



Enumclaw, Washington to Buckley, Washington and beyond Railings on Property Owners Private Property

To: Washington State House, Senate, Senators Cantwell & Murray, Representative Reichert, Governor's Office, Supreme Court, Freedom Foundations, Property Rights Groups, King County Ag, King County Council, Media

Most of this damning evidence against green state trail takings, comes from the pain and suffering experiences of other property owners.

The National Association of Reversionary Property Owners - <http://home.earthlink.net/~dick156/row.htm> and the Property Rights Foundations of America <http://prfamerica.org/> are the sources from much of this information.

It took me a couple hours to do this research.

1. You would expect any government servant to do this due diligence before taking one step down the trail of taking.
2. You would expect an honest government employee to never ever think of using force to steal someone else's property.
3. You would expect city, county, state and federal government to condemn the use of eminent domain, not abuse it.
4. Clearly there is a green political agenda
 - And it is not about protecting the laws of the land, natural laws, common law & our unalienable rights.

5. The agenda is to take, at any expense, for any reason, with the use of force, to keep themselves in power.

"The U.S. Constitution was a limitation of power and jurisdiction upon the federal government within its territories and upon itself NOT AN EXPANSION of power and jurisdiction upon the sovereign states and sovereign state Citizens.

- Individual rights are second only to God in a Constitutional Republic.
- Americans can no longer comprehend their own sovereignty and power.
- They have become apathetic and ignorant of their own divinity.
- Those who control American government have become demonic to accomplish their dark agenda.
- Once the thin skin of individual rights is penetrated, freedom slowly bleeds to death.

American government and the non government groups who use them, are consuming the blood of our life force.

We must awaken our neighbors and the next generation before this shroud of illusion consumes the few left who can see.

2. July 11, 2006-Here is an article about two women killed on a popular trail near Seattle. The trail zealots tell us popular trails are crime immune because so many people are on the trail. That does not seem the case!

http://seattletimes.nwsourc.com/html/localnews/2003124787_webhikersslain13.html

3. March 12, 2007-Click on the following link to see a case from the federal appeals court from Virginia where the court ruled that a property owner can sue for a Fourth Amendment violation of search and seizure when a city allowed people to trespass on private property for trail use. This is another tactic we can use to get control of our property rights.

<http://pacer.ca4.uscourts.gov/opinion.pdf/052344.P.pdf>

4. **October 15, 2006-This is an article about how trail users are not the eco-friendly they make themselves out to be. <http://www.washingtonpost.com/wp-dyn/content/article/2006/10/13/AR2006101301285.html?referrer=emailarticle>

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January 9, 2006—A Pennsylvania County Judge ruled for landowners in a very acrimonious case that has been ongoing for over 10 years.

The judge ruled that the landowners owned the railroad right of way in fee simple title. Also there was not a federal rails to trails designation attached to the abandonment. The judge also ruled that the landowners can go ahead with their lawsuit against the trail groups on trespass and slander of title. Click [here](#)

5. 7/20/2005 The link below is the testimony to Congress of Chuck Cushman executive director of the American Land Rights Association, he has wonderful examples of trails gone amok because of the National Trails Act. As he points out about how trails mutate, first the trail advocates claim that only the "willing" landowners will be expected to host a trail. Then the trail folks get impatient, which is quickly followed by eminent domain. They and their government agencies have all the power, while lonely landowners are left to fend for themselves. [here](#)

4/15/05 Lawyer sues a town, resort, and 2 trail outfits when he gets injured on a recreational trail in Toronto.

A personal-injury lawyer filed a \$1 million dollar lawsuit on behalf of himself when he got hurt on a trail after falling off his bike. A short article is followed by a bunch of bikers' comments. This is truly an inspiring event. Click [here](#)

6. A court awarded the settlement based on past damages and potential future damage to the farm, which adjoins a recreational trail. Click [here](#)

7. 4/4/05 Another very good court decision just came down for property owners on government grant rights of way.

A very definitive decision by the U.S. Court of Appeals for the Federal Circuit says that property owners owning land abutting railroad rights of way where the right of way was granted to a railroad by the government, the right of way belongs to the abutting property owner. And if a rail trail has been put on the right of way after railroad abandonment, then the abutting property owner is due just compensation. To see a copy of the decision click [here](#). This case is cited as: Hash v. U.S. 403 F.3d 1308 (2005). If any property owner fits into this category, then they can use this decision to get their just compensation for having a trail through their property. You might want to call either John Groen in the western states at 425-453-6206 or Nels Ackerson in Washington, D.C., at 202-833-8833.

8. A very good court decision just came down for property owners

The case below is a hot link to a Federal Claims Court decision on a federally granted right of way that is being turned into a rail trail. The property owner won a big decision on the ownership issue of the right of way easement. The decision is written in a way that positively affects all government granted rights of way and overrides many adverse decisions. It is 33 pages long, but well worth reading for those property owners affected. If you have any questions, please email me. Dick Welsh--NARPO Click [here](#). This case is cited as: Beres v. U.S. 64 Fed.Cl. 403, 427 (2005).

9. 3/15/05 Hope for property owner abutting a rail trail

A group of property owners in south central Washington State spent a lot of time following what a trails' group and the railroad did after the trails' group acquired the rights for a trail on an abandoned rail line. They discovered the railroad had sold off some land that disconnected the rail line from a connection to another rail line. It just so happens that the federal rails to trails law exists under the fiction that a railroad can restart service and connect it to the national rail system. If a railroad cuts the possibility of future connection to the national rail system, then the STB loses jurisdiction and the rail trail

can disappear. A court case to decide just that has been filed. For further information you can contact the attorneys representing the property owners—Nels Ackerson at 202-833-8833.

10. 12/13/04 [Sprint, Qwest, Other Telecoms Face New Multi-Billion Dollar Threat](#). Think City of Tacoma Water and City of Enumclaw Natural Gas liability.

The 7th Circuit Court of Appeals in Chicago on December 13, 2004 handed down a decision that exposes Sprint, Qwest, Level 3, and Williams to more than \$3 billion of liability in federal and state class actions that we are pursuing nationwide. The decision reversed a controversial nationwide class action settlement favored by the telecom companies, which we had opposed. More details can be found in an article in [Telephony Online](#).

11. 7/20/04 A New Property Value Study by the City of Portland, OR., that shows owning land near or next to a trail or park devalues your property Click [here to read and download a copy of this study](#). The City of Portland, OR., paid for this study to see if their regulations and spending were worthwhile from a fiscal standpoint. Living next to a trail was worst than living next to a cemetery for devaluation of your property's worth. Anyone living next to one of these trails already knew this fact, but it took a

12. November 20, 2007-The following link is to a great court win for northwestern Ohio residents who have been battling their local park district since 1997 about a trail through their property. The park district built a trail and would not pay the resident for the “taking” even though the residents owned the land. The residents went through many court fights at the local level which they lost, but they prevailed at the Ohio Supreme Court on November 20th. Now the park district either has to pay all their court costs and just compensation for the land taken, or the park district must remove the trail which is probably what will happen because of the costs. But the resident's attorney fees and costs will have to be paid anyway by the park district as the residents were very smart and sued under laws that allow attorney fees and cost to the prevailing party. Usually under American law, you have to pay your own attorney fees whether you win or lose, but there are some laws that allow recovery of attorney fees and costs which is why it is important to choose an attorney that knows what they are doing (most don't) when it comes to property rights. See the case results here-
<http://www.supremecourtofohio.gov/rod/newpdf/0/2007/2007-Ohio-6057.pdf>

14. **September 1, 2007- This is a quote by the U.S. Department of Transportation (DOT) Secretary Mary Peters. She told the media that 10 percents of federal gas tax is being spent on bike trails. She is 100 percent correct as the Transportation Enhancement Fund is mostly spent on bike trails, and the Enhancement Fund is 10 percent of the federal gas tax. "... there's about probably some 10 percent to 20 percent of the current [transportation] spending that is going to projects that really are not transportation, directly transportation-related... like bike paths or trails." U.S. Department of Transportation Secretary Mary Peters, Newshour with Jim Lehrer, Aug. 15, 2007**

14. News Brief - Summer 2007: <http://prfamerica.org/briefs/FL-HomebuyersCancelSales.html>

Florida Home Buyers Cancel \$41 Million in Sales After Public Access to Preserve is Disclosed

Miami-based Lennar Corp., one of the nation's largest home builders, offered to return deposits to 130 buyers and rescind contracts, with interest, after real estate broker Mike Morgan revealed that an adjacent nature preserve would require limited public access through the properties, according to an article by Michael Corkery in *The Wall Street Journal* on July 21st. A total of 114 buyers cancelled \$41 million in sales by accepting the offer.

15. Montgomery County, Pennsylvania, plans to condemn property for a trail after it loses lawsuit against owners

Montgomery County, Pennsylvania, lost in Pennsylvania Superior Court in 1999. It was a victory for 441 property owners who had faced the County's attempt in court since 1990 to assert ownership to an abandoned railroad bed that it wanted to convert to a trail. Unfortunately for the landowners, who were concerned about privacy, safety hazards, and liability, the County revised the design for the trail along Perkiomen Creek, and in February 2001 resolved to start condemnation procedures in against five property owners who would not give up.

"William Weirman, whose mother owns one of the properties off Route 29 in Perkiomen Township, reacted to the commissioners' actions with disgust," according the report by staff writer Carl Hessler, Jr., in the *Mercury*, which

reported the County Commissioners' decision on February 9. "We of course don't want the trail, but we can't afford to fight it," Mr. Weirman said.

16. Testimony of Nels Ackerson

Before the Committee on the Judiciary Subcommittee on Commercial and Administrative Law U.S. House of Representatives

June 20, 2002. The nation's leading attorney for property owners facing rails to trails Takings testified about the

"extravagantly wasteful litigation" caused by the failure of the federal government to set up a procedure

of compensation for landowners where land is expropriated under rails to trails.

<http://home.earthlink.net/~dick156/NELS-TES.RTF>

17.

19. ["Property Rights, Trails, & Open Space Preservation"](#) - By Carol W. LaGrasse, Speech to the Comprehensive Planning Advisory Committee, Town of Ballston, June 22, 2005

Private property rights were fundamental to the founders and protected other rights, but a brief chronology shows that U.S. Supreme Court rulings dealing with zoning and open space have both eroded and protected these rights. Trails threaten private property owners with liability and other problems, but reversionary title is protected. <http://prfamerica.org/indices/TrailsNatl-Index.html>

20. [Grants Have Agendas](http://prfamerica.org/indices/TrailsNatl-Index.html)” - By Carol W. LaGrasse, PRFA November 15, 2004
Government grants put never-ending streams of money toward preservationist objectives that diminish private property rights. Prime examples are National Heritage Areas, regional planning, trails, and government land acquisition.
<http://prfamerica.org/indices/TrailsNatl-Index.html>

21. [Liability for Recreational Uses of Private Property - New York State Protections Leave Landowners Vulnerable](http://prfamerica.org/indices/TrailsNatl-Index.html)” - By Carol W. LaGrasse (Property Rights Foundation of America Background Brief, January 2004)
In spite of the NY General Obligations Law’s protections for public-spirited property owners, the law’s exceptions and court decisions show that owners have liability to recreational and other users of their property where trails and recreational access exist. <http://prfamerica.org/indices/TrailsNatl-Index.html>

22. [Our Inalienable Heritage](http://prfamerica.org/indices/TrailsNatl-Index.html)” - By Carol W. LaGrasse, Welcome Address, Seventh Annual N.Y. Conference on Private Property Rights (PRFA, Oct. 18, 2003)
Taking a look at the ways our rights are being eroded and setting history back on a path toward justice. Countervailing the soft-sell, long-term approach of moneyed interests - conservation easements, scenic byways, heritage areas, trails - the high-sounding tools of landscape preservation
<http://prfamerica.org/indices/TrailsNatl-Index.html>

23. [“The Proposed Rondout Creek Canalway Trail-Defending Property Owners”](http://prfamerica.org/indices/TrailsNatl-Index.html)
- By Joseph Havranek, Rondout Landowners Alliance, Seventh Annual New York Conference on Private Property Rights (PRFA, October 18, 2003)
A classic of successful activism. FOIL Requests revealed that the true intent of the local project in Rosendale and Marbletown was a 108-mile trail linking the Hudson and Delaware Rivers. The Rondout Landowners Alliance got the information to the people and went on the offensive
<http://prfamerica.org/indices/TrailsNatl-Index.html>

24. [Saratoga County Canalway Trail Shrouded in Secrecy—Trail Planned along Champlain Canal Route through Saratoga and Washington Counties](http://prfamerica.org/indices/TrailsNatl-Index.html)” - By Carol W. LaGrasse (PRFA, October 22, 2002)
The New York State Canal Corporation, National Park Service, and the New York Parks and Conservation are very quietly garnering support for an elaborately planned proposal with federal funding to build an uninterrupted 26-mile trail along the active and abandoned Champlain Canal route from Waterford through Saratoga County, to be followed by another 22 miles through Washington County to Whitehall. The abandoned and active sections of the canal pass through or adjacent to private houses and backyards, businesses, farms, and other

private property, but the property owners are not being given information.
<http://prfamerica.org/indices/TrailsNatl-Index.html>

25. ADDRESSING THE FLAWS OF THE RAILS-TO-TRAILS ACT -
<http://www.law.ku.edu/oldsite/jrnl/v8n3/v8n3p158.html>

26. (a) *The opinion also made short work of an attempt by the government to blur a distinction historically made by the courts between physical and regulatory takings. When the taking claim is based on the government's physical occupation of private property, then the government's action is of paramount importance. Such occupation constitutes a per se taking, regardless of its extent or impact on the property owner's use or expectations. If the taking claim is based on regulatory action, by contrast, then other things--like the owners' reasonable expectations at the time they bought the property--are important. Compare Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419 (1982) [physical occupation] with Penn Central Transp. Co. v. City of New York, 438 U.S. 104 (1978) [regulatory].* <http://home.earthlink.net/~dick156/berger.htm>

(b) *The fact that the State of Vermont and the City of Burlington were the active violators of the Preseaults' rights did not relieve the United States of its responsibility, because it was the federal statute that authorized the taking in the first place. Whoever acted to take the Preseaults' land acted under federal authority. See Hendler v. U.S., 952 F.2d 1364 (Fed. Cir. 1991). It may make the folks in Congress feel good to exercise power. But when that exercise violates constitutional rights, there are consequences.*

<http://home.earthlink.net/~dick156/berger.htm>

(c) *Mike Berger was the attorney for the Preseaults in the 1990 U.S. Supreme Court case challenging the constitutionality of 16 USC 1247(d), a.k.a. the rails to trails act.*

Freedom Means Free Choice
No Exceptions
Enumclaw, Washington

