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June 17, 2015

County of El Dorado
Parks and Recreation Commission
330 Fair Lane, Bldg A
Placerville, CA 95667

Re: June 18, 2015 Agenda
Discussion Item El Dorado Trails Project
Legistar # 15-0784

Members of the Commission:

Too often in this world people, that are elected or selected to do the bidding of those they represent, are placed in a position of reliance on information that is not well researched! That is the case before you regarding any further removal of rails and ties from the SPTC corridor. You will be told by staff and county attorneys the County can tear out the rails and ties and replace them with a trail and still have the rights to the corridor; **WRONG!**

A grant of a use is only an easement for the purpose set forth in the grant! If the use defined by that purpose is not continued, it is abandonment! Not using the corridor for rail traffic very well may be abandonment; certainly, removal of the rails and ties would be abandonment. Perhaps, the very form of title dictates that we allow the rail use to continue and the trail use to be a side benefit.

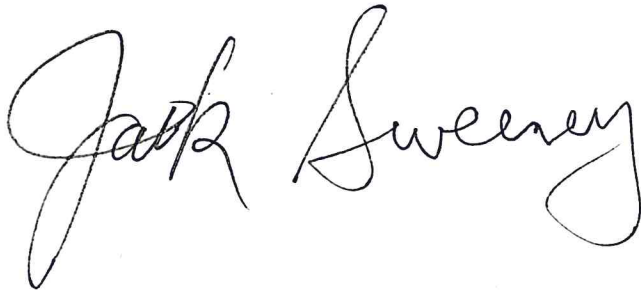
In *Brandt v US*; US Supreme Court Case # 12-1173 at the bottom of page 5 of the opinion is the following: *"Most relevant in this case, the patent concludes by stating that the land was granted 'subject to those rights for railroad purposes as have been granted ...'". In the middle of page 10, the Court explains, with citations, all about easements and their abandonment. At the middle of page 11 is the following: "The essential features of easements—including, most important here, what happens when they cease to be used—are well settled as a matter of property law. An easement is a "nonpossessory right to enter and use land in the possession of another and obligates the possessor not to interfere with the uses authorized by the easement." Restatement (Third) of Property: Servitudes §1.2(1) (1998). "Unlike most possessory estates, easements . . . may be unilaterally terminated by abandonment, leaving the servient owner with a possessory estate unencumbered by the servitude." Id., §1.2, Comment d; id., §7.4, Comments a, f. In other words, if the beneficiary of the easement abandons it, the easement disappears, and the landowner resumes his full and unencumbered interest in the land."*

So, if you do not disbelieve me, I am attaching a link to the case documentation. It is interesting reading, both legally and historically. http://www.supremecourt.gov/opinions/13pdf/12-1173_nlio.pdf

Following is my quote from three recorded documents that provided a portion of the corridor for railroad use. Nearly two thirds of the corridor between Missouri Flat Road and the first crossing of Forni Road were obtained by grants set forth in Book 33 at Pages 628, 630, & 633. The granting portion reads as follows: "*Witnesseth: That the said party of the first part [the property owner] in consideration of the benefis to be derived by her in construction of a Railroad, over the lands hereinafter described and of the sum of One Dollar to her in hand paid, the receipt whereof is hereby acknowledged, does by these presents grant, bargain, sell, and convey to the said parties of the second part,[the railroad enablers]their successors and assigns, forever for the construction and operation of a railroad thereon all her right title and interest in and to the described lands [the corridor].*"

The only other language was a reversionary clause if not constructed by June 1888

I am attaching my letter to the Board of Supervisors dated 3-16-14 and my response to their item #2 of 3-28-11 for further information. I have tried to keep our County aware of the law but no one ever seems to want to discuss this matter to arrive at the truth or a solution!

A handwritten signature in black ink that reads "Jack Sweeney". The signature is written in a cursive, flowing style with a large initial "J" and a long, sweeping underline.

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March 16, 2014

Board of Supervisors
County of El Dorado
330 Fair Lane
Placerville, CA 95667

Re: Southern Pacific Railroad Corridor

Chair Santiago and Members:

On March 10, 2014 the Supreme Court of the United States of America in the case numbered 12-1173 and entitled MARVIN M. BRANDT REVOCABLE TRUST, ET AL. PETITIONERS v. UNITED STATES ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT determined, on an eight to one vote, that the Rails to Trails Act **DID NOT** take precedent over private property rights.

In the subject case a parcel was patented to Brandt by the U.S. government subject to the Railroads rights. The patent was mute as to what happened if the railroad relinquished those rights. The U.S. Supreme Court determined that the Railroad Right of Way did in fact revert to the holder of the underlying fee title.

I am pleased that the U.S. Supreme Court has upheld my position on this matter which I first made public in 1987. By letter dated March 23, 1987, which was presented to Southern Pacific (SP), I stated that SP should attribute no value to the fee title underlying their easement as it was reversionary. Also by letter dated January 19, 1993 to BOS Chairman Wm.N. Center I stated that the corridor was no longer a railroad right-ofway and that it should have triggered a property tax bill to SP.

As many members of the Board of Supervisors, past and present, will acknowledge, I have stated many times in public that if you do not allow the use as a railroad to continue, and/or you take up the rails and ties, the right-of-way will revert to the holders of the underlying fee. By an eight to one vote of the U.S. Supreme Court I am correct!

So you do not disbelieve me, I am attaching a link to the case documentation. It is interesting reading, both legally and historically. http://www.supremecourt.gov/opinions/13pdf/12-1173_nlio.pdf

Respectfully,



James R. Sweeney

Parks & Rec **Comm** ; Sweeney Comments
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RESPONSE TO PROPOSAL TO REMOVE RAIL

Board of Supervisors
March 28, 2011
James R. "Jack" Sweeney
Supervisor District 3

People often make allegations without doing their homework! Politicians often react to such allegations without verification of the alleged facts. However, we are a nation that abides by its rules, laws, and agreements.

If this County determines to change the purpose of the SPRR corridor by removing the rails, it will need to work with its JPA partners to revise the agreements on which the corridor purchase was based. Those agreements are based on a continuing use of the rail throughout the corridor. Some of the more important portions of those agreements are set forth in the EASEMENT AGREEMENT recorded in Book 4834 at page 712 Official Records of the County of El Dorado.

Item 2 of that document cautions in part: "... the parties hereto further acknowledge that some portions of the RAIL CORRIDOR may be subject to reversionary rights ...". This is derived from a warning in the title report that this is not the same type of granting from which most other railroads obtained their right-of-ways. This corridor is unique in that most of its title is conveyed with a preamble that specifies that it is "for railroad use". Therefore, removal of the rails and ties would cause those properties to revert to the adjacent owners.

Item 5 of the EASEMENT AGREEMENT is as follows: "Restrictions on Transfers and Encumbrances . Except as provided in Section 7 of the RECIPROCAL USE AGREEMENT, GRANTEE shall not sell, transfer, convey, alienate, encumber, hypothecate, pledge or otherwise dispose of any interest in the PROPERTY". Therefore, the rails and ties are not the County's to dispose of without the consent of the JPA!

What is intertwined throughout all of the railroad purchase and use documents is the preservation of and use of the rail in place and other uses compatibly placed within the corridor. No one has an exclusive use; the use is multi-purpose!

SOME HISTORY

This County has moved on a steady course to support trail users and rail users since the end of freight service by rail in our County. The first abandonment was by the Michigan California Lumber Company of the Camino, Placerville, and Lake Tahoe Railroad right-of-way in or about 1986. That abandonment was supported by our Board of Supervisors as a way to decrease the burden on Mich-Cal in the hope that it could survive the decline of timber availability caused by the USFS decrease in available timber sales.

Unfortunately, the loss of the Mich-Cal lumber transport business and an already declining fruit transport business caused the Southern Pacific to petition for abandonment of the Placerville Branch.

Our Board immediately worked to obtain the CPLT R/W as an opportunity to provide trails in the area. On April 25, 1989 we authorized the purchase of the CPLT RR! On September 13, 1989 we consummated an agreement with the City of Placerville for the joint use of The El Dorado Trail!

When SP started their abandonment process, we tried every which way to block that effort. We could not stop SP but obtained the right to purchase the R/W through the Railbanking process. Since I personally carried the effort at obtaining my Board's backing for the purchases and the planning on this effort I can assure all that the SPRR was always deemed a multi use facility.

As a partial success story from the SP R/W purchase we opened the award winning section from Missouri flat Road to Forni Road in 2009.

To date, from Missouri Flat Road to Camino, approximately 10.5 miles of trails, we have spent approximately \$6.9 million on trails! (see attached funding summary)

Therefore people that say we have done nothing for trails are very quick to forget! If we treated the Rail users the same as the trail users and subtract the SPRR R/W purchase price of \$2.7 million from the amount spent on trails of \$6.9 million, we could spend \$4.2 million on rails and have a fine excursion train up and running. BUT, we tell the rail people that whatever they want they must pay for from their pockets. And if they had not been doing the maintenance that the County has been ignoring, a lot of the roadbed would have been lost.

On July 17, 2007 per item # 46 (07-1251) A motion was made by Supervisor Sweeney, seconded by Supervisor Santiago to approve, generally, the format of the Request for Proposal with the addition of an opening statement that it is El Dorado County's opinion that the primary usage is for trails with track usage to help to pay for said trails; and to refer this matter to the Sacramento-Placerville Transportation Corridor Joint Powers Authority Board.

Yes: 4 - Dupray, Sweeney, Briggs and Santiago

Absent: 1 - Baumann

The basic requirements of that proposal are in the attachment: Sacramento-Placerville Transportation Corridor JPA.pdf.

Following that approval by the County, the JPA has a draft agreement for excursion use in place. It is near to being acceptable by the parties and subsequently submitted to this Board for acceptance. If this Board approves the proposal before us today, what do we do with the proposed agreement?

Removing any more rail from this line would destroy forever a very important part of our history. Let's leave the rails in place and plan for joint use TOGETHER.

Thank you all.