
EMINENT DOMAIN - FEDERAL

Hippely v. United States

United States Court of Federal Claims - October 18, 2022 - Fed.Cl. - 2022 WL 10329550

In a rails-to-trails case, owners of property subject to railroad easement filed suit seeking just compensation for alleged temporary taking by Surface Transportation Board's (STB) issuance of notice of interim trail use (NITU) subject to a National Historic Preservation Act (NHPA) historic preservation condition, authorizing the county and railroad to negotiation potential conversion of easement into public recreational trail under National Trails Systems Act Amendments, prior to eventual expiration of the NITU and abandonment of easement.

Property owners moved for summary judgment on liability; government brought cross-motion for summary judgment.

The Court of Federal Claims held that:

- Railroad intended to complete abandonment during the period in which the NITU was in effect, thus requiring compensation for a taking, and
- The NITU was a factual cause of railroad's delayed abandonment of easement, despite concurrent presence of NHPA historic preservation condition.

In rail-to-trail takings case, evidence was sufficient to support an inference that, had there been no notice of interim trail use (NITU), railroad intended to complete abandonment during the period in which the NITU was in effect, thus satisfying causation element and requiring compensation for a taking; the railroad filed an application to abandon, which indicated an affirmative intent to abandon at the time the NITU was issued, railroad never sought further extension of time to negotiate trail use, railroad consummated abandonment six months after the NITU expired, NITU authorized removal of track during its pendency, and railroad met the standard of abandonment under Ohio law.

In rails-to-trails case, the notice of interim trail use (NITU) was a factual cause of railroad's delayed abandonment of easement and the delay of property owners' reversionary interests, despite the existence of a National Historic Preservation Act (NHPA) historic preservation condition; the NITU alone would have caused the delay in abandonment.

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