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Article

## **Judge: Coal rights trump public land COURT RULES FEDERAL OFFICE CAN'T CONTROL MINING PRIVILEGE**

**By Bill Estep**  
SOUTH-CENTRAL KENTUCKY BUREAU

The federal government owes tens of millions of dollars to the former head of the state Republican Party because it took control of his coal reserves under the Daniel Boone National Forest in McCreary County, a federal judge has ruled.

The decision could become a key part of the nationwide debate over private-property rights and government regulation, which touches on issues such as mining, logging, development and zoning.

**"This is a potentially very sweeping decision," said Glenn Sugameli, senior legislative counsel with the environmental group Earthjustice.**

**Sugameli, however, predicted the decision will be overturned.**

The ruling in favor of the Stearns Co., headed by Robert E. Gable, came almost 22 years after Gable started fighting the government in the case.

"The court in this instance determined that the action of the government crossed the line and resulted in a requirement that compensation be paid," said Bruce F. Clark of Stites & Harbison in Frankfort.

The federal government will likely appeal the decision, said Gable, who was state GOP chairman from 1986 to 1994 and ran unsuccessfully for governor in 1975 and 1995.

It could be years before the case is settled.

The key issue in Stearns' case is whether the government took a property right from the company by virtue of rules adopted in 1977 to limit surface damage from mining.

Such "takings" claims are thorny issues around the country, pitting landowners and developers who want minimal property regulations against environmentalists, government officials and other interests who argue that property controls benefit the public.

Gable's great-grandfather, Justus S. Stearns, built an empire in coal and timber in McCreary County beginning 100 years ago. But in the lean years of the Depression of the 1930s, the company sold 47,000 acres in McCreary and Wayne counties for what became the Daniel Boone National Forest, according to the federal decision.

Stearns kept the rights to the coal under the land, however.

The federal mining rules adopted in 1977 barred surface mining, including surface disturbances associated with underground mining, in national forests. However, the U.S. Interior Department could approve such mining if regulators found there were "no significant recreational, timber, economic or other values which may be incompatible" with mining.

In late 1980, Stearns leased mining rights on 8,300 acres of the land to another company, Ramex, which started mining.

The U.S. Office of Surface Mining Reclamation and Enforcement told Ramex to shut down until it applied for a review of its right to mine and whether the mining would be compatible with other uses for the land.

Stearns, resisting what it saw as government intrusion, told Ramex not to seek the compatibility review. The bureau shut down the operation.

Stearns filed suit in 1981; after more than 20 years of arguments and losses at several levels, Judge Loren A. Smith of the U.S. Court of Federal Claims ruled for Stearns on Aug. 5.

Smith ruled that the government's exercise of the 1977 mining law, including a 1986 decision by the mining office that Stearns no longer had a valid right to mine the area, constituted a physical taking of the company's property. The law made Stearns' ownership subservient to the government's, effectively destroying existing property rights, Smith wrote.

Smith ordered the government to pay Gable \$5 million, plus interest from 1980 and attorneys' fees. That would come to \$40 million, give or take a few million, Gable said this week from his ancestral home on Lake Michigan.

Gable has asked the judge to double the award, arguing that Smith applied the wrong figures in the complex calculation of how much Stearns' coal reserves would have been worth.

**Sugameli blasted Smith's "bizarre" ruling, saying the judge, who was appointed by President Reagan, is at the forefront of a radical, no-controls agenda on property rights.**

**The decision is out of step with earlier court rulings that say it does not constitute a "physical taking" to require landowners to get permission for some uses, or even to bar some uses, he said.**

**"This is very right-wing," Sugameli said.**

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