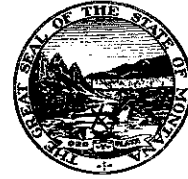




Dan Bucks  
Director


# Montana Department of Revenue



Brian Schweitzer  
Governor

## MEMORANDUM

To: Dan Bucks, Director

From: C. A. Daw, Chief Legal Counsel 

Date: September 8, 2008

Subject: Department of Revenue Major Case Update – July 2008 – September 2008

### Montana Supreme Court:

Gannett Satellite Information Network: We are awaiting an order from the Court indicating if the case will be submitted on the briefs or scheduled for oral argument, which is known as “classification.”

Menholt: On July 21, 2008, this matter was classified as “submitted on briefs” and we are awaiting the Supreme Court Opinion..

Omimex: This matter was classified “submitted en banc (the full court)” on July 2, 2008.

PacifiCorp: We are awaiting a classification order from the Court.

### District Court:

Fallon County Board of Commissioners, et al.: We are awaiting the Court’s ruling on the Motion to Compel. At this time, the Court has not yet set a hearing on the summary judgment motions. *TIFs should have been joined under trial*

Fallon County (Administrative Rule): Fallon County, through its County Commissioners, filed a complaint in Fallon County District Court seeking to have new Administrative rules 42.19.1401, 1402, and 1404 declared invalid. The Department’s Answer to the Complaint is due on 10/3/2008.

NorthWestern Corporation: On September 5, 2008, the District Court issued their decision on NorthWestern’s Petition for Judicial Review regarding STAB’s decision on the 2005 valuation. The Court remanded a portion of the case to STAB to remand to DOR for recalculations. *The DOR mainly won. filed a motion w/ District Court on the whole, they feel their valuation was substantially upheld*

**State Tax Appeal Board (STAB):**

Barretts Minerals: This matter has settled.

Devon Energy: Devon Energy withdrew its complaint prior to the Department's deadline for filing its answer. Devon reserved the right to challenge the Department's 2009 assessment at the time it is made.

Gold Creek Cellular, LLC (Verizon Wireless): On September 4, 2008, STAB heard oral argument regarding Verizon's Motion for Protective Order to Limit the Scope of Discovery and DOR's Motion to Compel discovery responses. Verizon has also appealed its 2008 assessment to ODR.

Omimex: A centrally assessed property tax classification case (similar to the 2004 case currently before the Supreme Court) for 2005 and 2006. The 2006 case also challenges DOR's valuation of Omimex's property. A status conference is set for December 9, 2008, to update the Board regarding the Omimex Supreme Court case. These cases are set for hearing before STAB in October 2009.

Pacificorp: The centrally assessed valuation for tax years 2006 and 2007 have been consolidated and are scheduled for hearing before STAB in September 2009. The 2008 valuation has been appealed to ODR.

Puget Sound Energy: This matter is set for hearing before STAB in September 2008. STAB has entered an order in limine on post-assessment merger information. DOR has filed a motion seeking revision of the order.

Qwest: Discovery is being conducted and hearing before STAB is set for February 2009.

Western Energy: A hearing before STAB is scheduled for October 30, 2008.

**Office of Dispute Resolution (ODR):**

Alltel: Alltel is currently being purchased by Verizon. This is a central assessment dispute for 2008, and involves the same issues as Verizon.

Gold Creek Cellular, LLC (Verizon Wireless): Verizon has appealed its 2008 assessment to ODR.

NorthWestern Energy: The 2006, 2007, and 2008 classifications have been appealed to ODR and are being held in abeyance pending the outcome of the 2005 appeal.

Omimex: The 2008 classification has been appealed to ODR and is on hold, along with 2007, awaiting the Supreme Court's decision.

Pacificorp: The 2008 classification has been appealed to ODR.

Plonk!: The DOR is seeking to revoke the liquor license of a licensee who sold alcohol that was not purchased through the State Liquor Warehouse as required by statute.

Qwest: Qwest recently appealed their 2008 valuation to ODR.

NorthWestern Energy: The 2008 classification has been appealed to ODR. The matter is being held in abeyance pending the outcome of the 2005 appeal.

**Montana Department of Revenue**  
**Schedule of Taxes Paid Under Protest by Centrally Assessed Companies with Outstanding Appeals**  
 As of August 31, 2008

Company	Year	Tax Protested	Total Uncontested Tax	Total Tax	Protested %	State Portion of Protested Tax		Venue - Hearing Date
						(Estimated)		
Electric and Gas Companies: NorthWestern Energy	2005	\$ 11,589,368	\$ 54,814,784	\$ 66,404,152	17%	\$ 2,317,874	District Court - Scheduling Order has been requested	
	2006	\$ 16,415,170	\$ 55,325,109	\$ 71,740,279	23%	\$ 3,283,034	DOR - Held in Abeyance	
	2007	\$ 15,825,402	\$ 58,222,569	\$ 74,047,970	21%	\$ 3,165,080	DOR - Held in Abeyance	
	2008	\$ -	\$ -	\$ -	0%	\$ -	DOR - Held in Abeyance	
		\$ 43,829,940	\$ 168,362,461	\$ 212,192,401	21%	\$ 8,765,988		
Puget Sound Energy	2005	\$ 2,699,269	\$ 6,298,293	\$ 8,997,562	30%	\$ 539,854	STAB Hearing - 9/29/08 through 10/10/08	
	2006	\$ 4,136,011	\$ 5,055,125	\$ 9,191,136	45%	\$ 827,202	STAB Hearing - 9/29/08 through 10/10/08	
	2007	\$ 5,729,366	\$ 4,687,863	\$ 10,417,229	55%	\$ 1,145,873	STAB Hearing - 9/29/08 through 10/10/08	
	2008	\$ -	\$ -	\$ -	0%	\$ -	DOR - ODR Hearing Scheduled	
		\$ 12,564,646	\$ 16,041,081	\$ 28,605,727	44%	\$ 2,512,929		
PacifiCorp	2005	\$ 467,440	\$ 1,869,761	\$ 2,337,201	20%	\$ 93,488	STAB Decision 7/31/07 - Supreme Court - Procedural Appeal	
	2006	\$ 505,863	\$ 2,023,453	\$ 2,529,317	20%	\$ 101,173	STAB Fall 2009	
	2007	\$ 597,650	\$ 1,792,981	\$ 2,390,642	25%	\$ 214,214	STAB Fall 2009	
	2008	\$ -	\$ -	\$ -	0%	\$ -	DOR - ODR	
		\$ 1,570,954	\$ 5,686,196	\$ 7,257,160	22%	\$ 408,875		
Telecommunication Companies: Qwest	2007	\$ 6,874,454	\$ 8,402,311	\$ 15,276,764	45%	\$ 1,149,358	DOR to be moved to STAB	
	2008	\$ -	\$ -	\$ -	0%	\$ -	DOR - ODR Hearing Scheduled	
		\$ 6,874,454	\$ 8,402,311	\$ 15,276,764	45%	\$ 1,149,358		
	2007	\$ 1,925,676	\$ 1,390,453	\$ 3,316,129	58%	\$ 333,693	STAB - Hearing date has not been set	
2008	\$ -	\$ -	\$ -	0%	\$ -	DOR - ODR		
	\$ 1,925,676	\$ 1,390,453	\$ 3,316,129	58%	\$ 1,483,051			
2008	\$ -	\$ -	\$ -	0%	\$ -	DOR - ODR Hearing Scheduled		
Pipeline Companies: Orinimax Canada LTD	2004	\$ 653,286	\$ 217,762	\$ 871,048	75%	\$ 130,657	Supreme Court - Briefs are being filed	
	2005	\$ 812,345	\$ 270,781	\$ 1,083,126	75%	\$ 162,469	District Court	
	2006	\$ 982,388	\$ 229,689	\$ 1,212,077	81%	\$ 196,478	STAB	
	2007	\$ 1,114,195	\$ 244,283	\$ 1,358,478	82%	\$ 234,419	DOR - Held in Abeyance	
2008	\$ -	\$ -	\$ -	0%	\$ -	DOR - ODR Hearing Scheduled		
	\$ 3,562,214	\$ 962,516	\$ 4,524,730	79%	\$ 724,023			
<b>Total</b>		\$ 70,327,894.04	\$ 200,845,016.79	\$ 271,172,910.83	26%	\$ 13,894,865.40		