AMERICAN INSTITUTE OF MINERALS APPRAISERS

NEWSLETTER

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IN THIS ISSUE

Continuing Education Credits

By John Gustavson, IMA President

To All AIMA Members:

In August the AIMA Executive Committee extended by 60 days until 15 October 2010 the deadline for Members to fulfill the already long-delayed CE requirements. During this recent extension period your Institute also launched the password-protected member sites.

On the latter subject many Members have called in with access problems, but most have been resolved. However, the Member Login on the Internet is still very slow. Our contractor is working on speeding it up.

We also improved the tables on which our Members may keep track of their claimed CE credits. Trevor Ellis noticed the difficulties and recommended several modifications. The original design assumed that the CE activities had taken place in the USA, so the page had a box for entry of only the US two-letter state codes.

However, some of our Members and Associate Members live in other countries, so that flaw has now been fixed. In the meantime, Trevor did discover that the box for "City" was flexible enough to hold the city plus country for the foreign entries, which he made. Other small improvements were made, and please submit suggestions to our Web Master Don Warnken.

The actual tally of accepted CE credits has not been performed and the list is by nature very lengthy and complicated. A total of 246 entries had been submitted. That is good news and I have asked the CE Chair to present a reasonable plan on how and when to spot check the submittals.

The Institute follows the honor system, so it is up to each Member to make sure to obtain the continuing education and to record the credits properly. Our Chair, Bob Frahme has been very willing to answer questions and Michael Cartwright has assisted in his temporary role as Advisor to the Executive Committee on CE matters.

The key has therefore been to get the system going. Many questions will be resolved at the forthcoming Annual Meeting in Denver, so I hope that many Members and Associate Members will attend.

Our Conference Committee has worked hard under the Chair of Richard Jolk who together with Trevor Ellis has put together THREE sessions on appraisal matters! Great job, Richard and Trevor! The attendance at these sessions provide almost a whole year's requirement for CE credits, so we hope to see many there.

In addition, I am personally working on getting our sessions recorded by video, so our distance Members can attend the sessions online and thereby also obtain the CE credits. So your Institute is doing what we can to get us over this very difficult CE bump along the now 20-year long road of its existence.

Yes, 20 years! We will celebrate the founding of the Institute in 1991 at some point of the evening at the Annual Meeting in Denver. Be sure to come!

John Gustavson, 2010 President

Editor Note: Next Newsletter will contain a CE sources list

Continuing Education Guidance

Dear Member:

Your Institute has now taken delivery of a secure Members-Only addition to our web site, http://mineralsappraisers.org. It enables you to log in and review or update your Continuing Education (CE) credits. The site for each Member is private and is only accessible by the Member. The Chair of the CE Committee has access upon reasonable advance notice of audit to the Members. Usernames and initial passwords have been forwarded to each Member.

The 2010 Executive Committee has received and reviewed the following Guidance material from our 2010 CE Committee Chair, Bob Frahme. We thank Bob for his input. It is presented here with only minor edits, the introduction of which enabled the Executive Committee to adopt the following material upon majority vote as the official Guidance for our Members. Some of these edits were introduced upon advice from Michael Cartwright, who has accepted the Ad Hoc appointment as Advisor on CE Matters to the 2010 Executive Committee.

Below follows the official Guidance material as it presently is being implemented. It is subject to discussion at the next Annual Meeting. Members are encouraged to submit recommendations for Agenda inclusion on this important subject to the Institute Secretary, Don Warnken at least 30 days in advance of the Annual Meeting.

I encourage all Members, both Certified Minerals Appraisers and Associate Members to make full use of this new service, which is aimed at improving our status as professional minerals appraisers.

Good Luck!

John B. Gustavson,
2010 President

Letter to AIMA Continuing Education Committee Chairman-

In response to the 11 May 2010 Notice of Deficiency and Remedial Action letter to AIMA members, I have a couple of comments relative to the quality and quantity of AIMA's continuing education policy. I concur with the AIMA Executive Committee that continuing education is an integral element of the appraisal profession; as physical, legal and economic trends are dynamic. I believe qualifying AIMA continuing education should include core appraisal courses, as well as accredited courses that address changing physical, legal and economic trends within our specific facet of real property appraisal. Speaking to the quantity of continuing education, I believe that an average of 10 to 12 hours per year is reasonable; and that an average 20 hours per year is excessive.

-Marc Springer, AIMA Member 2006-04

2011 SME-AIMA Valuation Sessions

For the first time, there will be three SME-AIMA Valuation Sessions. All three will be Chaired by Richard Jolk and Trevor Ellis. The first session will be initiated in the afternoon of Monday, February 28th. The second and third sessions will be held on Tuesday, March 1st.

VALUATION I: CONCEPTS AND METHODS
Afternoon of Monday, February 28th

Author: Gerald Clark
Title: Scope of Work: Building Block for the Appraisal

Abstract
The unique characteristics of minerals appraisal have often been in conflict with standards written for real property surface assets and businesses. Changes to U.S. standards with the Uniform Standards of Professional Appraisal Practice (USPAP) and international standards with the International Valuation Standards (IVS) are providing more freedom to structure minerals appraisals that better meet the client's needs.

It is the appraiser's responsibility to establish a framework within the appraisal that lead to credible results that are not misleading to the reader of the report. The appraiser accomplishes this first by providing information expected by most readers of similar reports. Then a course is set for the intended research and analysis to be performed, clearly explaining the steps to be taken to develop the opinions and conclusions of the finished work.

This paper is intended to provoke thought on ways the appraiser may use the scope of work to meet the client's needs, while at the same time accomplish a credible minerals appraisal that is not misleading.

Author: Richard Jolk
Title: Contribution to Value – What Counts?

Abstract
Many tangible and intangible elements of a mineral property make up its value; often overlapping in their contribution. Discussed in this paper are the main elements contributing to, or detracting from, the value of mineral properties. Consideration of these elements in the three approaches for market value appraisal will be introduced - the Sales Comparison Approach, the Cost Approach, and the Income Approach. Presented is a summary of the essential elements that must occur in combination for a property to approach its highest potential value as a mineral property.

Author: Edwin Moritz
Title: Highest and Best Use in Minerals Valuation:
Fundamental Step in Approach to Value

Abstract
Highest and best use is a fundamental step in the appraisal
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process and required under the USPAP standards. Although the subject as it pertains to real estate is widely discussed, there is limited treatment when it comes to mineral rights. This presentation reviews the concept of highest and best use and discusses the general methodology with an emphasis on its application to valuing mineral rights.

Author: Trevor Ellis
Title: A Review of the Many Cost Approach Methods for Minerals Valuation

Abstract
Many appraisers/valuers believe that the only valuation method available within the cost approach is depreciated replacement cost. This paper introduces the minerals appraiser to a number of methods that are based on the principle of contribution to value. Most of the methods are primarily for use in valuation of exploration stage or early stage properties. However, the very powerful "land mix adjustment method" is applicable to even producing properties.

Author: Louis Posgate
Title: The Income Approach: Methods of Royalty and Leasehold Interest Appraisal and Issues and Problems in Federal Tax Cases

Abstract
The importance of using return on and of capital concepts, and the need to define property and associated risks cannot be overemphasized. One capitalization of income method is a Hoskold capitalization rate method, demonstrating both return components (a real estate-sourced method applied to wasting assets, resulting in lower multiples than strictly using a discount rate constructed from financial asset opportunity costs and weighted-average cost of capital, or WACC). Annual studies by State annual property tax assessment offices suggest property risk rates to be added to the WACC. Return of capital must also be added. The market approach is another method sometimes used.

There are reasons why the discounted cash flow (and capitalization of cash flow) methods may indicate a value that varies from the actual property value at which transactions occur. Such reasons include buyers using rates differing from the market rate, non-economic motives for buying or selling (ex. pay taxes, liquidation of a partnership, bankruptcy auction), a lower production decline rate than sales from where a discount rate is extracted, using transactions where participants were more risk averse, or perhaps use of a transaction in a different economic environment.

Methods that rely on oil and gas rules-of-thumb applied to income, producing reserve estimates, or both can cause bad value results, according to historic Federal tax case law decisions, revealing the expert's and court's opinion on factors used in discount rate construction. Reliance on rules-of-thumb, hind-sight and poor construction of discount rates or hydrocarbon prices, or use of wrong costs, yielded unfavorable case decisions.

Tantamount to above considerations in estimating fair market value, as observed in tax cases and in other purposes, it is requisite to apply the capitalization process to the appropriate ownership interest for which the appraiser is engaged, i.e. royalty rate to the leased fee royalty stream, risked operating discount rate to the leasehold (working interest) estate, or whatever the economic interest being valued.

Misstatements of value (either substantial or gross, such as 50% or 25% of the final conclusion allowed in a tax dispute under Sec. 6662 of the Internal Revenue Code), can result in client penalties and now sanctions possible for appraisers. Therefore, diligence and methods comporting with Professional Appraisal Practice should be the norm for any Federal tax-related appraisal, as well as for other purposes that clients engage appraisers to perform. A further discussion of capitalization caveats reveals this in case decisions.

Authors: David McMahill, Fredric Pirkle, and Norman Stouffer
Title: How to Tie the Discounted Cash Flow Calculation to the Market in a Mineral Property Valuation

Abstract
If sufficient data exist, discounted cash flow analysis (DCF), is recognized by many as the preferred method of mineral property valuation. In performing DCF analyses of mineral projects, certain characteristics of mining a mineral project are based on the existence of reserves, costs as determined by the tons of ore produced, and revenue as determined by the price for product sold. It must be accepted that profit is generally more sensitive to changes in revenue than changes in cost, since product price is the driving force in revenue, and price poses the greatest uncertainty and therefore creates the greatest risk.

Important factors to be considered when performing a DCF on a mineral property are (1) the accuracy of the reserve estimate, principally regarding recovered grade; (2) project timing: (3) the product selling price; and (4) the risk of not sustaining the projected quantities and selling price.

Market comparable valuations, royalty value, and NPV as determined by the DCF approach should not be viewed as alternative approaches to estimating project value, but rather should be used together to derive a single value estimate based on both market and fundamental data.

Author: Trevor Ellis
Title: Sales Comparison Valuation of Development and Operating Stage Minerals Properties

Abstract
Minerals Appraisers/Valurers often find great difficulity or failure in attempting to employ the Sales Comparison Approach to the market value appraisal of development and
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operating stage mineral deposits. An important factor generally overlooked, or otherwise mishandled in the comparative adjustments, is a comparison of profit margins on a per unit of production basis between mineral properties, whether these be demonstrated or forecast margins. Profit margins can vary greatly between mines or quarries that are producing similar products. Ultimately, the expected profit margin determines what a buyer is willing to pay for an income producing property. In this paper, example sales comparison adjustments will be used as the basis for discussion of ways to employ adjustments for operating economics, while cautioning about the potential for double counting.

Author: Gerald Clark
Title: Reconciliation in Minerals Appraisal – The Final Adjustments

Abstract
Often overlooked and hurried, the final reconciliation of an appraisal can bring home the efforts of research and analysis that were presented in the pages that preceded it. Just as an attorney presents closing arguments in a trial, the appraiser can sell his or her opinion of value by summarizing points made throughout the appraisal and give added weight to important specific ideas and concepts.

This paper looks at some questions the appraiser should be asking while writing the final reconciliation. It is also intended to provoke thought on various methods that can be used to better convince the reader.

VALUATION II: SPECIAL PURPOSE APPRAISALS
Morning of Tuesday, March 1st

Author: Jeffrey Kern
Title: Financing of Mineral Property Development – Is there a Role for the Minerals Valuer?

Abstract
Most major U.S. Financing institutions have specific requirements for the appraisal of mining, mineral, and mineral processing facilities. These requirements focus on the use of all three approaches to value - cost, income, and market. The financing appraisals generally require an in-depth analysis of several factors, as well as documentation of potential cash flows:

- Current and previous cash flows on the property and similarly situated properties
- Actual and/or hypothetical royalties
- Market conditions including market opportunities and patterns and competition
- Leases, deeds, contracts, operating agreements, operating restrictions
- Mining/processing operation, environmental quality, water quality, local zoning, and other legal controls of the operation
- Physical attributes of the deposit and the site

While a team approach is usually necessary to complete the appraisal assignment within a 45 to 60 day time frame, most lending institutions require that the lead appraiser or author be a Certified General Appraiser. The paper, using a case study, discusses the procedures used to satisfy the requirements of the lending institutions.

Author: David Hammond
Title: Minerals Valuations in Royalty Financing

Abstract
During the past decade royalty financing has been increasingly used by mining companies as an alternative to debt and equity funding for project development. The royalty structure has aspects of both these traditional forms of financing, but its flexible characteristics can offer project sponsors unique economic value and risk mitigation advantages. Evaluation methodologies appropriate for both the funding provider and the mine operator to utilize in assessing the economic merits of a royalty, while similar in form to typical valuation techniques for mining projects, do entail nuances requiring careful consideration. This presentation describes the more important of these methodological differences in valuing both conventional royalties and a royalty financing. The pros and cons of royalty use in project funding, and characteristics of the frequently used "Metal Stream Purchase" royalty structure are also described.

Author: John Lizak
Title: Discount Rates in Mineral Company and Mineral Property Valuation

Abstract
The derivation of a discount rate is often the most contentious and flawed component of a mineral valuation. The Weighted Average Cost of Capital (WACC) is the discount rate that should be used in the common income approach to derive the present value of a company's, or a mineral lease's, future cash flows. The WACC method has many applications in investment management, corporate finance, and regulatory and tax proceedings. It is used in business valuation, regulatory proceedings, project selection, and shareholder value determinations. It is used in the valuation of entire mineral companies and mineral properties. The derivation of the WACC, and the resultant discount rate, will be examined in this paper. The historical discount rates and the risk premia for the energy mineral, the industrial mineral, and the metal industries will be tracked and compared to current transactional rates. The discount rates used to value entire mineral companies will be compared to the rates used to value mineral royalty interests.

Author: Alan Stagg
Title: Federal Condemnations and Takings – A Journey Down the Yellow Book Road

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Abstract
The Uniform Appraisal Standards for Federal Land Acquisitions, affectionately known as the "Yellow Book," is a formidable document laden with legal citations. From a practical standpoint, assuming knowledge and familiarity with appraisal standards and reporting methodology, Section B – Legal Basis for Appraisal Standards for Federal Land Acquisitions, Section D-11 – Valuation of Mineral Properties, and Section D-12 – Leasehold Acquisitions are the salient sections. This presentation examines a number of the issues and apparent conundrums that affect the mineral appraiser in attempting to conform the requirements of the Yellow Book with the practice of the mining industry in buying and selling interests in mineral properties (i.e., the market for such interests).

Ross Lawrence, Joe Hinzer, and Bereket Berhe
Canadian Valuation and Reporting Standards – Problems and Solutions

Mineral property valuations for Canadian securities regulation purposes must comply with CIMVal (Standards and Guidelines for Valuation of Mineral Properties, CIM, February 2003). The technical basis for a CIMVal report is the same as that required for a National Instrument 43-101 technical report. Following a brief explanation of these standards, the authors discuss some examples of technical and valuation issues that made compliance difficult or unusual.

Author: Craig Wood
Title: Pass-Through Entities and the Appraisal Process – To Tax Effect or Not To Tax Effect?

Abstract
Over the past couple of decades, it has become more prevalent for businesses to be structured as pass-through entities for income tax purposes. While S-corporations and limited partnerships have been with us for a considerable period of time, limited liability corporations and master limited partnerships, among others, have become increasingly common. This is particularly true within the mineral industry and especially so for landholding entities. There is disagreement between many appraisers in the business valuation profession and the tax courts on the proper method of treating income taxes in the valuation of these entities. Notwithstanding those differences in opinions regarding the methodology, it is important to understand what is currently accepted by the tax courts when preparing an appraisal. This paper reviews the history of tax court decisions on this subject, the reasoning behind several noteworthy business appraisers' disagreement with those decisions, and discusses the methodology currently accepted by the tax courts.

Author: David Wimberly
Title: Valuation of Mine and Quarry Businesses – Are Standards Relevant?

Abstract
Existing Business Valuation Standards include those issued by the Appraisal Foundation (USPAP), the American Society of Appraisers, the National Association of Certified Valuation Analysts, and the American Institute of Certified Public Accountants. Is it possible for a practitioner to pick and choose between which set(s) of standards he will use? Are there conflicts between the standards? What guidance is there for a practitioner if there are conflicts? These are just a few questions which must be answered in performing business valuations in general. This paper will focus on the scope and applicability of these standards to business valuations in general and valuations of mine and quarry businesses in particular.

Authors: Christopher Wyatt and Bernard Guarnera
Title: Valuations for Fairness Opinions and Other Tight Turnaround Needs

Abstract
A client calls and says his company just got an offer to take the company over and is getting ready to close the deal. He has been informed by counsel the board of directors needs a fairness opinion to fulfill their fiduciary responsibilities and of course it needed to be done yesterday. Fairness opinions require a different approach than a valuation - in essence a verification of the value being offered is fair and they typically need to be done quickly. This paper reviews actual cases and the differing methods employed in developing fairness opinions for companies with properties in differing stages of the mining cycle. One company has an unexplored property with limited exploration work, a second company has an operating mine, and a third company that has property that was mined and shut down during low mineral prices and is now reclaimed.

VALUATION III: VALUATION AND ECONOMIC EVALUATION RESEARCH
Afternoon of Tuesday, March 1st

Author: Michael Cartwright
Title: A Brief History of Minerals Valuation

Abstract
Value is not an objective measure, it is subjective. Agricola indicates in De Re Metallica that mineral property and mining company valuation has likely been around for at least 5000 years. His book is dedicated to Princes for "one reason above all others, because metals have proved of greatest value to you . . . you drew far richer profits from the mines" than any other path to wealth. He notes Xenophon's analysis of the financial operations of the Laurion silver mines and their royalty value to Athens. He understood diversification: "the man, who in common with others, has laid out his money on several mines in a region renowned for its wealth of metals, rarely spends it
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in vain". Adam Smith's The Wealth of Nations has a decidedly more jaundiced view of mining: it is "uncertain and ruinous and unfit for legal encouragement". Hoskold makes reference to "Professional Valuers" in his 1877 Engineer's Valuing Assistant. Presently, real property (which includes mineral rights) appraisers are licensed by government agencies to ply their trade and are required to meet certain minimum qualification levels. Unfortunately, none of those licensing requirements pertain to minerals.

Author: Stuart Limb
Title: Mineral Appraisals & Real Estate Appraisals – Similarities and Differences

Mineral Appraisal is concerned with the third dimension of land management (depth) in addition to the first two (length x width).

Mineral extraction is always a temporary use of land and the use and adoption of the income approach is much more common than in the appraisal of real estate.

Mineral appraisal is, in fact, an appraisal of personal property with the appraisal methodology assuming the minerals have been severed (extracted) from the land, processed and sold. Minerals are similar to timber, growing crops and fixed plant and equipment, which are also appraised separate from the real estate as personal property.

There are two types of income in adopting the income approach to mineral appraisal.

The adoption of a mining income approach to mineral appraisal is not the performance of a going concern or business appraisal.

A mineral appraisal generally comprises the appraisal of only a partial interest in a property. Alternative users during mining (e.g., grazing lease income on future reserves acreage) which generate income and the residual use value after cessation of mining are not typically included within a mineral appraisal.

Authors: Kazem Oraee, Ahmad Sayadi, and Mahdi Tavassoli
Title: Economic Evaluation and Sensitivity-Risk Analysis of Zarshuran Gold Mine Project

Abstract
In this paper the feasibility studies of the whole project is carried out on the basis of several economic variables estimated under the conditions of uncertainty. The resultant Net Present Value is hence also obtained under the same conditions. For this purpose, a model is first devised with the help of Excel and COMFAR software. The model is then developed that considers different scenarios which would result in different expected values for the economic variables. It is concluded that the NPV of the project is most sensitive to gold and silver price and that other variables such as discount rate, operating and capital cost all affect the feasibility of the project with lower degree of severity. Finally, risk analysis is also carried out using Mont Carlo technique, in order to estimate the most probable value of NPV. The average NPV calculated in this way is US$ 49.7 Million, whilst without due consideration of risk, this would be US$ 36.6 Million. The techniques used, together with the procedures adopted in this paper, would result in more accurate Net Present Values than expected from other frequently used methods.

Authors: Jose Botin, Ronald Guzman, and Martin Smith
Title: A Methodological Model to Assist on the Optimization and Risk Management of Mining Investment Decisions

Abstract
Identifying, quantifying and minimizing technical risks associated to investment decisions is a key challenge for the minerals industry decision takers and investors. However, risk analysis in most bankable mine feasibility studies are based on stochastic modeling of project NPV which, in most cases, fail to provide decision makers with a truly comprehensive analysis of risks associated to technical and management uncertainty and, as the result, are of little use for risk management and project optimization. This paper presents a value-chain risk management approach where technical risks and uncertainty are evaluated at each step of the project lifecycle, from exploration to mine closure, and are managed as part of a stepwise value-added optimization process.

Author: John Manes
Title: Appraisal Financial Data – Proof, Check, Review

Abstract
The appraisal process often includes receiving and reviewing various types of financial data.

Financial data is typically prepared by the client's accounting department or accountant, and then provided to the appraiser via e-mail or hardcopy.

Is an appraiser liable for errors in the Financial Data? How does the Uniform Standards of Professional Appraisal Practice (USPAP) address this? What can an appraiser do to minimize potential errors and impacts?

The Author of this paper utilizes a three step process to validate the integrity of the data, reduce errors, and assist with the appraisal process.

Proofing is necessary to verify the integrity of the data. Some helpful tools and techniques include data entry, spreadsheets, calculators and common sense.

Checking data involves using statistics, ratios, and other tools to explore the trends and patterns in the data. Checking also can reveal additional information that might be helpful to the appraiser.

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Reviewing data is the last step of the process, and is used as a final check. The review process relies upon the results of Proofing and Checking, and also provides the final details needed for the appraisal.

Author: Oswaldo Tovar
Title: A Method to Determine the Right Plant Size Using Microeconomics (Optimal Control Method)

Abstract
During the feasibility stage in a mining project, the plant's size of the operation becomes one of the most important issues to discuss due to its relevance in the Capital Expenditure (CAPEX)

This decision usually comes as a recommendation from a metallurgic team, which is based by some static comparative results. However, this static approach never considers the combined effect of interest rates and discount rates over variable cut-off grades along the life of mine.

This method uses an author developed economic model in MS Excel and Crystal Ball (c) to combine Kenneth Lane's "Decreasing Cut-Off Grades Program" with "Optimal Control Theory" to find the plant size which maximizes the Net Present Value by applying discounted cash flow, where the discount rate tends to maximize the plant size and the interest rate tends to minimize it simultaneously.

The input variables for this process are: 1) Tonnes-Grade reserve curve; 2) interest rate; 3) discount rate; 4) Plant Size - CAPEX. The output of this iteration process will be: 1) Variable cut-off grade program; 2) Optimum Plant Size; 3) Maximum NPV to obtain.

Author: Michael Cartwright
Title: Valuation Case Opinions 2011

Abstract
Even though many mineral property appraisers do not work on litigation related engagements they can gain valuable insight into other appraisals by reviewing valuation related court decisions. Decisions can provide credible guidance to approaching less common valuation issues arising outside of litigation. Minerals appraisers often perform appraisal/consulting services for estate and gift, income, property and severance taxes, corporate restructuring, offers to purchase/lease, property leasing/royalty/rental terms and conditions, buyout clauses, HABU and post mining land values and other normal course of mineral business activities. Many of these issues have been litigated and provide credible appraisal guidelines for addressing appraisal/consulting needs of clients. Appraisal guidelines by government authorities or professional societies are broadly worded to cover wide areas of appraisal practice, while case decisions tend to be much narrower in focus for particular valuation issues. Valuation issue searching, free or low cost sites and case references by valuation issue will be addressed. I will also note some appraiser liability issues and cases.

Authors: Kazem Oraee-Mirzamani, Arash Goodarzi, and Nikzad Oraee
Title: Economic Analysis of the Copper Mining Industry of Iran

Abstract
Mining of copper ore and the related industries play important roles in the national economy of Iran. National copper ore production amounts to 75% of the total output of the Middle East. All activities related to copper, that is, exploration, production, refinement etc are owned and managed by state owned companies. Decisions have been made to privatize all these activities. To assess the success of this privatization process, different components of the industry must be subject to economic analysis. In this paper, the cost estimation of all operations has been carried out. The total potential and attainable revenues have also been estimated using historical data available from the industry. Risk is a major factor in all mining activities and the copper industry of Iran has been subject to risk factors arising from many internal and external variables. These variables have been recognized and their effects evaluated. The effect of risk on the economic feasibility of the operations in the industry has also been analyzed.

Author: Richard Wyman
Title: Some Problems in Appraisal of Mineral Deposits on Unpatented Mining Claims

Abstract
Exploration for metallic mineral deposits today requires search over large areas of unoccupied land. In the western United States this means direct access to public lands under control of either the Bureau of Land Management or U.S. Forest Service. Prior to activity visible to the public, it is necessary to protect any future discovery by tying up the area of potential discovery by agreements with any property owners in the area, or by locating new mining claims. Frequently the potential target areas have existing mining claims located in previous periods of activity. Problems arise due to many revisions of the Mining Law of 1872 under which all mining claims are located. These directly affect the potential value of each claim, and two adjoining unpatented claims may have very different legal status.

Institute Seals

by John Gustavson

Some of our members have already acquired either the embossing version or the rubber stamp featuring the Institute's seal. The costs are now $55 and $35, respectively. The seal features your name and year of certification. Delivery time is about two weeks. Your Officers encourage you to acquire and use the seal on your appraisal reports and opinion letters.

Admin Law, Civil Procedure, Environmental Law, Government Law & Real Estate

<u>Recent Decision Involving Surface Condemnation Exclusive of the Mineral Estate</u>
Digested by John B. Gustavson, CMA 1992 – 1

Continued from August 2010 Newsletter and conclusion

IV. Gravel Rights
Gypsum Ranch next contends the district court erred in finding the parties intended to transfer the mineral interests to CSOH because Hunt litigated the value of the gravel on the property. We agree because, as a general rule, where the surface of the land contains sand and gravel, a mineral reservation does not include the sand and gravel.

AIMA Note: It would be of interest to find out to which "general rule" the Colorado Appeals Court is referring. Sand and gravel deposits thus appear to move between the surface and the mineral estate and are treated differently from State to State.

Thus, the dispute over gravel was irrelevant to show parties' intent with respect to the mineral interests, and the district court's finding that the parties intended to transfer the mineral interest was erroneous.

V. The "Useless Remainder" Statute

Gypsum Ranch also contends the district court erred in applying the "useless remainder" statute to this case. We agree because the "useless remainder" only applies to the remaining land that has "little value to its owner or..give[s] rise to claims or litigation concerning severance or other damage," and that was not the case here.

VI. Summary
We therefore conclude as a matter of law that CDOH/CDOT did not have the authority to take title to the mineral interest by means of condemnation, and that it did not take title to those interests. The judgment is reversed and the case is remanded for further proceedings consistent with this opinion. JUDGE GRAHAM and JUDGE PLANK concur.

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