### IDJI 7.18 - Partial take with severance damage and a benefit to the remainder

INSTRUCTION NO. \_\_\_

 In this case, you should determine the just compensation as follows:

 First, determine the fair market value of the parcel being taken for the project, including all improvements thereon, as of [date].

 Next, determine the fair market value of the remaining portion as it existed immediately before the take, and the fair market value of this parcel as it will exist immediately after the take, determined as of [date]. In determining these values, you may not consider the impact of the project in determining the value before the take, but you should consider the impact of the project and any special benefits which will result from the construction of the improvements in the manner proposed by the plaintiff after the take, in determining the value of the remainder of the property after the take.

 If you determine that the fair market value of the remainder after the take is less than the fair market value of the remainder before the take, and that the diminution of value is because of the take, the difference is considered severance damage and the property owner is entitled to this difference as part of the just compensation.

 If you determine that the fair value of the remainder after the take is greater than the value before the take, because of benefits conferred upon the property by the project or because of the construction of the improvements in the manner proposed by the plaintiff, then there are no severance damages and no other adjustment to value. Do not offset any excess in value applicable to the remainder, or property not taken, against the value of the property taken.

 Finally, determine whether the defendants have incurred any special damages or costs on account of the taking, and the amounts thereof.

 Combine the amounts you find under each of the elements in this instruction to find the amount of just compensation that is due from the plaintiff to the defendants in this case.

Comment:

Idaho Code § 7-711; State v. Collier, 93 Idaho 19 (1969); Orofino v. Swayne, 95 Idaho 125 (1972).