

# Committee on Resources

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## Testimony

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Richard Welsh, Executive Director

Testimony for H.R. 2438 before the Subcommittee on National Parks and Public Lands on October 30, 1997 in Washington, D.C.

Members of the Subcommittee, I am Richard Welsh, the executive director of The National Association of Reversionary Property Owners (NARPO). We want to thank you for the opportunity to speak in support of Congressman Ryun's bill, H.R. 2438, The Railroad Abandonment Clarification Act. NARPO is a nationwide non-profit organization dedicated to the preservation of reversionary property rights for tens of thousands of property owners throughout the United States. NARPO's home office is in Bellevue, Washington and we have division offices in Kansas, Michigan and Pennsylvania. NARPO has been involved in the rails-to-trails issue since 1985 when the ICC (now Surface Transportation Board (STB)) started the rulemaking process for implementation of the rails-to-trails law. NARPO currently is working with aggrieved property owners and taxpayers in 47 states. To date, there are over 60,000 property owners throughout the United States affected by the rails-to-trails law.

Because NARPO has been involved with rails-to-trails since the original ICC rulemaking in 1985, we have a great depth of knowledge about the property owner issues. Regardless of the intentions of the supporters of the rails-to-trails movement, rails-to-trails as passed by Congress and implemented by federal agencies, has become a terrible detriment to individual and constitutional property rights.

H.R. 2438, will go a long way to right the major flaw in the rails to trail law. When Congress passed the original rails-to-trails law in 1983, the new railbanking policy preempted state reversionary rights. Congressman Ryun's bill will eliminate this preemption. This will not be the death of rails-to-trails as the trails proponents insist. Instead rails-to-trails project sponsors can acquire land like any other entity seeking specified land for a specific use. Government and private groups can pay for the land needed from property owners to develop trails.

The rails-to-trails law has programmed over 3,600 miles of trails across 62,000 pieces of private property without paying one cent in compensation for the loss of reversionary property rights, rights which the U. S. Supreme Court has said are compensatory. Jane Glosemeyer, who is testifying here today, has waited over nine years for her compensation ---with no end in sight.

Because the rails-to-trails act preempts state property laws of reversion, certain state and federal laws lose their application. A glaring case of laws being abrogated due to the rails-to-trails act occurred near Park City, Utah in 1989. When Union Pacific Railroad abandoned their line from Echo, Utah to Park City, abutting owners expressed concern over the nearby tailing piles from the old Silver King Mine. The tailing piles lie directly on the right-of-way and are an environmental risk. The BLM Hazardous Material Unit ordered an environmental survey be conducted of the right-of-way which was proposed for trail conversion. The survey reported that voluminous amounts of arsenic, mercury and lead were present and leeching into the soil and in the air around the area. The report warned that children would be susceptible to airborne carcinogens emanating from the tailing piles. Because of exemption from state and federal environmental review of trails, nothing was done and the trail was built within 20 feet of exposed tailing piles. If Park City would have had to abide by state reversionary laws, more oversight of the project would have occurred, and the polluted land most assuredly would have been cleaned up. In this, case as in others, responsible land ownership comes with private ownership.

One of the worst aspects of the rails-to-trails act is that private entities can designate and develop these trails without ever being subject to the electorate. In a case near Lewiston, Idaho, a rail salvage company has acquired an interest in a long-abandoned railroad. When the property owners heard there might be a trail on the old rail bed that ran through their property, they tried to find out who had designs on their property. Public and private attempts to determine ownership responsibility failed. NARPO was able to determine the railroad was abandoned in 1985, and the land had reverted to the abutting property owners. During this confusion, the trails group sold quit claim deeds to the right-of-way to unsuspecting property owners.

One way property owners can fight to regain the use of their land is to convince local elected officials to oppose rails-to-trails projects. It is difficult to succeed, however, when an advantage is provided to trails groups over land owners through federal law. In almost every instance, property owners do not know about a forthcoming project until the trail is being built through their property. The Rails-to-Trails Conservancy (RTC), who is testifying here today, tries to make sure the property owners do not know about the trails projects. I am entering into the record today a copy of a letter from RTC to the City of Emmett, Idaho where RTC advocates keeping the property owners in the dark until funding and authorization for the trail is assured. The sad part is, RTC receives federal program money to collude against property owners.

Interim Trail Use designation and the arbitrary control by a trails group has had detrimental effects to property rights. After being designated as the Interim Trail User under the rails-to-trails act, an entity has complete control of the right-of-way. The negotiations between the trail use entity and the abandoning railroad can go on for years (over five years on some abandonments). The STB exerts no oversight before or after issuing Interim Trail Use permits to trail group entities. Meanwhile, the abutting property owners do not know who is the controlling entity in which to address their complaints. Property owners need to know who to contact for crossing permits or other historical uses made of the right-of-way.

A large group of farmers in central Pennsylvania discovered that their farms, which were split in two by a railroad right-of-way, would now be split by a recreational trail. The trail users did not like the smell of the farms and livestock and called Pennsylvania authorities to investigate the farmers for the odors. The trail developer also blocked ditches which drained the farmers fields. Now the farmers have wetlands that Pennsylvania says cannot be farmed. All this, notwithstanding the fact the abutting property owners are the fee simple owners of the right-of-way--land which should have reverted back to the farmer upon secession of rail use.

In another negative side effect of the rails-to-trails act, trails groups or their partners posing as non-carrier railroads are acquiring rail lines as operating railroads without the intent of operating the line as a railroad. They immediately file for abandonment of the line and sell the right-of-way to a government entity for trail use. Railroads, trail groups, trail group legal representatives, and state and local governments are winners as federal ISTEA money funds the acquisition and development of trails (private property). The losers are the property owners who lose the use of their land with no recourse.

H.R. 2438 will prevent the preemption of state reversionary property law. Groups interested in making trails would have to abide by state reversionary property law. Abiding by state property law would solve all of the above-mentioned problems before they occur. If a state or local government wanted to develop a trail, they could condemn the right-of-way and pay the property owner. This is the way our laws are supposed to work.

Rails-to-trails, as written, effectively means the extinguishment of reversionary rights. The U.S. Supreme Court has said these rights can be taken, but the Court said the Constitution requires just compensation must be paid for the "taking." This fundamental Constitutional protection of just compensation and due process allows the minority to protect themselves from the overreaching of the majority. The person that gets stuck is the property owner who is kept in the dark through a process that favors trail groups. H.R. 2438 will go a long way to reestablishing our constitutional rights. If trails groups, whether public or private, want to build a trail then they should have the financial wherewithal to buy the land and build the trail.

We want to thank the Public Lands Subcommittee for having this hearing on H.R. 2438 so the inequities to tens of thousands of property owners throughout the United States can be corrected. I would be glad to answer any questions

the Subcommittee members might have.

Richard Welsh, Executive Director

The National Association of Reversionary Property Owners (NARPO)

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