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PROPERTY RIGHTS: Supreme Court to hear challenge to Forest Service's 'rails to trails' program

By: Jeremy P. Jacobs - October 1, 2013

The Supreme Court today granted review of a Wyoming man's challenge to a Forest Service claim that it has a right to build a trail on his land.

At issue in *Marvin M. Brandt Revocable Trust v. USA* is the Forest Service's program for turning abandoned railways into trails, or rails-to-trails.

Brandt, of Fox Park, owns 83 acres of land he acquired from the Forest Service in 1976.

The land was once part of a government easement for a railroad that operated from 1904 to 1995. The Laramie, Hahn's Peak and Pacific Railroad Co. operated the track, which ran 66 miles from Laramie, Wyo., to the Colorado line.

After the railroad was abandoned around 2000, some land was preserved as part of the Medicine Bow-Routt National Forest. Other areas, including Albany and Fox Park, were developed privately.

In April 2005, the Forest Service announced it wanted to convert the railway into a public trail. About a year later, the agency sued Brandt and others, claiming it has a right to roughly 28 miles of land. The service said it has a "reversionary interest" in the land under the 1875 General Railroad Right-of-Way Act.

A federal district court and later a federal appeals court agreed, ordering Brandt to turn over title to the land.

William Perry Pendley, president of the Mountain States Legal Foundation, a nonprofit representing the Brandts, said the case may settle long-standing legal issues surrounding the rails-to-trails program.

"We are thrilled that the Supreme Court agreed to hear this vitally important matter in which the federal government has embarked upon a massive, nationwide land grab," he said in a statement.

The rails-to-trails program has led to an explosion of litigation in recent years from property owners. In April, the U.S. Court of Appeals for the Federal Circuit ruled that an Arizona family should be allowed to seek compensation in court under the Constitution's Takings Clause, which protects private property from government seizure "without just compensation" (*E&ENews PM*, April 11).

The case has grabbed the attention of property rights groups, including the libertarian Cato Institute, which filed a friend-of-the-court brief on the Brandts' behalf.

A Department of Justice spokesman was unavailable for comment due to the government shutdown.