

Rails-to-trails faces changes

By Eve Newman

Published:
Mar 21, 2014

A Supreme Court decision favoring a landowner in the Snowy Range who owns property along the Medicine Bow Rail Trail could affect rails-to-trails projects across the country as well as future property rights disputes.

On a local level, however, the trail might stay the way it is.

Marvin Brandt was the sole landowner who didn't surrender his claim to an abandoned rail corridor that passes through his property when the U.S. Forest Service turned the corridor into the Medicine Bow Rail Trail.

The trail now detours around Brandt's land along forest service roads. That detour could become permanent.

"When we get to the other side of his property, we push our bikes back up the steep embankment to get back on the rail trail," said Amber Travsky, who was part of the effort to build the trail through an organization called Cycle Wyoming.

Travsky said she was disappointed with the court ruling as she has always had "a true fondness" for the trail.

"It is an ideal location for a trail," she said.

—

On March 10, the Supreme Court ruled 8-1 in favor of Brandt, who owns 83 acres in Fox Park in the Snowy Range. The court said Brandt remains the owner of a 200-foot-wide path that crosses his property and was once part of a now-abandoned railroad.

The Laramie, Hahn's Peak and Pacific Railroad was completed in 1911 and ran from Laramie to Coalmont, Colo. The last train ran in 1996, and the rails and ties were removed in the years following, according to Cycle Wyoming. The government claimed ownership of the pathway, and 30 landowners along the route — all but Brandt — gave up claims to the land, according to news reports.

Construction of the 21-mile Medicine Bow Rail Trail began in 2005, led by the U.S. Forest Service. With help from organizations such as Cycle Wyoming, Wyoming Department of Transportation, Laramie Bicycle Network and the Wyoming Institute for Disabilities, more than \$1 million was raised to repair and resurface the rail bed for recreational use and build five trailheads.

Across the country, thousands of miles of rights-of-way were granted to railroads under the 1875 General Railroad Right of Way Act. The government gave away public land to railroads to enable settlement of the West. When the land was settled, railroad easements were preserved across what became private land.

Many of those now-abandoned routes are being transformed into recreational trails, with thousands of lawsuits initiated by landowners who have said the abandoned pathways belong to them, not the government.

In the case of *Marvin M. Brandt Revocable Trust v. U.S.*, the Supreme Court agreed. Brandt claimed that once the railroad abandoned the right-of-way, the land became his, according to reports. Brandt could not be reached for comment.

The government sued Brandt in 1996 and won in District Court and then the Tenth Circuit Court of Appeals, which said the government still had a right to the half-mile of rail corridor passing through Brandt's property. Groups such as the Cato Institute and Mountain States Legal Foundation aided his cause.

—

The law surrounding the Brandt case was straight-forward, as was the majority opinion, according to Steve Klein, staff attorney for the Wyoming Liberty Group, a Cheyenne-based policy research organization.

“What was a pretty simple area of the law had been pretty messed up by some lower court decisions,” Klein said.

“If you read the majority opinion itself, it is very simple.”

Klein said the idea that abandoned railroad easements belong to the landowner instead of the government has an established precedent.

“The federal government was arguing some very elaborate implied reversionary interest regarding the rails-to-trails that they'd reserved when they transferred the land. The court said, ‘No, this is nonsense,’” he said.

Governments can still turn old railroad corridors into trails, and they can use eminent domain to do so, but they'll have to pay landowners fair market value for the land, Klein said.

The case is one of several recent decisions regarding property rights that have favored landowners, and it will establish future precedent against the federal government being able to allow public access on abandoned easements that cross private land, he said.

Klein said Brandt's decision to be the lone holdout among the landowners who surrendered their claim to the railroad corridor is significant.

"People are getting the idea that you can fight city hall and win. You can even fight Washington, D.C., and win," he said.

—

Justice Sonia Sotomayor was the only justice to dissent from the majority. She said the ruling "undermines the legality of thousands of miles of former rights of way that the public now enjoys as means of transportation and recreation," with lawsuits primed to cost the government hundreds of millions of dollars.

More than 1,400 trails have been built along railroad rights-of-way. The Rails-to-Trails Conservancy, which has a mission of building a nationwide trail network along former rail lines, said the ruling could threaten popular existing rails in the West.

Kevin Mills, senior vice president of policy and programs for the conservancy, which consulted on the case, said rail corridors should be considered spaces with unique property status that belong to the public, on par with national parks.

"We certainly felt going into the argument that we had the better case," he said.

The organization has received calls from around the country from rail trail supporters wondering about the effect on trails, but the reach of the decision is limited, he said.

Trails most likely to be affected are ones built on corridors acquired by railroads after 1875 in mostly Western states.

"There are certainly circumstances under which people should be concerned," Mills said. "This is a precedent that could have some bearing on their trail, but it's a small subset of overall trails in the country."

For many rail corridors, the precedent established by the Brandt case wouldn't apply, though Mills said he does anticipate more litigation.

"There will be a sense on the part of landowner that they're more likely to be successful if they tried," he said.

—

The Supreme Court reversed and remanded the Brandt case to the Tenth Circuit for a final

decision, and Mills said the Rails-to-Trails Conservancy will continue to work on the legal strategy.

“The majority found that the right-of-way was an easement that was ended by the railroad abandonment. That’s a given in the remanded case, but that doesn’t mean that the circuit can’t look at the bigger picture, as long as it’s consistent with that decision,” he said.

Until the case is finalized, he said, it’s impossible to know the definitive outcome for the Medicine Bow Rail Trail.

Travsky said one can see straight across Brandt’s property from one side of the detour to the other.

“It is not long, but, just like any detour, it was always preferred that we would eventually be able to stay on the trail,” she said.