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Continuing Education Credits 60 – Day Extension

By John Gustavson, IMA President

To All AIMA Members:

The previously established deadline of 15 August 2010 is herewith extended until 15 October 2010. Many questions have been raised about which activities and courses may qualify for Continuing Education contact hours and thereby credits. Your Executive Committee must publish clearer guidelines and I am working on this with Bob Frahme, Chair of the CE Committee.

In addition to pure and simple course work (such as a *USPAP Refresher*) we may also consider many peer-reviewed and peer and public-exposed activities focusing on mineral appraisal. Examples could be expert witness mineral valuation testimony in adversary cases and luncheon talks to, say, a Rotary Club. I spoke to a COPAS (petroleum) accountant luncheon recently about mineral appraisal and I am submitting claim for 4 CE Credits (3 for preparation and 1 for the presentation). Three hours of preparation for each hour of presentation is a generally accepted ground rule among professional institutes.

We are not finished with the guidelines, but the expanded concept is that peer or public exposure such as mentioned above demands substantial self-study of mineral appraisal

fundamentals in advance of the activity and therefore constitutes education.

Also, we have contracted with a web site design firm and are now in the midst of transferring Member CE Credits information to that password-accessible icon on our web site. When installed, this will enable you, our Members access to record and keep track of your Credits. We will send you your temporary password shortly.

Finally, we have had second thoughts about the way of communicating the unfortunate, but necessary notice to the public in case a Member falls behind the CE Credit requirement. On the basis of discussions at the last Annual Meeting the Executive Committee had originally decided on the addition of the word “Inactive” after the Member’s number in the Directory.

Some Members consider this too strict, at least here in the beginning! (The AIMA is actually 20 years old at our next Annual Meeting!). In any case, the Executive Committee is considering alternatives like “Not Practicing” or “Check with Member re CE status”.

Best Regards, and Good Luck!

John B. Gustavson, AIMA President

Changes To Fair-Value Reporting Could Impact Valuations

Article Furnished by Michael Cartwright

Under new U.S. and International accounting proposals being circulated, managers of private equity, venture capital and other alternative private investment funds could face much tougher rules on explaining how they arrive at an asset's value and the methods used to appraise such assets, according to Pensions & Investments' July 26 story.

The proposed changes are part of an ongoing effort to standardize the way fair-value reporting is handled at the international level, which has attracted increasing interest since the financial crisis expanded overseas. Pensions & Investments reported that at the June meeting of the G-20, executives of both the Financial Accounting Standards Board and the International Accounting Standards Board were called to account for their progress converging the differences in accounting standards between nations.

In conjunction with the G-20 meeting, both the FASB and IASB released exposure drafts of revised fair-value standards seeking public and industry comment by Sept. 7. The IASB's draft focuses on increased transparency about fair-value measurements, including valuation techniques and assumptions made to measure fair value, according to Pensions & Investments. The FASB's draft would essentially require managers to clearly state how they arrived at fair-value valuations and would more plainly bring U.S. standards in line with international accounting standards, Pensions & Investment reported.

Among the more controversial potential changes to international and U.S. accounting standards would be rules that require alternative investment managers to disclose the effect on the reported value of certain assumptions they made to value an asset. Currently, many valuations of assets are made on a best estimate approach from managers using internal company information. Under the new rules, managers would have to disclose any of the significant inputs that went into that best guess—a controversial move because some industry observers believe this could expose managers to a host of legal issues, according to Pensions & Investments.

Another controversial change would be the altering of ways that firms could value assets. As it stands, a private equity investment firm can either combine assets and value them as a group, or value each individually. Under the new proposal, firms would be required to individually value assets, which could negatively affect holdings that would be worth more if they were grouped together, Pensions & Investments reported.

Despite issuing exposure drafts, neither the FASB nor the IASB has stated when it will release final standards for fair-value accounting rules. Insiders with knowledge of the proceeding say they could be made public by the first quarter of 2011, according to Pensions & Investments.

Membership Responses to Proposed Fair-Value Reporting Changes

Mitch Albert:

Hi, I like this topic and since we've been discussing CE credits for each of us, does anyone know of any course for CE credit offered on this topic? If yes, please let me know. Also, I recall Trevor talking about taking a CE class on conservation valuations for income tax deductions. If you know of a class available on this topic, I'd appreciate some info. Thanks.

Andy Clay:

Hi

Recently, we have had a number of meetings in Johannesburg to discuss implications of the IASB Extractive Industries Discussion Paper. CRIRSCO has now put out a position paper but does not reflect the fact that we in South Africa were split on the issue of continuing with Historical Cost and allowing Fair Value to be determined when reasonable expectations of future value being generated could be "judged". Also given more disclosure of valuation assumptions the decision was split as to calculate a Fair Value number and put it on the Balance Sheet or allow investors to calculate the number for themselves (my comment is that is stupid as giving the number leaves no room for misunderstanding and most investors are doff!).

Too few people are commenting on this issue.

Warm regards

SME-AIMA Valuation Sessions

Trevor Ellis writes,

Valuation I & II Author Colleagues:

Below is listed the current status of our valuation sessions, with papers in their current order of presentation. Of the 23 papers listed, 21 Abstracts have been approved. Two of the papers remain pending, being those of George Silver and Stuart Limb. Subject to those abstracts be submitted to Abstract Central and approved, we have space for one more paper available.

I am leaving this weekend for an overseas vacation, returning 24 August. I will occasionally check emails during my travels. But, Richard Jolk will mainly be responsible for fielding any author or session related communications.

Regards,

Trevor Ellis

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SME–AIMA Valuation Sessions, Continued
from page 2

VALUATION I: CONCEPTS AND METHODS

Gerald Clark
Scope of Work – The Building Block for the Appraisal

Richard Jolk
Contribution to Value – What Counts?

Ed Moritz
Highest and Best Use in Mineral Valuation: Fundamental Step in Approach to Value

Trevor Ellis
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.

George Silver -- Pending
The Royalty Method in Minerals Appraisal – It’s Tougher Than You Think

David McMahon, Fredric Pirkle, Norman Stouffe
How to Tie the NPV Calculation to the Market in a Mineral Property Valuation

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

Abstract

Minerals Appraisers/Valuers often find great difficulty or failure in attempting to employ the Sales Comparison Approach to the market value appraisal of development and 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.

Gerald Clark
Reconciliation in Mineral Appraisal – The Final Adjustments

VALUATION II: SPECIAL PURPOSE APPRAISALS

Jeffrey Kern
Financing of Mineral Property Development – Is There a Role for the Minerals Valuer?

David Hammond
Minerals Valuations in Royalty Financing

John Lizak
Discount Rates in Mineral Business Valuations

Alan Stagg
Condemnation Appraisal and Yellow Book

Ross Lawrence
Minerals Valuations for Stock Exchange Filings

Craig Wood
Minerals Valuations for Taxation Purposes

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

Christopher Wyatt, Bernard Guarnera
Valuations For Fairness Opinions and Other Tight Turnaround Needs

VALUATION III: VALUATION AND ECONOMIC EVALUATION RESEARCH

Michael Cartwright
A Brief History of Minerals Valuation

J. Stuart Limb – Pending
Mineral Appraisals & Real Estate Appraisals – Similarities and Differences

Karem Oraee, Ahmad Sayadi, Mahdi Tavassoli
Economic Evaluation and Sensitivity-Risk Analysis of Zarshuran Gold Mine Project

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

John Manes
Appraisal Financial Data – Proof, Check, Review

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

Michael Cartwright
Valuation Case Opinions 2011

The TASA Group, Inc

TASA is an acronym for Technical Advisory Service for Attorneys. They sometimes produce programs of interest to AIMA Members in their webinar's. Recently, they produced and presented a professional development webinar concerning "the Daubert decision" which is of particular interest to those who work as an expert witness. Their webinar program calendar can be viewed on their website, www.tasanet.com. There may be an opportunity for AIMA Members to pick up some CE credits at the a cost of \$37.50 or to register as an expert witness .

Free Digests of Daubert and Kumho Tire Available From BVWire

BV advises that free digests of Daubert and Kumho is available from BVWire.

BV writes "Its been ten years since the U.S. Supreme Court expanded its ruling in *Daubert v Merrell Dow Pharmaceuticals, Inc.* to include all types of technical testimony – including financial experts and business appraisers – in *Kumho Tire v. Carmichael*. PriceWaterhouseCoopers has just released its new [Daubert Challenges to Financial Experts: A Ten Year Study of Trends and Outcomes, 2000 to 2009](#). After examining over 5,200 *Daubert* challenges to expert witnesses of all types, in federal and state courts, the Pw Study concludes:

- Since *Kumho Tire*, the number of challenges to all types of expert witnesses has increased rapidly, rising from 253 in 2000 to 704 in 2007 to a record 869 in 2009.
- The number of *Daubert* challenges to financial expert witnesses has also increased every year: For example, financial experts met 168 challenges in 2009, representing an 8% increase over 2008, which saw a 34% increase from 2007.
- Economists, accountants, and **appraisers** are more frequently challenged than all other financial experts, accounting for 23%, 21% and 8% of all challenges to financial experts, respectively, during 2000 – 2009.
- Although more frequently challenged, economists, accountants, and appraisers were more likely to survive a *Daubert* challenge, enjoying a 51% higher success rate than other financial types.
- Courts excluded appraisers much less frequently in 2009 compared with the 10 – year average. Conversely, courts excluded economists more frequently.

The frequency of *Daubert* motions also vary widely by jurisdiction, but the PwC study found, and plaintiff's experts are challenged two to three times more often than defense experts (but notably, their exclusion rate is lower). The *Daubert* standard applies in most courtrooms today (some states still apply the "general acceptance" or so called Frye rule). The Supreme Court's discussion of the Frye rule, the gate-keeping function of trial judges generally – and its four –

part test for admissibility of expert evidence under Federal Rules – is a critical reading for any financial expert."

ASFMRA Classes/Seminars

ASFMRA will be holding several classes/seminars that may be of interest to AIMA Members. These are:

Appraisal Through the Eyes of the Reviewer
October 1, 2010 Solvang, CA
To register Contact: Suzi Roget
209-368-3672 or secretary@calasfmr.com

7 Hour National USPAP Course (A114)
November 17, 2010 Austin, TX Farm Credit Bank
To register contact: Sherry Lockerman
512-465-0634

ASFMRA will also be presenting classes/seminars at their annual meeting that may also be of interest to AIMA Members. Their Annual Meeting will be held in Orlando, FL November 1 – 4. Contact melster@asfmr.org for registration information. The courses/seminars of interest are:

2010/2011 7 Hour National USPAP Course (A114)
November 2, 2010
Instructor: Chris Greenwalt, ARA, RPRA

The underlying theme of all sections are USPAP requirements for ethical behavior and competent performance by appraisers. Discussion will focus on specific USPAP revisions and afford you the opportunity to apply this information through case studies and a review of frequently asked questions and responses of various USPAP topics. The material emphasizes the role of the appraiser, the appraiser's impartiality associated with this role, and helps clarify concepts such as scope of work and when USPAP applies. The special responsibilities of the appraiser with regard to impartiality are explored in detail.

Eminent Domain (A250)
November 3-5, 2010
Instructor: Brent Stanger, ARA

This course demonstrates techniques used in preparing value estimates on properties subject to acquisition under Eminent Domain law. The appraiser will learn how condemnation appraising is different than other types of appraising and explore complications which may be encountered, including severance damages, consequential damages, special and general benefits, condemnation blight, project enhancement and inverse condemnation. Case studies and short examples are used to learn:

- o Just compensation formula
- o Highest and best use zoning
- o Approaches to value
- o Damages and benefits
- o Easements
- o Appraiser relationships with attorneys, judges and juries *Continued on page 5*

ASFMRA Classes/Seminar, *Continued from page 4*

- o Trial preparation and participation
- o Trends in eminent domain law

Please Note: This is an intermediate skill level course. It is assumed the student has already gained the level of knowledge and understanding that is taught in the lower level courses.

Required Textbooks & Equipment: HP-12c, HP-17bII or HP-19bII calculator; Real Estate Valuation in Litigation, second edition.

Optional Textbooks: The Appraisal of Real Estate 13th Edition; The Appraisal of Rural Property, 2nd Edition

Credible Topics for Continuing Education Credit

By Michael Cartwright

This is a general condensation of my thoughts and ideas concerning the role, goals and requirements for continuing education of AIMA members. It was suggested at the 2010 AIMA meeting in Phoenix that I might want to present my ideas and suggestions relating to continuing education in the AIMA. I am in favor of reasonable and not too narrowly defined continuing education for our members. I have been and am currently of the opinion that we may be in the process of adopting continuing education requirements that may be overly restrictive as to subjects and individual topics that would be useful for our members in their work appraising mineral property and mining business interests for a wide variety of purposes and intended users.

I have attempted to research this topic to learn what other organizations are requiring to see if we are in general agreement with them. Neither too onerous or too generous. I did not conduct an exhaustive search since I do not believe that we would need to go into such detail. The information that follows came from reputable appraisal organizations and regulatory bodies including the Appraisal Foundation, Appraisal Institute and American Society of Appraisers.

Appraisal is defined in many state statutes as "an analysis, opinion or conclusion, whether written or oral, relating to the nature, quality, value or use of a specified interest in, or aspect of, identified real estate for or with the expectation of receiving compensation". As we all know, some defined value is the typical request a client makes of us in an engagement of our services. We also know and understand that the value we have been tasked with finding requires that we examine and understand the nature, quality and uses of the land and its mineral endowment that we are valuing as well as the specific type of property interest that is involved. Mineral property appraisal and mining business valuation require a rather broad area of education, training and experience. It also necessitates a similarly broad area of continuing education so that we can remain proficient and increase our potential value to clients in many areas related to mineral properties and their value.

A more or less all encompassing and exhaustive list of topics specifically associated with the overall area of real property appraisal is the Real Property Appraisal Body of Knowledge Summary which can be downloaded from <http://www.gemvalleyappraisal.com/publications/RPABKS.pdf>. However, it is a good deal overly broad and too detailed for my purpose and intended use in this letter.

A much more usable and on-point paper is Creditable Topics for Continuing Education Credit, an excellent document for AIMA members to read and keep for future use. It is available at

http://www.appraisalinstitute.org/education/downloads/CE_Loag/CE_Creditable_Topics.pdf.

This document should assist the AIMA Continuing Education Committee as well as individual members in better determining what may or may not be creditable topics for continuing education. This document addresses acceptable Subject Areas and Creditable Topics within those areas that would be acceptable for continuing education credit for Appraisal Institute members.

SUBJECT: The subject must enhance the professional competency of designated appraisers or aid in increasing and expanding designated appraisers' outlook on the profession.

CREDITABLE TOPICS: The content must contain either direct application of appraisal theory and techniques in the appraisal process or skills related or tangential to appraisal practice.

Subject areas include: Accounting/Bookkeeping, Analysis/Evaluation, Appraisal/Appraising, Architecture/Design, Assessor/Assessment, Capitalization, Cash, Codes/Law, Communications/Report Writing, Construction, Depreciation, Development, Economic/Feasibility, Environmental/Hazardous Waste, Ethics/Standards, Financial, Government Aid, Investments, Land/Subdivision, Leases/Leasing/Rentals, Loans/Lending, Maintenance, Management, Mathematics, Market/Marketing, Planning, Real Estate Transactions, Securities/Syndication and Tax/Taxes.

Within each of these Subject Areas the document lists some representative, but hardly exhaustive, more specific topics for study. While many of the Subject Areas and Creditable Topics do not directly address mineral-specific items it should not be too difficult for an AIMA member to draw analogous conclusions for appropriate continuing education courses. If these general Subject Areas and Creditable Topics are acceptable to the Appraisal Institute, the premier real property appraisal organization, then they should be equally acceptable and readily adaptable to the needs of the AIMA organization and its individual members.

There are also similar documents addressing business valuation subjects and topics that would be appropriate for
Continued on page 6

Creditable Topics for Continuing Education Credits, *Continued from page 5*

AIMA members. If individual AIMA members or the Continuing Education Committee needs assistance in discovering them, please let me know.

It is also interesting to note that, according to a letter dated 29 January 2010, that the Business Valuation section of the American Society of Appraisers appear to have a 7-hour USPAP update requirement every five years instead of every two years as is required for real estate appraisers. This letter is available at <http://www.appraisers.org/Files/Accred-Reaccred/USPAPCELetter.pdf>. This five year USPAP update course requirement would seem to me to be fully adequate for continuing education requirements for AIMA members.

The federal licensing regulations for appraisers and the general requirements noting when appraisals were required were outlined in the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), and provided an exemption for mineral rights in Section 323.2 Definitions: (h) Real estate or real property means an identified parcel or tract of land, with improvements, and includes easements, rights of way, undivided or future interests and similar rights in a tract of land, but does not include mineral rights, timber rights, growing crops, water rights and similar interests severable from the land when the transaction does not involve the associated parcel or tract of land. (<http://www.fdic.gov/regulations/laws/rules/2000-4300.html#fdic2000part3233>).

Since mineral rights were specifically exempted from real property licensing requirements and many mineral property "appraisals" may involve a number of business valuation elements it would seem to me that Subject Areas and Creditable Topics in business valuation, similar to those noted for real property above, should also suffice for AIMA member's continuing education requirements.

I would suggest that AIMA should avoid reinventing the wheel with our continuing education requirements and detailing of acceptable courses and simply adopt appropriate Subject Areas and Creditable Topics terminology for the purposes of our specialized area of appraisal. A continuing education requirement is a professional society governance issue that should seek input from as many members as is practicable before chiseling them into stone.

If individual AIMA members or Continuing Education Committee members have any questions, comments or suggestions please let me know so that we can discuss them.

Michael

CE Chairman Response

Thanks for your thoughts on this issue. As we all know, it has been my policy in four of the five years that I have been involved with the CE Committee not to "re-invent the wheel"

as you say, by detailing acceptable CE courses. In the first year, I attempted to develop such a list but quickly found it to be a fool's errand because there is such a plethora of acceptable courses for CE available, world-wide.

To the contrary, it has been my policy to require CE classes to lie within the broad categories of appraisal, economics, and finance and, to some extent, marketing. The requirements have always included distant learning. Each of the many sub-disciplines you outlined fits into these broad categories and I agree with all of those that you cite. Thus, the CE committee has not in any way promoted "narrowly defined" continuing education requirements for members.

If, however, we become so complacent as to allow day-to-day work by a member to masquerade as CE (simply because we learned something in the course of that work), as some are proposing, or public relations work in the community, as some are proposing, we will have defeated the purpose of a CE requirement and reduced our stature among professional organizations.

Once again, thanks for your thoughtful comments.

Bob Frahme

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

Recent Decision Involving Surface Condemnation Exclusive of the Mineral Estate

Digested by John B. Gustavson, CMA 1992 – 1

A Continuation From May 2010 Newsletter

III. Subsurface Interests

Gypsum ranch first contends CDOT acquired a right-of-way that was a surface interest or easement. However, we need not determine the exact nature of the interest acquired because we conclude, based on Colorado's eminent domain proceedings statute, that Hunt retained the mineral interest.

A. Standard of Review

“Statutory interpretation is a question of law that we review de novo.” When interpreting a statute, we give effect to the legislative intent. To determine that intent, we look first to the statutory language. We construe words and phrases in context and according to common usage unless they have acquired a technical meaning by legislative definition. When the legislature defines a term, that definition governs.

B. Analysis

Colorado's eminent domain statute pertaining to state highways gives authority to CDOH/CDOT to acquire land for highway purposes. That authority, however, is limited by Colorado's eminent domain proceedings statute, which limits CODT's ability to acquire any interest in mineral deposits other than those required for subsurface support:

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[T]he petitioner shall become seized in fee unless a lesser interest has been sought, except as provided in this section, all such lands, real estate, claims, or other property described in said rule as required to be taken, and may take possession and hold and use the same for the purpose specified in such petition....No right-of-way or easement acquired by condemnation shall ever give the petitioner any right, title, or interest to any vein, ledge, lode, deposit, [oil, natural gas, or other mineral resource] found or existing in the premises condemned, except insofar as the same may be required for subsurface support.

§ 38-1-105(4), C.R.S. 2008 (emphasis added) (in effect in 1975; material brackets added in 2008). Thus, we conclude, based on Colorado's eminent domain proceedings statute, that in the absence of a specific and unequivocal conveyance of her mineral interest, Hunt retained those mineral interests.

Nonetheless, CDOT argues that section 38-1-105(4) applies only to easement interests, and therefore does not apply to the disputed transaction, which it characterizes as condemnation of a fee simple absolute. CDOT argues that the term "right-of-way" contained in section 38-1-105(4) is limited to describing the purpose for which the land was used, rather than describing some estate less than fee simple absolute (CDOT argues "right-of-way" has two-fold meaning: it may be used to designate easement, or may be descriptive of use or purpose to which a strip of land is put). We disagree.

First, section 38-1-105(4) states plainly that CDOT could not condemn the mineral interest in land taken for a right-of-way, regardless of the exact nature of the fee interest implied by the term "right-of-way." Second, the property in question was taken for a highway, and a "state highway" is statutorily defined as "a right-of-way or location, whether actually used as a highway or not, designated for the construction of a state highway upon it."

No petition for a right-of-way "shall ever give the petitioner any right, title, or interest" in the mineral estate. § 38-1-105(4) (emphasis added). Third, the Petition in Condemnation requested the "hereinafter described interest in real property for the construction of said highway improvements," and stated the property was fully described in Exhibit A, the legal description of the property. That exhibit thoroughly described the surface estate.

Accordingly, we conclude CDOH/CDOT was not statutorily authorized to condemn mineral interest when it condemned Hunt's land for highway purposes, regardless of the nature of the title it took otherwise. Our interpretation of the plain meaning of section 38-1-105(4) is clarified by SB 08-041, signed April 25, 2008, and effective August 5, 2008, revising several of the condemnation statutes ("[a] legislative amendment may be construed as a clarification rather than a

change in law when the legislative history or the language of a statute clearly indicated an intent to clarify"). When SB 08-041 was introduced, the bill summary read as follows:

Clarifies that the transportation commission, any other governmental entity acquiring land for road or highway purposes, or any other person or entity acquiring an easement or right-of-way may only acquire interest in oil, natural gas, or other mineral resources beneath the land acquired to the extent required for subsurface support. Makes conforming amendments.

The bill's heading reads:

Concerning the ownership of minerals beneath land acquired by government entities, and, in connection therewith, clarifying that a government entity may acquire interest in such mineral through condemnation only to the extent required for subsurface support.

Section 38-1-105(4) was amended by SB 08-041 to include oil and natural gas among the mineral resources that could not be taken in condemnation of a right-of-way.

Moreover, SB 08-041 added subsection (4) of section 43-1-208:

Notwithstanding any other provision of this section, the commission may not acquire through condemnation any interest in oil, natural gas, or other mineral resources beneath land acquired as authorized by this section except to the extent required for subsurface support.

The amendments to the statutes in SB 08-041 address the very issue before us, and clarify that the legislature does not, and never did, intend for CDOH/CDOT to condemn mineral interests, other than those needed for subsurface support, when it acquires land for highways. Therefore, we conclude the trial court erred in granting summary judgment in favor of CDOT. While section 38-1-105(4) apparently precludes condemnation of minerals other than those needed for subsurface support, CDOH's position in 1988 was that it was entitled to all oil and gas underlying right-of-way in condemnation proceedings unless specifically reserved by owner, based on the premise that "vein, ledge, lode, or deposit" did not include oil and gas.

CDOT also contends that, because Hunt raised no objection to CDOH's authority to take the mineral estate, and Gypsum Ranch's claims are derived of Hunt's as her successor in interest, the argument has been waived. However, pursuant to the legislative scheme, CDOH could never take title to the mineral interest underlying the property condemned for highway use. § 38-1-105(4).

Moreover, the Petition requested the interest needed for constructing a highway, and the Rule and Order described only the surface interests pursuant to such a request. CDOT's reliance on the proposition that ownership of the surface carries with it the ownership of the underlying minerals unless there has been a clear and distinct severance, is misplaced. As noted, section 38-1-105(4) provides that "[n]o right-of-way or

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easement...shall ever give the petitioner any right, title, or interest to any vein, ledge, lode,[or] deposit...found or existing in the premises condemned.”

It further stated that “interests of the respondent in said parcel have been acquired by the petitioners, and that the title to said property, together with all appurtenances thereto belonging, is hereby vested in the petitioner, State Department of Highways.” In construing a deed, a court’s primary purpose is to determine the intent of the parties, which must be done by reviewing the deed as a whole, not isolated sentences or clauses within the deed.

When we review the Rule and Order as a whole, we determine “the acquisition of the property which is the subject matter of this action,” condemned for the construction of highway improvements, gave CDOH only an interest in property sufficient to meet the purpose of condemnation. Acquiring the mineral interest would have transferred an interest beyond the purpose of condemnation.

We also reject CDOT’s argument that because CDOH paid full value of the fee simple absolute, it necessarily took the mineral interest. Because the power to take by eminent domain is qualified, the title may be qualified, even if the condemnor has paid full value for the property.

AIMA Note: the use of the term “full value” is questioned, because even back in the 1975-1987 period there was a budding understanding of the potential for oil & gas in the area.

The final section of this document will be presented in the next newsletter.

The NEWSLETTER is published by the American Institute of Minerals Appraisers, 5757 Central Avenue, Suite D, Boulder, CO 80301

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