Donna Mullens <donna.mullens@edcgov.us>

Fwd: DOT presentation today

1 message

Vickie Sanders <vickie.sanders@edcgov.us> Thu, Jun 18, 2015 at 1:45 PM
To: Donna Mullens <donna.mullens@edcgov.us>

Vickie Sanders
Parks Manager
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Parks Make Life Better!

-------- Forwarded message --------
From: **Kenison, Mike** <Mike.Kenison@safecu.org>
Date: Thu, Jun 18, 2015 at 12:52 PM
Subject: DOT presentation today
To: "vickie.sanders@edcgov.us" <vickie.sanders@edcgov.us>

Hi Vickie,

Is it possible to attach these documents to today's Item? I have printed copies and will bring them today, if I make it.

Mike

Mike Kenison

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2 attachments

SPTC-Draft_orig Pg15.pdf
28K

Andrea Ferster Memo_Reversionary Property Interest.pdf
969K

SPTC JOINT POWERS AUTHORITY

In July 1991, the Sacramento-Placerville Transportation Corridor Joint Powers Authority (SPTC-JPA), a public entity, was formed for the purpose of purchasing from Southern Pacific Transportation Company 53.1 miles of the Placerville Branch Corridor between Mile Post (MP) 94.3 at 65th Street in the City of Sacramento and MP 147.4 at Apex near the City of Placerville. The members of the SPTC-JPA include Sacramento Regional Transit District, Sacramento County, El Dorado County, and the City of Folsom. In September 1996, the SPTC-JPA successfully completed its purchase of the railroad corridor now known as the SPTC. The Initial Study/ Negative Declaration and Categorical Exclusion completed for the SPTC-JPA Right of Way Acquisition Project stated that:

"The purpose of the project is to acquire the SPTC ROW as a multi-modal transportation corridor, which would include bikeway, pedestrian, and recreation trails; light rail transit system extension; and freight and commuter rail opportunities."

The western 16 miles of the Placerville Branch Corridor was purchased by the SPTC-JPA for use by Sacramento Regional Transit to extend the Gold Light Rail Line from the City of Sacramento to the City of Folsom. The SPTC-JPA "railbanked" the eastern 37-miles of the corridor under the protection of the National Trails System Act, 16 U.S.C. 1247(d), also known as the "Railbanking Act" or "Rails-to-Trails Act." Railbanking is the federal process that prevents the formal abandonment of a railroad right-of-way and preserves it for interim use as a multi-use trail subject to possible future reconstruction and reactivation of the right-of-way for freight rail service.

Because such interim use is subject to restoration or reconstruction for railroad purposes and is not treated for purposes of any rule of law as abandonment of the railroad right-of-way for railroad purposes, no reversionary landowner interest can or would vest until the corridor has been abandoned through an action of the Surface Transportation Board. The removal of the rails and ties in a railbanked corridor is not treated as abandonment of the railroad right-of-way for railroad purposes and no reversionary landowner interest can or would vest as a result of the removal of the rails and ties in the SPTC. For additional information, refer to Andrea Ferster's opinion on the Brandt v. U.S. case's applicability to the SPTC.

Upon the acquisition of the Placerville Branch in 1996, the SPTC-JPA and its member agencies entered into an agreement called the "Reciprocal Use and Funding Agreement" or "RUFA." The purposed of the RUFA was "to establish their joint and severable rights and responsibilities

SPTC-JPA Funding

When the SPTC-JPA purchased the corridor for $14 million in September 1996, each member agency was required to fund the purchase of the segment of the corridor within its jurisdiction:

- El Dorado County: $2,641,000
- City of Folsom: $3,126,000
- Sacramento Regional Transit: $7,820,000
- Sacramento County: $413,000

El Dorado County's $2.64 million share was funded by $2.24 million in transportation grant funding intended to provide non-motorized transportation facilities and air quality benefits (Regional Surface Transportation Program, Transportation System Management Program, and AB 2766 funds) and a $400,000 loan from Sacramento Regional Transit and the City of Folsom.

1993 — SPTC JPA FILES OFFER OF FINANCIAL ASSISTANCE (OFA) THROUGH NATIONAL TRAILS ACT

1996 — SPTC JPA PURCHASES THE CORRIDOR FOLLOWING NEGOTIATIONS

2005 — SACRAMENTO REGIONAL TRANSIT EXTENDS GOLD LINE TO FOLSOM

2008 — THE P&SVRR NON-PROFIT IS FORMED

2010 — EL DORADO WESTERN RAILROAD NON-PROFIT IS FORMED

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WHO OWNS THE REVERSIONARY PROPERTY INTEREST? – MARVIN M. BRANT REVOCABLE TRUST V. UNITED STATES

Telebriefing – March 26, 2014

Background

On March 10, 2014, the U.S. Supreme Court held in an eight to one decision that the United States did not retain any rights to a right of way that was granted under the General Railroad Right-of-Way Act of 1875 ("1875 Act") after patenting the adjacent lands to Marvin M. Brandt Revocable Trust (Brandt) without expressly reserving an interest in the right-of-way. The Court reaffirmed that rights-of-way acquired through federal lands under the 1875 Act are easements that are terminated by the railroad's abandonment, and that the United States does not retain any "reversionary interest" in the rights-of-way.

In reaching this conclusion, the Supreme Court sided with the U.S. Court of Appeals for the Federal Circuit, which reached a similar conclusion. *See Hash v. United States*, 403 F.3d 1308 (Fed. Cir. 2005) (holding that the United States does not hold a reversionary interest in the lands granted pursuant to the 1875 Act and later patented under the Homestead Act.)

The *Brandt* Decision Has Limited Applicability to Rail-Trails.

The main question posed to the Rails to Trails Conservancy following issuance of the *Brandt* decision was: what effect does the decision have on rail-trails (i.e., trails built on former railroad corridors)? The answer to this question is that the vast majority of current and planned rail-trails do not fall within the scope of the *Brandt* ruling.

First, the ruling does not affect rail-trails that have been "railbanked" under the National Trails System Act Amendments, 16 U.S.C. § 1247(d). Railbanking is the federal process of preserving unused railway corridors for potential future railway service by converting them to multi-use trails for interim use until such time as they are returned to active railroad service. "Quiet title" claims by adjacent land owners challenging the ownership of the corridor are and will continue to be preempted when a trail is "railbanked," even if the corridor consists of 1875 Act right-of-way. The sole legal recourse of adjacent landowner who believe that their property has been "taken" by rails-to-trails conversion occurs under the railbanking law is to file a claim for compensation from the United States. *Preseault v. ICC,* 494 U.S. 1, 20 (1990); *Hash v. United States*, 403 F.3d 1308 (Fed. Cir. 2005).

Second, the ruling only applies to railroad corridors originally acquired through federal lands pursuant to the 1875 Act. Any rail-trails that were originally acquired through privately owned lands are not affected by the ruling.

the adjacent lands under the Homestead Act. Section 912 provides that 1875 Act rights of way can only be "abandoned" by a judicial decree by a court of competent jurisdiction or by act of Congress. A number of federal courts have held that the abandonment of federally granted railroad rights-of-way is governed by Section 912 rather than state common law precepts. *See, e.g. Vieux v. East Bay Regional Park District*, 906 F.2d 1330, 1339 (9th Cir.), *cert. denied*, 498 U.S. 967 (1990)

In the *Brandt* case, the U.S. District Court for the District of Wyoming issued a judicial decree declaring the corridor to be abandoned. However, as the Federal Circuit has recognized, under both state common law and in construing abandonment in the context of 1875 Act rights-of-way, abandonment is "a question of "fact." (citing *Preseault v. U.S.A.*, 100 F.3d 1525, 1546 (Fed. Cir. 1996); *Ellamae Phillips Co. v. United States*, 564 F.3d at 1373. In many if not most instances, federally granted railroad corridors have been conveyed for public highway or trail use without a judicial decree of abandonment. Therefore, the 1875 Act easement cannot be found to have been terminated by abandonment in those cases.

B. <u>The scope of the 1875 Act grant as encompassing trail or public highway use was not resolved in *Brandt*.</u>

The Supreme Court's decision in *Brandt* does not address and therefore does not resolve the issue of the scope of the 1875 Act grant, and whether that scope is sufficiently broad to encompass trail or other public highway uses. The Federal Circuit has previously recognized that a finding that the railroad acquired only an easement under the 1875 Act as a result of *Hash* (and now the *Brandt*) "does not preclude the trial court from deciding either the scope of the easement granted under the 1875 Act, or, if the scope was broader than railroad use." *Ellamae Phillips Co.*, 564 F.3d at 1373.

The scope of the legal interests conveyed to a railroad by the 1875 Act, a federal statute, is an issue of federal law. *Northern Pacific Ry. Co. v. Townsend*, 190 U.S. 267, 270 (1893); *Nicodemus v. Union Pacific Corp.*, 440 F.3d 1227, 1234-1238 (10th Cir. 2006). Nothing in the language of the 1875 Act itself limits the use of the granted right-of-way to railroad operations only. Other courts in construing similar granting languages have held that trail use is within the scope of those grants. *See, e.g. Chevy Chase Land Co. v. United States*, 158 F.3d 574 (Fed. Cir. 2000). The scope of the 1875 Act grant has not been addressed at the appellate level and remains an issue to be resolved in future cases.