

Court Decision Could Slow Expansion of Rail Trails

Ruling states that land must revert to original owner when railroad ceases to exist.

By Jon Marcus

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Amber Travsky has run the Medicine Bow Rail Trail since it was first laid out along a former Laramie, Hahn's Peak and Pacific Railway right-of-way through southern Wyoming.

She particularly loves it in the autumn, when she can see the foliage of the surrounding Medicine Bow National Forest and the 11,000-foot Medicine Bow Peak. There are moose on either side of her, and swarms of butterflies.

“It’s just gorgeous in the fall,” says Travsky, who usually runs with her Australian shepherd, Muggle. “It’s in its glory. The trail goes through some really cool country, and because it was meant for a railroad, there’s not a lot of grade to it. It just really makes you want to run.”

From now on, however, Travsky will be forced to take a detour.

In a little-noticed decision, the U.S. Supreme Court this month ruled 8-1 that government easements for railroad routes expired in some cases when the railroads went out of business, meaning the land beneath those rail trails must revert to its original owners—including the man whose property the Medicine Bow Trail cuts through, who brought the lawsuit.

“When we get to this guy’s place, we have to get off the trail and get on the Forest Service road and make a big circle,” says Travsky. “It’s like when they’re doing construction and you have to go around it—a total pain in the butt.”

It also promises to be much more than an isolated inconvenience. While it is likely to affect only a very small fraction of the nation’s 21,768 miles of existing rail trails, the decision in the Wyoming case could slow or stop some of the 7,835 miles of trails that are slated to be added to this fast-growing network.

“A lot of people all around the country feared this meant the end of rail trails. And it doesn’t,” says Kevin Mills, senior vice president of policy and trail development for national Rails-to-Trails Conservancy. “But we’d be the first to say it’s a disappointing decision. We think it will

lead to more cases where litigation is brought or feared, where it will be an additional hurdle and could slow down progress. It's apt to have a chilling effect."

The uncertainty comes as trail-running, some of it on unpaved rail trails, is exploding in popularity. Nearly five million people trail-run regularly, averaging 31.8 trail-running days apiece for a total of 154 million outings—up more than 10 percent since 2006—according to a survey by Montrail and the Outdoor Foundation.

Runners comprise between 3 percent and 17 percent of trail users, based on studies of trails in the Northeast, and an increasing number of road races are being run on rail trails, away from noise and traffic.

The annual Rails-to-Trails Conservancy Opening Day for Trails is March 29.

"It's just a beautiful, scenic environment, and the grade of a railroad has to be less than 2 percent, so it's a gradual ascent and descent," says Wendell Doman, founder and event director of Coastal Trail Runs, which organizes trail-running events in California and Oregon, including a 10K, half marathon, marathon, and 50K on the Bizz Johnson Rail Trail in northeastern California.

"It's a great resource for recreation and fitness, not only from a local standpoint, but we get runners from all over the country who enjoy it," says Doman, of San Francisco. "Even where I live there's a rail trail just a quarter mile from my house, and people are on it all day long.

Existing trails like those are unlikely to be affected, as long as the corridors along which they run are "railbanked"—meaning, set aside for possible return to rail use—are located in the original 13 colonies, were acquired from private landowners, or were granted by the federal government before 1875.

That means the impact will occur mostly west of the Mississippi, where the Supreme Court ruled that federal railroad easements granted after 1875 didn't necessarily come with long-term land rights.

These include at least 80 trails over which other lawsuits have already been filed by a collective 8,000 landowners, the Justice Department estimates, contesting rights of way for trails including the George S. Mickelson Trail in South Dakota, the Foothills and John Wayne Pioneer trails in Washington, the Weiser River Trail in Idaho, and the Rio Grande Trail in Colorado.

"The court undermines the legality of thousands of miles of former rights of way that the public now enjoys as means of transportation and recreation," said Supreme Court Justice Sonia Sotomayor, who dissented from the ruling. "Lawsuits challenging the conversion of former rails to recreational trails alone may well cost American taxpayers hundreds of millions of dollars."

The case, *Marvin M. Brandt Revocable Trust et al., v. United States*, was supported by libertarian and conservative organizations including the Mountain States Legal Foundation, the Cato Institute and the Pacific Legal Foundation. It alleged that the Medicine Bow trail was on

land given in 1908—well after the 1875 cutoff—to the Laramie, Hahn's Peak and Pacific, which was later absorbed by the Union Pacific

The Supreme Court decision reversed findings by the U.S. District Court for the District of Wyoming and the U.S. Tenth Circuit Court of Appeals that the federal government had what they termed a reversionary interest in the property.

Mills says the setback will be less dramatic than some fear.

“I think the rails-to-trails movement is unstoppable,” he says. “We’ve reached a tipping point, where it’s becoming an essential community asset, something everybody wants to have.”

But back in Medicine Bow, users who have already dealt with a pine beetle infestation and a forest fire worry the ruling will now stymie long-held plans to extend their rail trail at the other end.

“What’s sad, from my standpoint is that such a small segment of our trail could have such a big impact on trails everywhere,” says Travsky. “It’s this little piece of trail in the middle of nowhere, but it could have that influence across the nation.”