

AMERICAN INSTITUTE OF MINERALS APPRAISERS

NEWSLETTER

May 2010

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IN THIS ISSUE

2010 Annual Meeting Minutes

In Memorandum

Continuing Education

Creation of the International Valuation Standards Council

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

AIMA 2010 Annual Meeting Minutes

Mr. John Gustavson, AIMA 2009 President, opened the meeting at 7:00 PM and called for an approval of the Agenda, which was unanimously obtained. Michael Cartwright was elected to act as Secretary of the Meeting and take notes for the Minutes. After a headcount John Gustavson declared that at least two Officers were present and that also sufficient Members were present to constitute a quorum to vote on any resolutions. The 2009 Annual Meeting Minutes were read and a minor correction was forwarded by Trevor Ellis. The 2009 Minutes as amended now would read: "...for authoring [under] the Canadian National Instrument 43-101..." Don Warnken moved to approve 2009 Minutes as amended. This was seconded by Stuart Limb and carried by voice vote.

Treasurer, William Bagby gave his report which is presented on page 7.

After motion and seconding the Treasurer's report was voted upon and carried unanimously.

Before continuing with the regular business the membership noted with sadness the death after a long illness of Certified Minerals Appraiser and former Treasurer of the Institute, Mr. L.T. Gregg of Duluth, Georgia. "LT" had been a Member since 1996.

New Members, new Associate Members and guests were then introduced. John Gustavson introduced Richard Jolk, a mining and minerals processing engineer, as being newly Certified as an AIMA Member. Bob Frahme introduced Brianna Lamphier, a geologist employed by Gustavson Associates and noted that he is mentoring her for both AIMA

certification and for designation as an MAI in the Appraisal Institute.

John Gustavson introduced Louis Posgate, a member of the American Society of Appraisers (in Oil & Gas as well as Business Valuation). Louis indicated some concern with the current ASA treatment of oil & gas appraisers. John Gustavson encouraged Louis to submit his application papers to the AIMA. Dan Cordier of the USGS was introduced as a guest by Fred Pirkle. Dan is the new Rare Earth Elements, thorium, scandium, mica specialist at the USGS. Fred is mentoring him for AIMA certification. Trevor Ellis introduced Eunhye Kim, from South Korea, a PhD candidate at Penn State in the Department of Energy and Mineral Engineering, and she is scheduled to graduate in May. Trevor is mentoring her mining industry career and interest in possible AIMA Certification.

John Gustavson then called for Committee reports and Bob Frahme provided the Continuing Education report. The Institute policy includes a mandatory requirement for an average of 20 hours annually of CE credits over every 3-year cycle. The current cycle ends 28 February 2011. Bob noted that acceptable courses include commercial/industrial appraisal issues, and mineral finance and economics courses related to appraisal. However, no pure residential appraisal courses are currently acceptable. Likewise, no general geology, mining and petroleum engineering courses are acceptable for credit.

Michael Cartwright did not agree with the AIMA's complete disapproval of these types of courses and Stuart Limb voiced disagreement with several CE requirements. A general
Continued on page 2

AIMA 2010 Annual Meeting Minutes,

Continued from page 1

discussion followed. The consensus of the attending membership is that current continuing education requirements are acceptable. John Gustavson, as President of the Institute, requested Bob Frahme to entertain cogent Member arguments about acceptability or not of specific courses, provided that Bob be supplied with the necessary information from the record-submitting Member.

Bob noted that out of 40 members, only 10 members have forwarded their credits and have met the CE requirements. Bob noted that these members also appear to be certified as general real estate appraisers in one or more states. He noted that other members may have met the CE requirements, but have failed to submit their record of credits. The balance appears to have done nothing to meet the CE requirements. Don Warnken agreed to put a reminder of the CE requirements into the *Newsletter* on a regular basis. It was noted that they are also available on the AIMA website.

Bob Frahme proposed that the Institute must advise the public and indicate whether a Member is active or inactive based solely on CE fulfillment or lack thereof, and to note such in the AIMA online Directory. Stuart Limb wanted to discuss the use of inactive versus decertification for failure to comply with CE requirements. However, John Gustavson noted that the Executive Committee had already considered the active/inactive identification matter, but had not yet approved of the terminology and implementation. However, he agreed that action was necessary in order to maintain the Institute's standing. John Gustavson noted that the Executive Committee will take immediate action regarding addition of the word "Inactive" and that a personal notice will be sent to each noncompliant Member allowing 90 days thereafter for remedial action.

It was noted that CE credit is given for attending the appraisal sessions at the SME Annual Meeting and that credits may be claimed for writing and presenting mineral appraisal papers. [*Editor's note: In 2008 it was resolved that seven hours of CE credit may be claimed as an incentive to those presenting papers at the above mentioned venue.*]

During the general discussion about Continuing Education questions were also aired about any USPAP CE requirement [*Editor's note: There is no direct requirement; however, in its FAQ section, the Appraisal Standards Board provides guidance by advising that the Comment section to Standards Rule 1-1(a) requires that an "...appraiser must continuously improve his or her skills to remain proficient..." and that this clearly indicates that some form of continuing education is required, although not explicitly stated in the USPAP document."*]

Trevor Ellis suggested the possible acceptability of Edumine.com and other university online education courses in relation to CE requirement. Bob Frahme will look into this, and noted that the courses would be acceptable, if related to

current general requirements as earlier discussed. Michael Cartwright raised a question about why individual items noted in The Appraisal Foundation's Body of Knowledge might not be acceptable? Michael will raise this issue in a *Newsletter* issue. Bob Frahme introduced and passed out to Members a list of acceptable CE classes. This list is proposed to be published onto the Institute's web site and should be periodically updated. Don Warnken will look into the practicability thereof.

Chuck Melbye discussed progress on the AIMA's becoming a group able to certify Members as a Qualified Person for performing Canadian National Instrument 43-101 and 51-101 compliant reports. Someone noted that we needed to get our Continuing Education enforcement into shape as soon as possible.

Trevor Ellis brought up the old question as to whether AIMA Members should be able to show additional professional designations in the AIMA online directory, perhaps in a smaller font. John Gustavson noted that the Executive Committee will take that concern under advisement.

Trevor Ellis, Mentoring Committee Chairman, gave a status report concerning those Associate Members, who were involved in the program. He noted that the Mentor program could use some assistance in order to mentor the seven Associate Members towards achieving the Certified Mineral Appraiser designation. Mentoring can be done by email, telephone or in person and details would be worked out by the mentor and the Associate. A disappointingly low number of Members has stepped up and offered to mentor the Associate Members. The current list of Associate Member and their mentor is:

Frank J. Bertrand, Bertrand Data Services
RR, Box 266, Towanda, PA
Mentor: unassigned

Samuel Y.C. Chan, Greater China Appraisal Limited
2703 Shui On Centre, 6-8 Harbour Road, Wanchai, Hong Kong, China
Mentor: Trevor Ellis

Ms. Brianna Lamphier, Gustavson Associates, LLC
5757 Central Avenue, Suite D, Boulder, CO 80301
Mentor: Robert Frahme

John S. L. Morgan, Morgan Worldwide Consultants, Inc.
P.O. Box 888, Lexington, KY 40588-0888
Mentor: unassigned

Stephen D. Olmore, S.D. Olmore & Assoc., Inc.
750 Fernwood Road Key Biscayne, FL 33149
Mentor: Trevor Ellis

David Wimberly, Blackthorne Group LLC
1650 Summit Lake Drive, Suite 101-3, Tallahassee, FL 32317
Mentor: unassigned
Continued on page 3

AIMA 2010 Annual Meeting Minutes,

Continued from page 2

Craig R. Wood, Stagg Resource Consultants Inc
5457 Big Tyler Road, Cross Lanes, WV 25313
Mentor: unassigned

Trevor Ellis agreed to serve again for 2010. The Executive Committee promised to assist in soliciting volunteer mentors, in particular if the Associate is employed in a company, which already is the home of an existing Certified Minerals Appraiser.

There being no further old business the Meeting turned over to New Business. The first item was easily handled. In 2009 the Institute changed its Bylaws to allow for 2-year terms for its Officers. Therefore, there were no election results to present and no new Officers to install. The following slate continues for 2010: John B. Gustavson, President, John K. Chance, Vice President, William C. Bagby, Treasurer, and Donald E. Warnken, Secretary.

Next, Bill Bagby announced the winner of the 2010 Cartwright Prize of \$100 for Best Paper presented at the two Appraisal Sessions. The attending Institute Members themselves voted on which paper they thought provided the most valuable information for them. The prize went to George Silver, CMA #2001-1 for his excellent presentation on working with attorneys in litigation and surviving cross examination. Congratulation, George!

Trevor Ellis noted that the Executive Committee had listened to his proposal toward the possible adoption by the AIMA of a technical paper providing best practice guidelines for valuation in the minerals and petroleum industries, which he and colleagues originally drafted for the IVSC (*International Valuation Standards Committee*). At the present time the AIMA has no guidance documents or standards specifically focused on mineral appraisal, except for the AIMA's adoption of the IVSC's *International Valuation Standards* (as an alternative to USPAP), which contains a guidance note, *Valuation of Properties in the Extractive Industries*. Ellis proposed that this document, which is not publicly available and has not been adopted by the IVSC, may fill a gap between the general USPAP/IVSC Standards and industry textbooks as a "best practice" guide. Several Members had an opportunity at the Meeting to review the guidelines in the technical paper. John Gustavson advised the Meeting that he considered this proposal as being important for the Institute and that he would work directly with Trevor Ellis to obtain the permissions necessary from the IVSC. Then, the AIMA can circulate this document to our full membership for possible vote on adoption or for further editing to fully suit the AIMA goals and purposes.

Michael Cartwright has frequently provided citations to legal cases and court decisions, which involve minerals appraisal. John Gustavson noted that he himself has also compiled a large number of appraisal-related case histories also at

Gustavson Associates' library. Therefore, in order to make such references available to a larger audience John requested Michael Cartwright and Brianna Lamphier to work together and try to index and classify this reference material as a resource for the broader membership. Both Mike and Brianna volunteered that they would look into this proposal.

The final item under New Business was the location of the 2010 venue of the SME Conference and the desire to provide Appraisal Sessions as usual. The Conference will be in Denver, Colorado and Mr. Richard Jolk offered to organize and chair one or two appraisal sessions. John Gustavson thanked him for the offer and Trevor Ellis promised full support toward a successful Appraisal Session in 2011.

The Annual Meeting was adjourned at 9:15 PM.

Signed: Donald Warnken: Secretary, AIMA

In Memorandum

Family – Placed Death Notice

GREGG, Lawrence Terrell Gregg, known to many as "L.T.", passed away on February 8, 2010 in Atlanta, GA at the age of 73. L.T. was born on May 17, 1936 in Fort Worth, TX. He graduated from Texas A & M with dual degrees in geology and geophysics, where he became a lifelong Aggie fan. L.T. had a remarkable 50 year career in environmental, geophysical, geotechnical, and mining exploration consulting, culminating as an environmental department manager and senior consultant at QORE, Inc. for the last 24 years. He was a registered professional geologist in several southeastern states, and was one of a small number of members of both the **American Institute of Mineral Appraisers** and a Certified Mineral Appraiser. L.T. was regarded as a brilliant thinker, a consummate professional, and was always on the lookout for an adventure, both in career and as a world traveler. L.T. was blessed with a loving family, and is survived by his wife, Catherine Broussard Gregg, of Atlanta; his younger sister, Mavis Crawford of Plano, TX; his oldest son, David Gregg & wife Maryann, and his four children, Robyn Schellenberg, Julie Johnson, Ricky, and Alfonso, all of San Diego, CA; his second son, Thomas Gregg and wife Kathy, and his four children; Amy, Erika, Dana, and Lane, and his great-grandson Brayden Strickland, all of San Diego, CA, and; his fourth son, Richard Gregg and wife Lori Sue, of Boulder Creek, CA. In lieu of flowers, donations may be made to Hospice Atlanta. Memorial Services will be held Saturday, February 13, 2010 at 2 p.m. at Sandy Springs Chapel Funeral Directors, 136 Mt. Vernon Hwy. Sandy Springs.

Editors Note: L.T. had been an AIMA member since 1996.

Continuing Education

In our January 2010 Newsletter, your *Web Master* stated that a Form would be posted on the AIMA web site for Members and Associate Members to record their Continuing Education Courses for CE credit. The bad news is; the form has not been
Continued on page 4

Continuing Education, *Continued from page 3*

created as of this date. The good news is; John Gustavson, your President, has offered to contract with a professional web site developer he knows to accomplish that task. So sometime in the near future, it should be available for posting your CE credits.

At our 2005 Annual Meeting, the Education Committee recommended in the form of a resolution, that Members would be required to take an average of 10 hours per year of continuing education for the first three year cycle thence 20 hours per year there after. The Resolution was approved.

Many Members have simply not reported their CE credits and others have simply not complied with the CE requirements. Therefore, a notice of delinquency and remedial action letter has been mailed to all Members as a reminder of their obligation.

Twenty credit hours is not an overwhelming requirement. Many hours may be obtained by simply writing a paper and attending the annual SME Valuation Session. Also some hours can be a roll over from courses taken to be in compliance with licensing. The expense and the time involved are considerations for all of us. That could be partially alleviated by enrolling in courses available online.

For your information, The American Society of Farm Managers and Rural Appraisers is offering a one-day seminar concerning the valuation of minerals, mineral rights and mineral lands. It will be held in St. Louis, Mo on July 14th. More information can be obtained by contacting Mary Elster at melster@asfmra.org.

Creation of the International Valuation Standards Council

By Trevor Ellis

Since mid-2007, the International Valuation Standards Committee has undergone a major restructuring, becoming a larger organization, renamed the International Valuation Standards Council (conveniently also abbreviated as IVSC). Specific standards guidance for valuation of minerals and petroleum assets were first included in the International Valuation Standards in 2005. The new IVSC is designed to meet the rapidly increasing valuation standards related needs of the world, particularly with the global adoption of the International Financial Reporting Standards.

The proposals for restructuring the IVSC were published in January 2007 and approved three months later at a Special Meeting in San Francisco. The restructuring was encouraged by members of the US Financial Accounting Standards Board and many other influential national and international institutions. The Chairman of the IVSC, Joseph Vella, when introducing the proposals said, "The valuation profession is under the spotlight as never before. The greater use of fair value has significantly raised the profile of valuations used for

financial reporting purposes and is triggering increased scrutiny of the profession from regulators and other parties. The valuation profession is being challenged to come together around a set of robust and high quality valuation standards and to raise the quality of valuations internationally. The proposals for a restructured IVSC will provide the organizational structure for the profession to do just that."

The first meeting of the new organization was in Kuala Lumpur, Malaysia, in October 2008. However, appointments to all board positions have only recently been completed. Appointments for many supporting roles have yet to be made.

Under the new structure:

The new International Valuation Standards Board is an independent, autonomous decision-making body. An International Valuation Standards Interpretations Committee is to be created under the direction of the Standards Board.

Through the IVSC is remaining a membership based organization, the criteria for membership has been broadened well beyond the national professional valuation institute membership of the previous IVSC. Membership is now open to a broader range of valuation societies and to corporate providers of valuation services, users of valuations, regulators and national standard setters, and academics. IVSC is actively encouraging minerals and petroleum industry sector membership to ensure representation of this sectors interest.

The IVSC will work to protect the public interest by assisting in the development of high quality practices by the world's valuers and assist the development of the profession in developing countries. A new International Valuation Professional Board has been created for this area of pursuit, and is responsible to the Management Board. The intent is for the Professional Board to take a leadership role on behalf of the valuation profession in areas such as education and training, ethics, and information on best practice.

An elected Board of Trustees has responsibility for oversight of the work of the IVSC. Its responsibilities include ensuring adequate funding and resources, high quality staff support, and the protection of the independence and integrity of the Standards Board and the Professional Board.

A call for volunteers for a new Extractive Industries Expert Group is expected shortly from the International Valuation Standards Board. The outgoing Expert Group was first convened by this author in January 2001. It has since carried out eight years of intense activity. During those it drafted the standards for valuation of minerals and petroleum assets that are now included in the International Valuation Standards, wrote comprehensive submissions to many international standards setting bodies and regulatory boards, and participated in relevant United Nations working group meetings. A major project begun in March 2004 is the development of an Extractive Industries Technical Paper,
Continued on page 5

Creation of the International Valuation Standards Council, *Continued from page 4*

which remains to be finalized. A new Expert Group is being sought to bring fresh perspectives to projects such as this.

The IVSC posts information about its activities and calls for volunteers on its website, www.ivsc.org.

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

The Following Has Been Furnished By Michael Cartwright, CMA

Dore Energy Corp. v. Prospective Inv. & Trading Co., No. 08-30186

In an action for termination of an oil well lease based on the lease owner's alleged failure to negotiate the shape of the producing units as required by a settlement agreement, summary judgment for Plaintiff is reversed, where the District Court did not address whether the parties had failed to negotiate within a reasonable time.

Delta Seaboard Well Servs. Inc. v. Am. Int'l Specialties Lines Ins. Co., No. 09 – 20311

In an action seeking coverage under an excess commercial liability policy issued by defendants regarding "loss of hole" at an oil well, summary judgment for defendant is affirmed where the umbrella policy's "follow form" endorsement unambiguously adopted the exclusions of the underlying policy, and that policy's exclusion for loss of hole was dispositive.

Communities for a Better Env't v. Coast Air Quality Mgmt. Dist., No. S161190

In Plaintiffs' law suit against ConocoPhillips and the South Coast Air Quality Management District, for failing to prepare an EIR before approving a refinery project, judgment of the court of appeals is affirmed a neither the statute of limitations, nor principles of vested rights, nor the CEQA case law on which ConocoPhillips and the District rely, justified employing as an analytical baseline for a new project the maximum capacity allowed under prior equipment permits, rather than the physical conditions actually existing at the time of analysis. Therefore, the District abused its discretion in determining the project at issue would have no significant environmental effects compared to a baseline of maximum permitted capacity.

Recent Decision Involving Surface Condemnation Exclusive of the Mineral Estate

Digested by John B. Gustavson, CMA 1992 – 1

Editors note: This paper will be presented in installments because of its length.

We often see a mineral estate become subject of litigation. Frequently, the borderlines between the surface estate and the mineral estate (and even the smaller "sticks-of-the-bundle" such as access rights, severed commodities, etc.) become diffuse. The current case, while not dealing specifically with the appraisal of value appraised is still of interest, because of the guidance it provides the professional minerals appraiser in his important identification Characteristics of the Property (see USPAP Standards Rule 1 – 2.e).

Summarizing the case, the Colorado court of Appeals ruled in April 2009 that the Colorado Department of Transportation does not own mineral rights underneath land, which CDOT condemned to build Interstate 70 through Garfield County.

The Colorado Department of Highways, a predecessor, filed for condemnation in 1975 against Agnes Hunt for land to build I – 70. Hunt was awarded compensation and CDOT finalized the condemnation in 1987. The historic court order did not mention subsurface mineral right; however sand and gravel ownership had been a point of contention.

Gypsum Ranch acquired Hunt's property in 2000. In the meantime the area had seen accelerated development of natural gas. In late 2006, the Ranch sued CDOT, alleging that CDOT acquired only a right of way across the land and a right for "subsurface support" for highway improvements. The Ranch argued that CDOT did not have a right to any oil and gas underneath.

In 2008, CDOT won a lower court ruling saying it did own the oil and gas, and that Gypsum Ranch did not deserve to get any royalties from it. Gypsum Ranch appealed the decision, arguing that CDOT obtained only a surface easement and that the lower court made some legal errors, including an error equating gravel rights with mineral rights.

"CDOH/CDOT did not have the authority to take title to the mineral interest by means of condemnation", a Court of Appeals judge said in his April 2009 opinion. Here are the details:

COLORADO COURT OF APPEALS NO. : 08CA0399
Garfield County District Court No. 06CV391
Honorable James B. Boyd, Judge

Gypsum Ranch Co. LLC, a Colorado limited liability company, Plaintiff-Appellant, v. Board of County Commissioners of the County of Garfield, Defendant, and Antero Resources Corporation and Department of Transportation, State of Colorado, as successor in interest to the Colorado Department of Highways, Defendants-Appellees.

JUDGEMENT REVERSED AND CASE REMANDED WITH DIRECTIONS

Opinion by: JUDGE FURMAN
Graham and Plank, JJ., concur
Announced: April 16, 2009

Continued on page 6

Admin Law, Civil Procedure, Environ,

Continued from page 5

In this case we are asked to decide who owns the oil and gas rights underlying a parcel of property that the CDOH condemned in 1975 to acquire right-of-way and access for a highway. Plaintiff, Gypsum Ranch appeals the district court’s summary judgment in favor of defendants, Antero, CDOT and Board of County Commissioners of the County of Garfield (collectively, CDOT). We reverse and remand.

I. Background and Proceedings

In 1975, CDOH filed a Petition in Condemnation against Agnes Hunt to acquire a portion of the right-of-way for the construction of a highway through Garfield County. The petition sought immediate possession of the property “to proceed with the construction of the highway improvement.” Hunt disputed the value of the property compensation based on the presence of gravel deposits on the property.

AIMA Note: The gravel deposit is identified as having a value although it is not specified, but assumed by the parties that the gravel deposit is part of the surface estate. It is not known whether other minerals were considered at that time.

In 1987, the district court issued a Rule and Order awarding compensation to Hunt for the “taking of said property and all interests therein,” and vesting “title to said property, together with all appurtenances thereto belonging” in CDOH. The Rule and Order was recorded as if it were a deed of conveyance.

In 2000, Gypsum Ranch acquired Hunt’s property, subject to CDOH’s acquisition by condemnation.

AIMA Note: It is not known whether other minerals were considered at that time.

In 2006, Gypsum Ranch filed a complaint, alleging that CDOH, now CDOT, had condemned and acquired only a right-of-way across land, with a right of subsurface support. Gypsum Ranch sought to quiet title to and obtain a declaratory judgment regarding the subsurface mineral interest. Antero, an oil and gas operator that holds leases to develop and produce oil and gas from both Gypsum Ranch and the CDOT, was joined in the proceedings.

AIMA Note: It is a fact that the general area was the focus of a major gas drilling boom and that the CDOT and surrounding landowners had leased their minerals to Antero and other oil companies.

CDOT answered, contending it had acquired a fee simple that included both the surface estate and subsurface mineral interests. CDOT also filed a counterclaim and cross-claims, seeking both to quiet title in itself and a declaration that it owned the disputed property in fee simple absolute and so was entitled to the financial benefits from the oil and gas lease with Antero. Antero did not take a position on the quiet title issue,

either in the trial court or on appeal, but filed a brief to protect its own interest in the leases.

Gypsum Ranch and CDOT both filed motions for summary judgment. In January 2008, the district court granted summary judgment against Gypsum Ranch and in favor of CDOT, finding CDOT had acquired a fee simple absolute in 1987 that included them mineral estate. The court concluded gravel deposits were part of the mineral interest because Hunt had argued that that the value of gravel deposits on her land must be considered as a part of the condemnation, and the value paid by CDOH/CDOT included both mineral and gravel interests and surface estates.

The court also concluded that, under section 43-1-210(1), C.R.S. 2008, the “useless remainder” statute, CDOH/CDOT was allowed to condemn the mineral estate if the landowner failed to exercise the option to keep the mineral interests, and Hunt had not done so. Accordingly, the court determined that Gypsum Ranch was not entitled to receive any benefits, including royalties associated with the disputed property.

Gypsum Ranch appeals the district’s summary judgment.

II. Summary Judgment

Summary judgment is appropriate when the pleadings and supporting documents demonstrate that no genuine issue of

material fact exists and the moving party is entitled to judgment as a matter of law. We review de novo a district court’s grant of summary judgment.

Gypsum Ranch argues the district court erred I granting summary judgment in favor of CDOT. Gypsum ranch contends (1) because CDOT’s power to condemn was limited

to a surface roadway easement, the condemnee retained the subsurface mineral interest; (2) the district court erred in equating gravel rights with mineral rights; and (3) the district court erred in applying the “useless remainder” statute to this case. We address each contention in turn.

To be continued in the next Newsletter



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Phone: (303) 443-2209; Fax: (303) 443-3156

Editor: Donald Warnken

E-mail: dongene32@sbcglobal.net
