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The Netflix series "Ozark" and eminent domain - by Anthony Alderman

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If you're a fan of Netflix's "Ozark," you might remember when eminent domain was featured as a major plot device in season two. (If you've not seen the second season, please be warned that the following contains spoilers.) As a fan and an appraiser, in this article I'd like to discuss how eminent domain was used in "Ozark," and how it can be used in the real world, especially as it pertains to bodies of water, and how appraisers get involved.

What Is Eminent Domain?

Eminent domain refers to the right of the government, or municipalities, to take privately held land for public use. The specific processes for eminent domain actions vary from state to state, and cases can become complicated, particularly cases involving ownership rights over bodies of water.

How Was It Used in "Ozark"?

In the "Ozark" episode called "The Badger," protagonist and anti-hero Marty Byrde is desperate to find a way to get his business partners, the Snells, to agree to give him right of way for his new casino boat. After doing a little digging, Marty informs the Snells that riparian rights and eminent domain could enable the government to seize land for the casino if the Snells don't sell, as the casino could benefit the public. This does not sit well with the Snells—the insult is compounded by the fact that the Snell family ancestors had been forced to leave their land 75+ years prior due to an eminent domain action. At that time, the land the Snell family left behind was flooded to support the operations of a power company—a piece of backstory that isn't that far-fetched, given the last hundred or so years in the U.S.

Eminent Domain and Water in the Real World

- **Flooding for Energy Production:** In the 20th century, land across the U.S. was flooded by entities including the U.S. Army Corps to supply water to nearby towns or to generate electricity (i.e., for public use). For example, in Connecticut, a valley was flooded to create Candlewood Lake in the western portion of the state to generate electricity.
- **Riparian Rights in Eastern States:** In eastern U.S. states, water laws, such as riparian rights featured in the "Ozark" episode, say that people with property adjoining a water frontage have the right of access to the water such as for building a dock, fishing, hunting, drinking water and irrigation. However, such operations must be achieved without impinging upon equal rights and access to other neighboring property owners.
- **Waterway Laws Vary from State to State:** In various regions of the U.S., eminent domain can look very different. Interestingly, North Dakota law allows for private citizens as well as corporations or government bodies to exercise eminent domain, allowing this power when it comes to "the application of water to beneficial uses." This seems like a very broad category for such an immense use of power. North Dakota evaluates when an individual, or group, is beneficially using water. The state requires a water permit issued from a state engineer.
- **Environmental Contamination and Eminent Domain:** According to a League of Michigan

Conservation Voters analysis, a 1990s court case involving a storm water retention pond established that environmental contamination could be considered in the fair market valuation of property taken by the government under eminent domain. The analysis says this provides an incentive to property owners and purchasers to limit environmental contamination on their own property and to test for it when purchasing property, and that it also ensures that there are more funds available for governments to conduct pollution remediation activities after condemnation.

How Do Appraisers Get Involved?

What role do commercial appraisers play in the eminent domain process? Appraisers are unbiased third parties and are often called upon to inspect and value a property to be acquired by eminent domain proceedings. The appraisers will make an objective valuation on the property. The task is to determine the fair market value of the subject as if the project does not exist (before the taking) and as if the project is 100% complete (after the taking). Sometimes appraisers are asked to appear in court proceedings as expert witnesses when eminent domain cases do go to court. In the example from “Ozark,” it is unlikely that the Snells would have challenged the eminent domain proceedings since all the characters involved were up to no good. But in the real world, property rights are a sensitive and complicated issue and elicit strong responses from the property owners and the communities in which these projects take place. This is why it is essential to have a third-party appraiser with right of way expertise to value the property fairly and competently.

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