

Condemnation Summit XXVIII

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The Ins & Outs of Water Utility Condemnations

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Welcome, Chris Kramer



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Carefree v. Cave Creek

- Intergovernmental Agreement
- Partial Taking
- Pre-Filing Appraisal (RCNLD)
- Offer
- Appraisal (OCLD v. DCI/RCNLD+ “Severance Costs”)
- Virtual Arbitration
- Award
- Attorneys’ and Expert Fees + Bad Faith

Benefit of the Bargain?

Cave Creek Condemnation Proceeding

Planner (6)

Bullhead City v. EPCOR

- Preliminary Valuation and Rate Study
- Election
- Appraisal
- Offer
- Right to Take
- Immediate Possession
- Pre-Trial and Jury Selection
- Settlement

Water Industry Playbook

- Stop the condemnation before it starts.
- <https://truthfromthetap.com/>

Condemnation is expensive, uncertain, time-consuming, expensive, anti-business, socialist, expensive, un-American and expensive.

Municipal ownership results in higher rates and worse service.

Anyone who says otherwise is ignorant, misleading or lying to advance their social agenda.

Authority to Condemn

- ARS Sec. 9-511(C): For purposes listed in sub. A
- ARS Sec. 9-515: Where residents served under existing franchise
- ARS Sec. 9-516: Where adequate service provided within or without corporate boundaries
- ARS Sec. 9-518: Where no other method for valuing utility is provided by law
- ARS Sec. 9-522: Subject to 515-518 may condemn within or without corporate limits and issue bonds to finance
- ARS Sec. 12-1111, et seq.

Necessity, “More Necessary” Public Use

- ARS Sec. 12-1112 does not apply to utility condemnations
 - *Desert Waters v. Superior Court*, 91 Ariz. 163 (1962)
 - *Flecha Caida Water Co. v. Tucson*, 4 Ariz. App. 331 (1966)

Right to Take and Immediate Possession

- Motion to limit discovery: Whether condemnation is a “good idea”.
- Motion for partial summary judgment: right to take and right to take immediate possession.
- 4-day OSC (April)
- \$80M bond (\$55M vs. \$137M)
- Possession: September 1, 2021 (DOV)

Rate Making for Dummies

$(\text{Rate Base} \times \text{Allowed Rate of Return}) = \text{Return on investment}$
 $+ \text{Allowed Expenses} = \text{Revenue requirement}$

Rate Base is generally OCLD (or $\text{OCLD} + \text{RCNLD} / 2$)

Economic obsolescence is the inability of an asset to earn a return regardless of its functionality

Valuation

- Partial Taking and Allocation
- Severance vs. “Actual and Consequential” Damages
- Original Cost
- Replacement Cost
- Reproduction Cost
- Regulation and Economic Obsolescence (Going Concern)
- Discounted Cash Flow
- Direct Capitalization of Income (Rate Base)
- Market (Price per Connection or ERU)
- Owner’s Opinion
- Auction Theory (with Municipal Buyer)

Pre-Trial Practice and Procedure

- Witnesses
- Severance Damages MPSJ
- Jury Questionnaire
- Challenges for Cause
- COVID

Settlement

- \$60M vs. \$150M updated appraisals
- \$80M vs. \$130M (settlement posture pre-mediation)
- Offered high/low of \$95M-\$125M
- Countered with high/low of \$80M-\$120M
- Settled for \$100M

Thank You!

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Questions?

