



Chapter 10

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Takings Law: Issues of Interest to Mineral Property Owners

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Synopsis

Table listing sections from § 10.01 to § 10.06 with corresponding page numbers, including sub-sections like [1] — Development of 'Physical' Takings Law.

§ 10.01. Introduction.

The Fifth Amendment Takings Clause, while simple in its statement, has given rise to a complicated array of cases with varying rules that often appear inconsistent at best.

1 Pennsylvania Coal Co. v. Mahon, 260 U.S. 393 (1922).

DeBenedictis.² Although both cases considered the effect of statutes³ that regulated mining in circumstances that might cause subsidence, in one case (*Mahon*) the Court found a taking, and in the other (*Keystone*) it did not. In this instance, as well as other seemingly inconsistent takings cases, the Court has found a basis for distinguishing the cases and applying separate rules despite the seeming similarity of the facts.⁴ Consequently, as one Justice noted, even the wisest lawyer has difficulty in discerning the principles of takings law that will be applied by the courts.

This chapter attempts to provide an outline of the general principles of current takings law and a framework for analyzing a takings issue in the context of a mineral case. It also identifies the most recent cases that may have an effect on the analysis that will be used by courts in a mineral takings case.

§ 10.02. General Takings Principles.

The body of law that has come to be known as “takings” law derives from the clause of the Fifth Amendment to the United States Constitution which provides in pertinent part :” . . . nor shall private property be taken for public use, without just compensation.”⁵ This clause is commonly called the “Takings Clause” although some Justices and courts continue to refer to it as the “Just Compensation Clause.”⁶ The United States Supreme Court has embraced a general “fairness and justice” standard for the operation of the Clause, declaring that the Clause operates “to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.”⁷

² *Keystone Bituminous Coal Ass’n v. DeBenedictis*, 480 U.S. 470 (1987).

³ The Kohler Act was at issue in *Mahon* and the Subsidence Act was at issue in *Keystone*.

⁴ Justice Stevens explains in his dissent in *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 at 1072-1073 (1992) that “[u]nlike the Kohler Act, which simply transferred back to the surface owners certain rights that they had earlier sold to the coal companies, the Subsidence Act affected all surface owners — including the coal companies — equally.”

⁵ U.S. Const. amend. V.

⁶ *Lucas*, 505 U.S. at 1071 (Stevens, J. dissenting).

⁷ *Armstrong v. United States*, 364 U.S. 40, 49 (1960).