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What are “Rails-to-Trails” Cases?

The “before” picture – a former railroad right-of-way is abandoned under state law



What are “Rails-to-Trails” Cases?

The “after” picture – pursuant to federal law, the former railroad right- of-way is converted to a public linear park



Railroad Acquires Right-of-Way by One of Three Ways

1. Written conveyance from landowner

- Landowner executes document conveying right or land to the railroad to use land for a railroad right-of-way
- Can be either easement (right) or fee (land) depending on state law

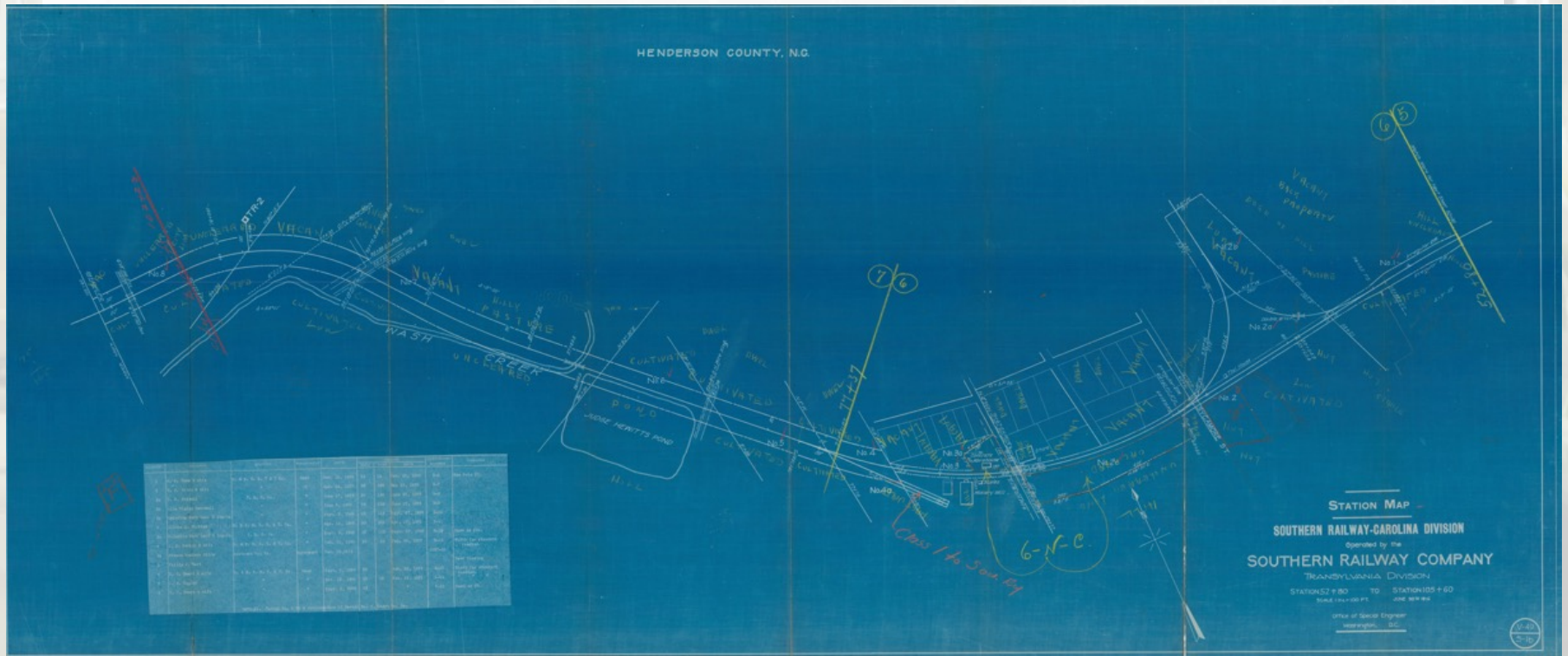
2. Condemnation

- Landowner did not willingly convey property to railroad
- Railroad used its power of eminent domain to condemn owner's land for use as a railroad right-of-way
- In most states (not VA), only a limited easement is conveyed

3. Prescriptive Easement/Charter

- Similar to adverse possession
- Railroad has no written document by which it acquired its right-of-way
- Railroad used its power of eminent domain to build right-of-way
- In most states, only a limited easement is conveyed

Railroad Ownership Documented in Valuation Map



Railroad Ownership Documented in Valuation Schedule

NUMBER	GRANTOR	GRANTEE	INSTRUMENT	DATE	RECORD			CUSTODIANS NUMBER	REMARKS
					BOOK	PAGE	DATE		
1	M. G. Toms & wife	H. & B. R. R. T. & T. Co.	Deed	Feb. 18, 1895	33	13	Feb. 28, 1895	B-6	See Note #1.
2	W. B. Price & wife	"	"	Apr. 24, 1895	33	329	May 13, 1895	B-7	
2a	T. S. Boswell	T. R. R. Co.	"	June 17, 1899	39	128	June 26, 1899	B-8	
2b	Lila Ripley Barnwell	"	"	June 9, 1899	39	118	June 17, 1899	B-9	
2c	Columbia Park Land & Imp. Co.	"	"	Sept. 8, 1909	65	112	Sept. 27, 1909	B-10	
3	Lillie E. Whitted	H. & B. R. R. T. & T. Co.	"	Apr. 13, 1895	33	265	Apr. 17, 1895	B-11	
3a	Columbia Park Land & Imp. Co.	T. R. R. Co.	"	Sept. 8, 1909	65	112	Sept. 27, 1909	B-10	Same as #2c.
4	J. M. McMillan & wife	H. & B. R. R. T. & T. Co.	"	Feb. 25, 1895	33	15	Feb. 28, 1895	B-12	Width for standard roadbed.
4a	Freeze Hosiery Mills	Southern Ry. Co.	Agreement	Dec. 24, 1912				1037-15	Deed Missing
5	Philip J. Hart								
6	H. G. Ewart & wife	H. & B. R. R. T. & T. Co.	Deed	Sept. 5, 1894	33		Feb. 28, 1895	B-13	Width for standard roadbed.
7	J. H. Ripley	"	"	Oct. 22, 1894	33	18	Feb. 28, 1895	B-14	" " "
8	H. G. Ewart & wife	"	"	Sept. 5, 1894	33		"	B-13	Same as #6.

NOTE: #1. Parcel No. 1 is a continuation of Parcel No. 6, Sheet No. 1a.

Under State Law, RR Easement Extinguished Upon Abandonment



Federal Law Preempts State Law



THE U.S. CONSTITUTION

THE SUPREMACY CLAUSE

Clause 2. Supreme Law of Land

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

What are “Rails-to-Trails” Cases?

- **The Plaintiffs**
 - Landowners owning land adjacent to former railroad right-of-way
- **The Defendant**
 - The federal government – represented by the Department of Justice
- **The Court**
 - U.S. Court of Federal Claims – located in Washington, DC
- **The Law**
 - The federal “Trails Act”



What is “The Trails Act”?

- In 1968, National Trails System Act was enacted (16 U.S.C. Sections 1241 – 1251)
- In 1983, Congress added a rail section (16 U.S.C. Section 1247(d)):

Rails-to-Trails Act of 1983



Interstate Commerce Commission (ICC) may **transfer land previously used for railroad transportation** to public or private entities willing to maintain the land as a trail.

“such interim use shall not be treated, for purposes of any law or rule of law, as an abandonment of the use of such rights-of-way for railroad purposes.”

Presault v. ICC, 494 U.S. 1 (1990)



Presault v. ICC, 494 U.S. 1 (1990)

HELD: The Trails Act is
“a valid exercise of
congressional power under
the Commerce Clause”

BUT:

Compensation may be due
under the Fifth Amendment

Fifth Amendment
To the U. S. Constitution

No person shall...be deprived of life, liberty, or
property, without due process of law; nor shall
private property be taken for public use,
without just compensation.



How Do Trails Act Takings Cases Begin?

The Surface Transportation Board

- Federal agency with jurisdiction over all railroads in interstate commerce

“Abandonment Proceedings”

- Railroad applies to the STB to abandon service across the right-of-way
 - Must certify the line has not been used in at least two years
 - Too expensive to insure, maintain and won't affect shippers on the line
- Trail group files a trail use request, asking the STB to issue a Notice of Interim Trail Use or Abandonment (“NITU”) authorizing the conversion
- Railroad agrees to negotiate with trail group
- NITU automatically issued; NITU can be renewed infinitely

The Importance of the NITU

- **Triggers six-year statute of limitations**

“We therefore hold that the appropriate triggering event for any takings claim under the Trails Act occurs when the NITU is issued. The NITU marks the ‘finite start’ to either temporary or permanent takings claims by halting abandonment and the vesting of state law reversionary interests when issued.”

- *Caldwell v. United States*, 391 F.3d 1226 (Fed. Cir. 2004)
- Affirmed in *Barclay v. United States*, 443 F.3d 1368 (Fed. Cir. 2006)

- **Interest begins accruing until date of payment**

- **Relevant date for measuring damages**

- **Ownership after this date immaterial**

WHAT HAPPENS WHEN THE NITU IS ISSUED?

The issuance of a NITU will likely take your Mississippi property rights by imposing two new easements on your land:

1. Public-access recreational trail
2. Possible future railroad use

Per the Supreme Court's decision in *Preseault v. I.C.C.*, 494 U.S. 1 (1990), this is a constitutional taking, but under the Fifth Amendment, the government must compensate you.

How Do Property Owners Make a Claim for Compensation?

The case is usually separated into three phases:

1. Title
2. Liability
3. Damages



Must Prove Ownership on Date of Taking

- Must be record owner on date of issuance of the NITU
- Established by owner's deed and tax records
- Marriages, divorces, and deaths can cause complication in title
- Typically resolved through settlement

Liability turns upon 3 questions

Ellamae Philips Co. v. United States,
564 F.3d 1367 (Fed. Cir. 2009):

1. Did the railroad have only an easement over the property owners land?
2. Was that easement limited to use of the easement for railroad purposes?
3. Even if the easement was not so limited, would the easement have otherwise been abandoned under state law?

Damages consist of three components

1. Property Value

- Individual appraisals
- Difference in “before” and “after” scenario
- Comprised of actual value of the land taken (“the dirt value”) and severance damages

2. Interest

- Moody’s AAA rate from “date of taking” until final payment

3. Attorneys’ Fees/Costs

- Contingency Fee
- Uniform Relocation Act (42 U.S.C. § 4654(c) (2000))

Severance damages measure impact of taking on entire parcel

- Cost to cure damages can be added to cure the impact of the government's taking. This can include damages for:
 - Fencing
 - Landscape berms
 - Walls
- Bisected properties may be impacted by loss of access, inability to farm, and loss of point rows
- Access can be concern for undocumented access over the right-of-way to access a property
- Improvements located within the right-of-way may need to be removed

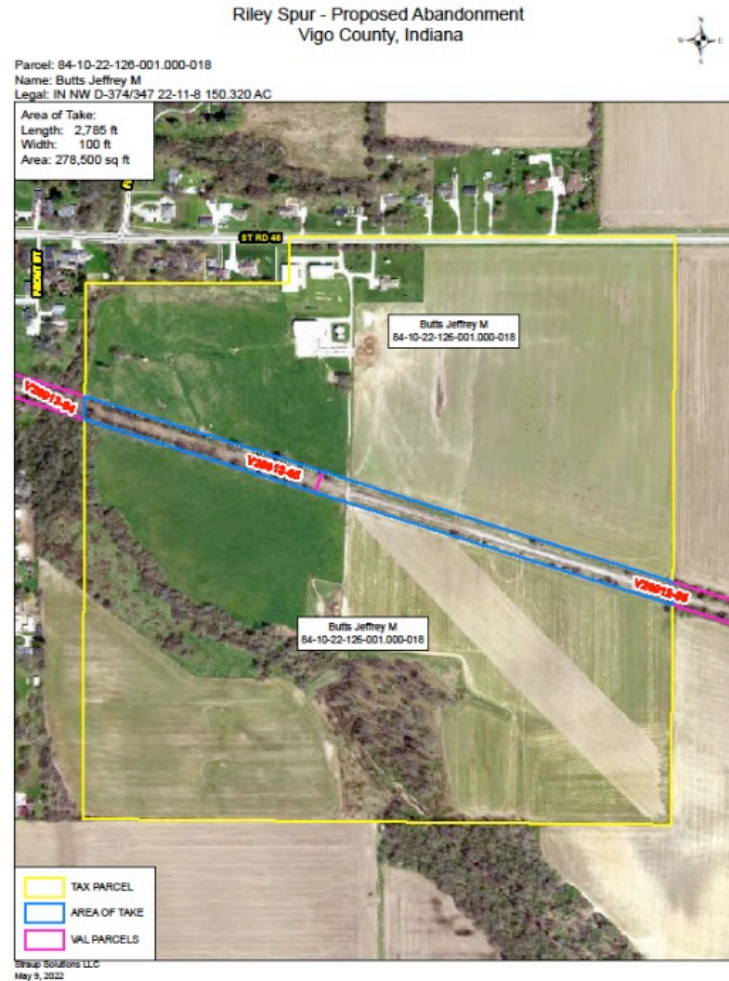
Filing a Claim for Compensation Does Not Affect a Landowner's Property

- ❑ A claim for compensation is a constitutional right
- ❑ It is a request for compensation as guaranteed by the Fifth Amendment
- ❑ A claim does not affect the rail-trail easement
- ❑ A claim has no impact on development or creation of the trail
- ❑ Filing a claim is the only way to be paid for the taking of private property.

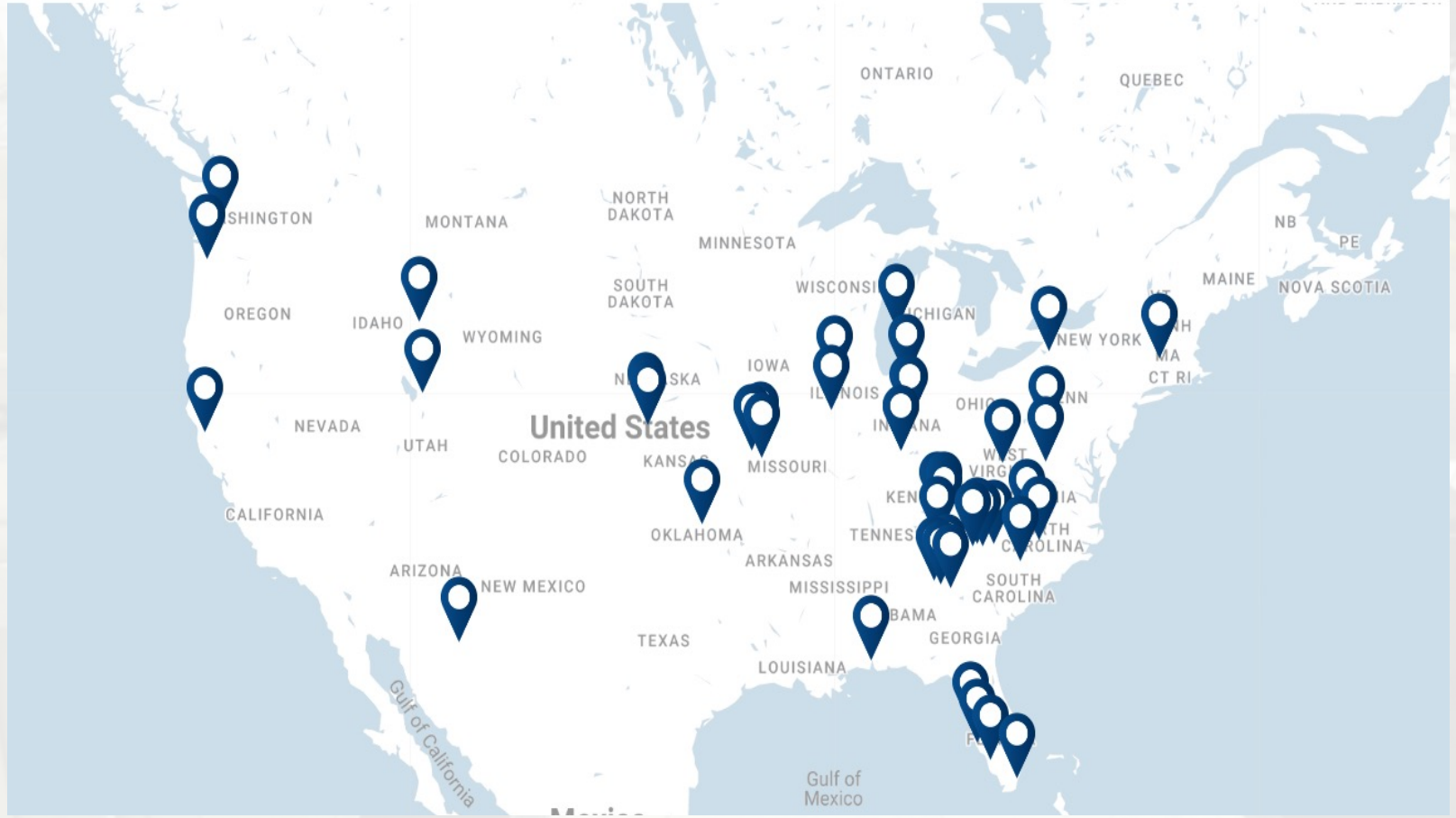
Case Study – Loss of Access and Encroachments Within Take



Case Study – Farm Bisected by Right-of-Way



Our Experience Representing Landowners Across the Country





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