

[Government Interest in Railroad Rights-of-Way; Land Use and Planning](#)

The Legal Intelligencer (Online)

This article also appears in the following ALM publications:

TLI PM Legal Alert

PA Law Weekly Alert

August 26, 2014 Tuesday

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The Legal Intelligencer

Length: 1145 words

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Body

On March 10, the U.S. Supreme Court rendered a decision in [Brandt Revocable Trust v. United States, 134 S. Ct. 1257 \(2013\)](#), addressing whether the federal government retains any interest in railroad rights-of-way that were created by the General Railroad Right-of-Way Act of 1875, [43 U.S.C. § 934 et seq.](#)

The act was enacted by Congress for the purpose of encouraging the construction of railroads and the settlement and development of the western portion of the United States. The act permitted railroad companies that met certain requirements to obtain a right-of-way through the public lands of the United States and granted railroads the right to take the land adjacent to a right-of-way for station buildings, depots, machine shops, side tracks, turnouts and water stations.

As expansion of the railroads advanced rapidly and development of the West grew, the federal government began to convey the same public lands that were subject to railroad rights-of-way to private individuals wishing to settle in the West.

Over time, however, railroad companies have steadily abandoned the rights-of-way granted pursuant to the act, and in 1976 Congress enacted the Federal Land Policy and Management Act, [43 U.S.C. § 1701 et seq.](#), which, among other things, repealed the Railroad Right-of-Way Act's provisions governing the issuance of new rights-of-way. As a result of the increasing trend of railroad companies abandoning their rights-of-way granted pursuant to the Railroad Right-of-Way Act, a question arose in Brandt as to who owns the land underlying the rights-of-way after abandonment—the private property owners or the United States.

In Brandt, the United States initiated an action seeking both a judicial declaration of abandonment of a right-of-way granted to the Laramie, Hahn's Peak and Pacific Railway Co., its successors and assigns under the Railroad Right-of-Way Act and an order quieting title in the United States to the legally abandoned right-of-way.

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The United States named the railroad's successors and the owners of 31 parcels of land crossed by the abandoned right-of-way as defendants in the action. The United States settled with or obtained a default judgment against all but one of the landowners.

The remaining landowner contested the United States' claim to the abandoned right-of-way and filed a counterclaim on behalf of his family's trust, asserting that the stretch of right-of-way crossing his family's property was a mere easement that was extinguished upon legal abandonment by the railroad. The landowner further asserted in the counterclaim that as a consequence of the railroad's abandonment, his family enjoyed full title to the land without the burden of the easement. The United States countered the landowner's position by arguing that, pursuant to the Railroad Right-of-Way Act, it retained a reversionary interest in all rights-of-way granted thereunder.

Agreeing that the United States retains a reversionary interest in a railroad right-of-way granted pursuant to the Railroad Right-of-Way Act after a legal abandonment, the U.S. District Court for the District of Wyoming granted summary judgment to and quieted title in the United States, and the U.S. Court of Appeals for the Tenth Circuit affirmed that decision.

After granting certiorari, however, the U.S. Supreme Court reserved and remanded the case to the Tenth Circuit for further proceedings, concluding that a right-of-way granted pursuant to the Railroad Right-of-Way Act constituted a simple easement for which the United States retained no reversionary interest. Relying upon basic common-law principles addressing what happens to an easement when it ceases to be used, the Supreme Court found that, upon legal abandonment of the right-of-way, ownership would vest in the underlying property owner, not in the United States.

In reaching this conclusion, the Supreme Court asserted that "the government loses [its] argument today, in large part because it won when it argued the opposite before this court more than 70 years ago" in [*Great Northern Railway v. United States*, 315 U.S. 262 \(1942\)](#).

In *Great Northern*, a railroad company sought to drill for oil beneath the surface of its right-of-way obtained pursuant to the Railroad Right-of-Way Act. Upon discovering the oil, the railroad company claimed ownership of it and threatened to use the right-of-way to drill for and remove it.

The United States challenged the railroad company's rights to the underlying oil, arguing that it remained the property of the United States. In so arguing, the United States contended that the act granted the railroad company an easement and nothing more, and consequently the railroad company acquired neither the right to use any portion of the right-of-way for the purpose of drilling or removing subsurface oil and minerals, nor any right, title or interest in or to the deposits below the right-of-way.

Agreeing with the United States, the Supreme Court ruled in *Great Northern* that based upon the text, background and subsequent administrative and congressional construction of the act from which the railroad's interest stemmed, only an easement had been granted to the railroad company, and not a fee interest. Accordingly, the Supreme Court held that the railroad company had no interest in the oil beneath its right-of-way, but rather this property interest belonged to the United States.

In light of the Supreme Court's decision in *Brandt*, many are questioning the fate of existing and proposed rails-to-trails projects that span for hundreds if not thousands of miles across the United States. Although the Tenth Circuit has yet to issue a decision on remand, at a minimum it appears that rails-to-trails

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projects involving rights-of-way obtained pursuant to the Railroad Right-of-Way Act and then subsequently abandoned may be adversely impacted.

Although the Supreme Court's decision is limited to rights-of-way created by that statute only, it is likely that the Brandt decision will be cited by litigants in cases involving the creation and abandonment rail rights-of-way under other statutes and common law. On the other hand, the decision does not appear to impact rail corridors "rail-banked" under the National Trails Systems Act Amendments of 1983, the constitutionality of which the U.S. Supreme Court affirmed in [*Preseault v. ICC, 494 U.S. 1 \(1990\)*](#).

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Classification

Language: ENGLISH

Publication-Type: Newspaper

Subject: EASEMENTS & RIGHTS OF WAY (93%); US FEDERAL GOVERNMENT (90%); LAND USE PLANNING (90%); US ENVIRONMENTAL LAW (78%); TRUST ARRANGEMENTS (78%); PUBLIC POLICY (77%); LAW COURTS & TRIBUNALS (73%); SUPREME COURTS (73%)

Organization: SUPREME COURT OF THE UNITED STATES (84%)

Industry: EASEMENTS & RIGHTS OF WAY (93%); LAND USE PLANNING (90%); RAIL TRANSPORTATION (89%); REAL ESTATE (89%); NEW CONSTRUCTION (76%); PERSONAL TRUSTS (73%); RAILROAD CONSTRUCTION (72%)

Geographic: UNITED STATES (96%)

Load-Date: October 31, 2014