



Chapter 3

Valuation of Minerals in Condemnation Proceedings: The Keys to Quick and Just Compensation

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§ 3.01. Introduction.

The Fifth Amendment to the United States Constitution—which forbids the taking of private property by the government without just compensation—has not changed since the ratification of the Constitution in 1789. Valuation of minerals taken in condemnation proceedings, however, has changed dramatically in the past several decades, and stands to change even more with the publication of the *Fifth Edition of the Uniform Appraisal Standards for Federal Land Acquisition* in 2000 (Uniform Appraisal Standards). The validity of the *Uniform Appraisal Standards* was confirmed just last year in *The Stearns Co., LTD v. United States*,¹ and perhaps to a lesser extent, in *Bassett, New Mexico, LLC v. United States*.² State condemnation law cannot lag far behind.

This chapter will examine how the historical “unit” rule for valuation has become supplanted by methods that allow for more accurate measurement of the true value of minerals to the landowner, and specifically will examine the methods for valuation of minerals under the *Uniform Appraisal Standards* and the emerging case law. In addition, this chapter will discuss condemnation procedures generally, particularly in the West Virginia state courts, where condemnation can be expensive for both parties, and will suggest ways to reduce or even eliminate litigation expenses. Finally, this chapter will examine a sample mining plan and calculation of minerals taken by the government as a means of showing the proper method to use in order to value minerals in a taking.

The purpose of this chapter is to explain how the landowner or mineral rights owner can receive the full and fair value for its minerals in a condemnation, with minimal litigation. If property owners and governmental representatives are fully educated on the proper valuation

¹ *The Stearns Co., LTD v. United States*, 53 Fed. Cl. 446 (2002).

² *Bassett, New Mexico, LLC v. United States*, 55 Fed. Cl. 63 (2002).

of minerals, both parties benefit, and neither party needs to resort to court proceedings. The public pays no more than what is truly fair, and the mineral owner receives the full value for the taking of its minerals.

The methods for mineral valuation discussed in this chapter, moreover, are applicable to any valuation or measure of damages where the owner has lost the ability to mine the minerals. The application of these sound and reliable methodologies will enable mineral owners to obtain full compensation for their losses.

§ 3.02. The Proper Methods for the Valuation of Minerals: How Much Is Just Compensation?

The touchstone for the proper valuation of taken property is that the land and its minerals must be valued as if they were put to their highest and best use.³ That use “must be physically possible, legally permissible, financially feasible, and must result in the highest value.”⁴ When minerals are being valued, the obvious first choice for the highest and best use is mining.

But showing that the highest and best use is mining is not necessarily easy. One must demonstrate to the government that mining is physically possible, legally permissible and financially feasible. The best way of doing so is to develop a sound and thoroughly defensible mining plan for the property. Such mining plans, if properly designed, will withstand any test in court. Sound and thoroughly defensible mining plans were precisely the bases for the valuation of the minerals in the important cases of *United States v. 100.80 Acres of Land*⁵ and *Whitney Benefits v. United States*.⁶

Indeed, the inquiry of what is the highest and best use does not end with concluding that it is mining. The question must be focused on what is the best mining plan for the property, that is, what is the mining plan

³ See, e.g., *United States v. 91.90 Acres of Land*, 586 F.2d 79 (8th Cir. 1978).

⁴ *Uniform Appraisal Standards for Federal Land Acquisition* §A-14 (5th ed. 2000).

⁵ *United States v. 100.80 Acres of Land*, 657 F. Supp. 269 (1987).

⁶ *Whitney Benefits v. United States*, 18 Cl. Ct. 394 (1989) *aff'd* 926 F.2d 1169 (1991).