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Constitutional Law - Eminent Domain - Value of the Right to Transfer a Crop Allotment

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CONSTITUTIONAL LAW — EMINENT DOMAIN — VALUE OF THE RIGHT TO TRANSFER A CROP ALLOTMENT — The United States Government condemned a farm which had a cotton allotment established pursuant to the provisions of the Agricultural Adjustment Act of 1938 as amended.[1] The government contended that a just price for the farm should be determined by subtracting the value of the cotton allotment, including the right to transfer the allotment, from the market value of the land with the cotton allotment attached. However a Federal District Court Jury for the District of Arizona determined that the cotton allotment and the right to transfer the allotment were of no independent value and the true market value is the value of the land with the cotton allotment attached. The government appealed this decision contending that the cotton allotment was never taken from the landowner and therefore he should not be compensated. The United States Court of Appeals, Ninth Circuit, *held* that the cotton allotment was a measure of the land's proven productive value and would not be of the same value to another farm to which it might attach. The value of the right to transfer the allotment is dependent on numerous speculative factors including the availability of suitable land for cotton production. Furthermore the cost of converting this non-cotton land into profitable cotton land could not be conclusively established, therefore, the right to transfer the allotment had no independent value. *United States v. Citrus Valley Farms, Inc.*, 350 F.2d 683 (9th Cir. 1965).

Presently a crop allotment for a particular farm is determined in part by past acreage and soil history of the farm.[2] The owner of condemned land has the right to retain his allotment in a county pool and subsequently transfer it within three years to other land presently owned or subsequently purchased, which does not have an allotment or which has an allotment below the county average, but he may not sell or lease this allotment for value.[3] When land is sold the allotment generally stays with the land, as is particularly true with the wheat allotments in North Dakota.

Apparently the owner should be compensated for the value of his land with the crop allotment attached.[4] The difficulty arises, however, when determining whether the value of the right to transfer the allotment should be deducted from the market value. If such right is retained by the displaced owner and he finds available suitable substitutional acreage, he then has received compensation for an allotment which he never lost. It is evident from this that

1. Agricultural Adjustment Act, 7 U.S.C.A. §§ 1341-50 (1938), as amended, 7 U.S.C.A. §§ 1344-50 (Supp. IV 1965).
2. Agricultural Adjustment Act, 7 U.S.C.A. § 1334 (c) (1938), as amended, 7 U.S.C.A. § 1334 (c) (Supp. IV 1965); Agricultural Adjustment Act, 7 U.S.C.A. § 1344 (f) (8) (1938), as amended, 7 U.S.C.A. § 1344 (f) (8) (Supp. IV 1965).
3. Agricultural Adjustment Act, 7 U.S.C.A. § 1378 (a) (1938); November 3, 1965 an exception for cotton was enacted; Agricultural Adjustment Act, 7 U.S.C.A. § 1344 (b) (Supp. IV 1965).
4. See Iriarte v. United States, 157 F.2d 105 (1st Cir. 1946).

the value of the right to transfer the allotment is based on the availability of land without any allotment or with a below average allotment. The low probability of this occurring illustrates the impropriety of deducting the value of this right unless it is shown that it is definitely of some immediate value. Thus when the owner purchases substitutional acreage there is usually a wheat allotment already attached and his retained right to transfer his allotment is valueless. It is in these rare instances that the right to transfer the allotment from the condemned land has independent value, but this illustrates that the instant case is too broad in stating that the right to transfer has no independent value.

Courts in eminent domain proceedings, when valuing crop allotments, are confronted with determining market value[5] of the condemned land. The factors included in such determination vary with the particular situation, but North Dakota case law generally upholds the theory that all elements which might affect the market value of an area of land should be considered in determining just compensation.[6] The North Dakota courts have refrained from setting any particular formula for determining the elements for consideration in market value,[7] but they have included elements of past productive history.[8] Other jurisdictions have taken into consideration anything connected with the land such as soil productivity[9] or an element of value which is a consequence of governmental policy.[10] The latter presumably would include any crop allotment and the value of the right to transfer such allotment.

Eminent domain actions will undoubtedly become more common in North Dakota as condemnation of land areas for Garrison Diversion projects progress. The affected land areas of Central and West Central North Dakota are in most cases the more productive lowlands and therefore represent the most valuable lands in each area.[11] Inevitably these condemnation actions will affect large portions of individual farms and will therefore come under the Agricultural Adjustment Act of 1938 as amended pertaining to crop allotments in eminent domain proceedings.[12] When and if North Dakota courts are confronted with eminent domain actions the paucity of cases concerning the value of the right to transfer a crop allotment should lead undoubtedly to a consideration of the instant case in their decision, it being presently the only case which directly

5. *E.g.*, Little v. Burleigh County, 82 N.W.2d 603 (N.D. 1957); Chandler v. Hjelle, 126 N.W.2d 141 (N.D. 1964); N.D. CENT. CODE § 24-01-01.1 (1960).
6. United States v. 443.6 Acres of Land in Barnes County, N.D., 77 F. Supp. 84 (S.W.D.N.D. 1948) (Condemnation of Bald Hill Dam Reservoir); United States v. 679.19 Acres of Land More or Less in McLean County, N.D., 113 F. Supp. 590 (N.W.D.N.D. 1953) (Condemnation actions for Garrison Reservoir Development).
7. *E.g.*, City of Bismarck v. Casey, 77 N.D. 295, 43 N.W.2d 372 (1950).
8. United States v. 443.6 Acres of Land in Barnes County, N.D., *supra* Note 6.
9. Wahlgren v. Loup River Public Power Dist., 139 Neb. 489, 297 N.W. 833 (1941).
10. Iriarte v. United States, *supra* note 4.
11. H.R. Doc. No. 325, 86th Cong., 2d Sess. (1960).
12. Agricultural Adjustment Act, 7 U.S.C.A. § 1378 (a) and (c) (1938).

involved such a problem. The acceptance of this decision would lead inevitably to the conclusion that they would allow compensation for the value of the allotment attached to the land and not deduct any value for the right to transfer. The demonstrated infrequency of occasions on which the right to transfer can be of any value independent of the land to which it is presently attached should further bolster the argument for giving full compensation for cropland without deducting the speculative value which might be allocated to the right to transfer.

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