence, mitigation  
6 measures will eventually take place in both counties.<sup>6</sup>

7 Under Section 15-23-701, MCA, coal producers are required to submit  
8 annual reports to MDOR specifying the gross yield from each mine owned or worked  
9 in the preceding year, and an officer of the producing entity must verify the report.  
10 The mine operator must file quarterly reports with MDOR as to the tons of coal  
11 severed from each county and annual reports as to the price at which the coal is sold.  
12 (Def.'s Br. Supp. Mot. Summ. J., Br. Ex. 1, Charlton Dep. at 32-33.)

13 Prior to tax year 2009, it appears that coal was removed primarily from  
14 the mineral estate in Musselshell County. In early 2010, MDOR personnel became  
15 aware that coal was being removed from the mineral estate in Yellowstone County. As  
16 a result, the mine was required to file amended reports for tax year 2009 that allocated  
17 the CGPT between the two counties relative to the amount of coal extracted from the  
18 mineral estate of each county. In April 2010, the Bull Mountains Mine operator,  
19 Signal Peak Energy, LLC (Signal Peak), filed its sworn amended reports showing the  
20 tons of coal sold from each county for the 2009 tax year. (Charlton Dep., attach.) In  
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22 <sup>3</sup> Id. at 2-9, § 2.1.2.1.

23 <sup>4</sup> Id. at 2-2, § 2.1.1, & 2-10, § 2.1.2.4.

24 <sup>5</sup> Id. at 2-9, § 2.1.1.3, & 2-14, § 2.1.2.7.

25 <sup>6</sup> Id.

1 its amended reports, Signal Peak listed the tons of coal taken from each county, the  
2 free on board gross revenue, and six deductions including the black lung tax, federal  
3 reclamation tax, resource indemnity trust tax, coal severance tax, CGPT, royalty  
4 deductions, and the resulting contract sales price. (Id.)

5 MDOR administers the three related Montana production taxes including  
6 the CGPT, the coal severance tax, and the coal resource indemnity and groundwater  
7 assessment tax. (Charlton Dep. at 12-13.) The CGPT is five percent of the contract  
8 sales price. (Id. at 26-27.) Based on Signal Peak's reports, in June 2010 MDOR  
9 certified the respective portion of the taxable value of the coal gross proceeds to each  
10 county treasurer. The contract sales price for coal produced in Musselshell County  
11 was \$6,572,340, and the resulting CGPT due from the mine was \$328,617.02. (Id., see  
12 also Compl. ¶ 15). The contract sales price for coal produced in Yellowstone County  
13 was \$2,538,195.21, with CGPT still due from the mine of \$126,909.76. (Compl. ¶  
14 15.) Charlton explained that when Signal Peak amended the CGPT, they also had to  
15 amend the coal severance tax return, as the CGPT is a deduction in the coal severance  
16 tax return. (Charlton Dep. at 109.) Charlton further indicated that most coal mines in  
17 Montana are above ground, and the Bull Mountain Mine is the only underground  
18 coal-mining operation in Montana. (Id., at 137-38.)

19 No independent appraisal was requested under Section 15-23-102, MCA,  
20 and there is no claim of bias in Signal Peak's apportionment.

### 21 STANDARD OF REVIEW – STATUTORY CONSTRUCTION

22 When faced with cross-motions for summary judgment, the Court is not  
23 required to simply grant judgment for one side or the other. *Ike v. Jefferson Nat'l Life*  
24 *Ins. Co.*, 267 Mont. 396, 399-400, 884 P.2d 471, 474 (1994); accord *Mont. Bd. of*  
25 *Pharm. v. Kennedy*, 2010 MT 227, ¶ 16, n. 1, 358 Mont. 57, 243 P.3d 415. Instead, the

1 Court must "evaluate each party's motion on its own merits, taking care in each  
2 instance to draw all reasonable inferences against the party whose motion is under  
3 consideration." *Id.*, 267 Mont. at 400, 884 P.2d at 474 (quoting *Heublein, Inc. v.*  
4 *United States*, 996 F.2d 1455, 1461 (2nd Cir. 1993)).

5 Statutory construction presents a question of law to be decided by the  
6 district court. Sections 25-7-102 and 26-1-201, MCA. When interpreting statutes, the  
7 Court's function is to give effect to the intent of the legislature. Section 1-2-101,  
8 MCA; *State v. Boulton*, 2006 MT 170, ¶ 12, 332 Mont. 538, 140 P.3d 482. "If  
9 possible, the intent of the Legislature is to be determined from the plain language of  
10 the statute. If the intent can be determined from the plain language of a statute, a court  
11 may not go further and apply any other means of interpretation." *Id.* (citations  
12 omitted). This Court may not insert language which has been omitted, or omit  
13 language which has been inserted. Section 1-2-101, MCA; *Stop Over Spending Mont.*  
14 *v. State*, 2006 MT 178, ¶ 62, 333 Mont. 42, 139 P.3d 788. In other words, the Court  
15 must reject any construction which leaves part of the language of the statute without  
16 effect and must correspondingly give effect to all relevant statutory provisions.  
17 Section 1-2-101, MCA; *Spoklie v. Mont. Dep't of Fish, Wildlife & Parks*, 2002 MT  
18 228, ¶ 24, 311 Mont. 427, 56 P.3d 349; *Montco v. Simonich*, 285 Mont. 280, 287, 947  
19 P.2d 1047, 1051 (1997); *Darby Spar, Ltd. v. Dept. of Rev.*, 217 Mont. 376, 379, 705  
20 P.2d 111, 113 (1985).

## 21 DISCUSSION

22 Although the history of mining in Montana is rich, this appears to be a  
23 case of first impression. There is no issue as to the fact that coal from the mine is  
24 located beneath both counties. The ultimate issue is whether the tax should be  
25 apportioned between the two counties based on the tons of coal which are taken from

1 those counties. Yellowstone County and MDOR assert that the CGPT originates when  
2 the coal is severed from the mineral estate. Musselshell County argues that the CGPT  
3 is determined after the coal is washed and compressed to less than two inches and  
4 placed on the train, free on board in Musselshell County.

5 Like all mines, a "coal mine" is defined as "all parts of the property of a  
6 mining plant under one management that contribute, directly or indirectly, to the  
7 mining or handling of coal." Section 50-73-102(3), MCA. Excavations and the  
8 "workings" of a mine are defined as "all parts of a mine excavated or being excavated  
9 including shafts, slopes, tunnels, entries, rooms, and working places, whether  
10 abandoned or in use." Section 50-73-102(2), MCA. The Montana Supreme Court has  
11 historically stated that "coal or iron in place may be a mine in a proper sense of that  
12 term." *Northern Pac. Ry. Co. v. Musselshell County*, 54 Mont. 96, 112, 169 P. 53, 58  
13 (1917) (citations omitted).

14 As referenced above, most coal mines are surface mines. There would  
15 be no question that MDOR properly apportioned the CGPT if surface mining took  
16 place in Yellowstone County, as the mine would clearly be located in both counties  
17 and the exact tonnage of coal taken from both counties would be open and obvious.  
18 Here, an argument exists simply because mining takes place a few yards below the  
19 surface and results in subsidence in both counties. In addition, both counties have filed  
20 affidavits indicating financial impacts resulting from the mine and mitigation of  
21 subsidence will occur in both counties.

22 During his deposition, Van Charlton, MDOR's Natural Resource Unit  
23 Manager, explained that the coal severance tax benefits the state, while the CGPT  
24 benefits counties, and the coal resource indemnity and groundwater assessment tax  
25 benefits local government units. (Charlton Dep. at 187-88.) He further testified that

1 he believed the CGPT should be apportioned between the two counties based on  
2 Section 15-23-702, MCA. (Id., at 93-94.) That statute states: "Entry of gross  
3 proceeds in property tax record. On or before July 1 each year, the department shall  
4 enter the valuation of the gross proceeds of coal mines in the property tax record for  
5 each county in which the mines are located."

6 MDOR and Yellowstone County argue that Section 15-23-701, MCA, is  
7 the reporting statute; Section 15-23-702, MCA, above-quoted, is an apportionment  
8 statute; and Section 15-23-703, MCA, is the five-percent assessment statute which is  
9 calculated from the tonnage of coal taken from each county and the contract sales price  
10 obtained for the coal which is sold. This Court agrees.

11 Further, Section 15-23-105, MCA, states in pertinent part:

12 **Apportionment among counties.** The department shall  
13 apportion the value of property assessed . . . among counties in which  
14 such property is located. Apportionment shall be on a mileage basis or  
15 on the basis of the original installed cost of the centrally assessed  
16 property located in the respective counties. If the property is of such a  
17 character that its value cannot reasonably be apportioned on the basis of  
18 mileage or on the basis of the original installed cost of the centrally  
19 assessed property located in the respective counties, the department may  
20 adopt such other method or basis of apportionment as may be just and  
21 proper.

22 The Compiler's Comments to that statute state, "[i]t is the intent of the legislature that  
23 apportionments [of centrally assessed property] made under this act shall substantially  
24 correspond with the location of such property." In addition, A.R.M. 42.22.122 is cited  
25 by the Compiler which requires that the value of centrally assessed property be  
26 apportioned among the taxing units where a company's property is located.

27 Musselshell County argues that a plain reading of Sections 15-23-703  
28 and -105, MCA, require that the CGPT be determined in the county where coal is  
29 loaded for transport, free on board. Indeed, at first blush it appears that the CGPT is to

1 be determined where it is loaded on the train pursuant to the definition of “[c]ontract  
2 sales price” found in Section 15-35-102(5), MCA which references “f.o.b.” the  
3 location of the mine. The definition also contains the word “produced” which is  
4 defined in the same statute as when “severed from the earth.” Section 15-23-102(8),  
5 MCA.

6 This Court believes, however, that regardless of the definition of contract  
7 sales price, the apportionment statute, Section 15-23-105, MCA, is consistent with the  
8 Department’s interpretation of Sections 15-23-701 through -703, MCA, which require  
9 assessment wherever the mine or mines are located. Here, tunnels and coal seams are  
10 located in both counties. This Court interprets the statutes as requiring a mine’s gross  
11 proceeds to be apportioned among the counties where the mineral deposit is located  
12 and severed. This is consistent with other statutes as coal is “produced” when it is  
13 severed from the earth, Section 15-35-102(8), MCA, and “coal mine” is defined to  
14 include all parts thereof including mine tunnels and abandoned property. Section  
15 50-73-102(2), (3), MCA.

16 Both counties agree that apportionment cannot be performed on a  
17 mileage basis or on the basis of the original cost of the centrally assessed property, and  
18 the Department has authority to determine apportionment among counties which is just  
19 and proper. (See Section 15-23-105, MCA.) This Court believes that Sections  
20 15-23-702 and -105, MCA, contemplate taxation of coal deposits in the county where  
21 the ore deposit is located, not where the ore is loaded for transportation. Under Section  
22 15-23-105, MCA, apportionment is based on where the assessed property is located.  
23 It is clear that if we were dealing with a strip mine, each county would be granted  
24 credit for the coal removed from that county under the applicable statutes. Nothing to  
25 the contrary is stated in the statutes, administrative rules, or case law relating to this

1 subject matter. In fact, A.R.M. 42.22.122(5) requires apportionment of centrally  
2 assessed property among county taxing units based on where the property is located.

3 This Court cannot insert language to the benefit of one county over the  
4 other. Therefore, Yellowstone County is clearly entitled to a portion the CGPT from  
5 the mine. Because the statutes require apportionment, this Court finds, as a matter of  
6 law, that MDOR's assessment between the two counties was just and proper under  
7 Section 15-23-105, MCA.

8 Further, the statutes are silent on the issue of impacts caused by a coal  
9 mine. Therefore, MDOR correctly disregarded impacts in determining the CGPT, as  
10 MDOR lacks statutory authority to consider that issue. Further, the Court believes that  
11 Yellowstone County provided appropriate answers to discovery requests propounded  
12 by Musselshell County stating that the CGPT is not based on impacts.

13 Unlike the CGPT, the coal severance tax and the resource indemnity and  
14 groundwater assessment tax are to be distributed to areas impacted by coal mining.  
15 Under 15-35-102(2)(b), MCA, the purpose of the coal severance tax, among other  
16 things, is to "stabilize the flow of tax revenue from coal mines to local governments  
17 through the property taxation system." Under Section 15-38-102, MCA, the purpose  
18 of the resource indemnity tax and groundwater assessment tax is "to indemnify its  
19 citizens for the loss of long-term value resulting from the depletion of its mineral  
20 resource base and environmental damage caused by mineral development." Section  
21 15-38-102, MCA. The CGPT provides no provision for weighing impact and  
22 allocating proceeds to counties based on impact. In addition, Musselshell County  
23 admits it has received a two-year grant from the Coal Board to address impacts. (Br.  
24 Supp. Mot. Summ. Adjud. Issue Impacts Suffered, at 5.)

25 ////

1 Musselshell County argues that coal gross proceeds are personal property  
2 which are taxed in the taxing jurisdiction where it is located on the date of assessment.  
3 See Sections 15-8-408 and 15-23-703, MCA. It further argues that while Section  
4 15-23-105 allows apportionment between the counties in which such property is  
5 located, no basis exists in this case to allow apportionment. Additionally, because coal  
6 is one of the many items that is centrally assessed (the taxpayer's returns are sent to  
7 MDOR instead of to the individual counties), the coal is "centrally assessed" in  
8 Musselshell County. It also argues that Section 15-23-703, MCA, implies that a mine  
9 can only be located in a single county. Finally, Musselshell County argues that  
10 because the Hard-Rock Mining Impact Property Tax Base Sharing (Hard Rock Act)  
11 specifies the ways in which apportionment takes place among counties, the absence of  
12 such specificity relating to coal allows no apportionment. See Section 90-6-401,  
13 MCA, et seq. The Hard Rock Act specifically addresses the apportionment of ore  
14 from metal mines among counties when the mouth of the mine is in one county but  
15 impacts are felt in adjacent counties.

16 Musselshell County ignores Section 15-23-702, MCA, and misreads the  
17 other applicable statutes including the apportionment statute, Section 15-23-105,  
18 MCA, and the applicable administrative rules, ARM 42.22.122, and the other statutes  
19 that define where a mine is located.

20 Barring a clear legislative mandate or case law to the contrary, this Court  
21 believes the applicable statutes require that coal taken from either the surface or  
22 mineral estate under Yellowstone County should be taxed in that county. Therefore,  
23 the Court believes Signal Peak/MDOR's apportionment was correct, and Musselshell  
24 County's arguments listed above and all other arguments made by Musselshell County  
25 miss the mark. MDOR's assessment was required by the applicable statutes and was

1 therefore "just and proper" and not arbitrary and capricious. MDOR is not required to  
2 make an administrative rule clarifying the above, as the statutes and applicable  
3 administrative rules are clear.

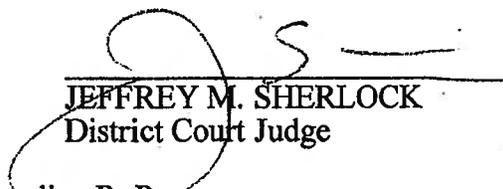
4 Finally, Yellowstone County argues that Musselshell County has no  
5 statutory authority to bring suit against another county. That issue is moot. All future  
6 funds from the CGPT should be allocated between the counties, and Yellowstone  
7 County should be paid the amount determined above for tax year 2009.

8 **CONCLUSION**

9 For the foregoing reasons, Musselshell County's motion for summary  
10 judgment, request for declaratory ruling, and request for summary ruling are DENIED.  
11 Finally, because impacts are not relevant in calculating the CGPT, Musselshell  
12 County's motion to disqualify MDOR from determining impacts is moot.

13 Yellowstone County and MDOR's motion for summary judgment is  
14 GRANTED, and its motion relating to impacts is moot.

15 DATED this 3 day of February 2012.

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18 **JEFFREY M. SHERLOCK**  
District Court Judge

19 pcs: R. Allan Payne/Marc G. Buyske/Jacqueline R. Papez  
20 Daniel L. Schwarz  
Teresa G. Whitney

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