

FILED

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MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JESSIE JAMES COX; et al.,

Defendants-Appellants,

and

400 ACRES OF LAND, MORE OR
LESS, SITUATE IN LINCOLN
COUNTY, STATE OF NEVADA; et al.,

Defendants.

No. 21-15066

D.C. No.

2:15-cv-01743-MMD-NJK

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Miranda M. Du, Chief District Judge, Presiding

Argued and Submitted February 9, 2022
Phoenix, Arizona

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Before: MURGUIA, Chief Judge, GRABER, Circuit Judge, and FITZWATER,** District Judge.

In this eminent domain action, Defendants, the Sheahan family, appeal the district court's order setting the just compensation value for Defendants' property, the Groom Mine, at \$1,204,000. Defendants also appeal the district court's evidentiary rulings that excluded certain survey evidence and Defendants' preferred method of property valuation. We review the district court's determination of the highest and best use of a property for clear error, Desert Citizens Against Pollution v. Bisson, 231 F.3d 1172, 1176, 1181 (9th Cir. 2000), and we review de novo whether the district court applied the facts to the correct legal standards, Lim v. City of Long Beach, 217 F.3d 1050, 1054 (9th Cir. 2000). We review evidentiary rulings for abuse of discretion. United States v. Thornhill, 940 F.3d 1114, 1117 (9th Cir. 2019). We affirm.

1. The district court applied the correct legal standards and did not err when it adopted the commission's conclusion that Defendants' proposed large-scale commercial tourism use for the Groom Mine property was too speculative to be considered when calculating the compensation value. The commission carefully considered Defendants' proposed use and determined that Defendants did not meet

** The Honorable Sidney A. Fitzwater, United States District Judge for the Northern District of Texas, sitting by designation.

their burden of demonstrating that the proposed use was reasonably probable. See United States v. 429.59 Acres of Land, 612 F.2d 459, 462 (9th Cir. 1980) (“The landowner [has] the burden of establishing the value of the property subject to condemnation.”); Wash. Legal Found. v. Legal Found. of Wash., 271 F.3d 835, 863 (9th Cir. 2001) (en banc) (“[A] property owner need not be compensated for losing the ability to use his land when there is no reasonable probability that such a use will occur.” (internal quotation marks omitted)).

2. The district court did not abuse its discretion when it excluded Defendants’ survey evidence. The district court permissibly concluded that Defendants had offered insufficient evidence that the surveys in question were designed and conducted by individuals who were sufficiently qualified to render those surveys reliable. See Elliot v. Google, Inc., 860 F.3d 1151, 1160 (9th Cir. 2017) (affirming exclusion of surveys that were not conducted according to accepted principles, including failure to show the survey’s designers were qualified).

3. Because the district court did not err in concluding that Defendants’ proposed use was not reasonably probable, Defendants’ preferred method of valuation was irrelevant to assessing the value of the property. Accordingly, any error resulting from the exclusion of that method was harmless. See United States

v. 1,071.08 Acres of Land, 564 F.2d 1350, 1353 (9th Cir. 1977) (applying harmless error analysis to an evidentiary ruling in a just-compensation case).

AFFIRMED.