

In the United States Court of Federal Claims

No. 93-134 L
(Filed: March 5, 2003)

DOROTHY M. MOORE, *et al.*,

Plaintiffs,

v.

THE UNITED STATES,

Defendant.

Takings; Rails to Trails
Act; Damages for
Imposition of New
Easement.

William J. Travis and William C. Dunning, Greensfelder, Hemker & Gale,
P.C., St. Louis, Missouri, for plaintiff.

William J. Shapiro, Susan V. Cook, and Elsie Kappler, U.S. Department
of Justice, General Litigation Section, Environment & Natural Resources
Division, for defendant.

ERRATA

BRUGGINK, Judge.

Please substitute the attached page of the opinion in the above-entitled
case filed on December 19, 2002.

ERIC G. BRUGGINK
Judge

Indeed, it indirectly confirmed the court's prior determination that the current use is different in kind from a railroad use. In the final analysis, however, the court can only award severance damages if there is some reliable proof that these physical intrusions, concerns, and annoyances have actually translated into loss in market value. This analysis does not center on the perceptions of particular landowners. Instead, the question is whether the buying public, in light of the taking, would view the property as less attractive. Any other basis for an award would amount to tort damages.

Application to particular parcels

In light of the above rulings, we make the following more particularized findings as to the individual parcels.

Jensen:

The parties agree on the size of the right of way parcel: 0.17 acres. We accept Mr. Nunnink's assessment as to valuation, albeit not his 50% downward adjustment. On this appraisal in particular, Mr. Dinan's valuation of the land itself was not internally consistent. Accordingly, we assign a decrease in value to the property of \$6,000.

Moore:

In this instance, Mr. Nunnink's determined the right of way parcel to be 6.06 acres and assigned it a value of approximately \$15,000 per acre. Mr. Dinan's figure for size is 5.88 acres, while his per acre value is substantially lower, at approximately \$1,000 per acre. As to size, we have no reason to treat one of these figures as more accurate in this instance. Accordingly we use an averaged figure of 5.97 acres. We hold the government to its higher assessment of value because it is consistent with the court's acceptance of why no severance damages are awarded. The trail adds to the value of the upland; not the contrary.

Rehmeier Farms:

As to size of parcel, we accept Mr. Nunnink's larger figure of 1.9 acres. Mr. Dinan assumed a uniform 50 foot wide right of way, whereas it was in fact wider in places. We also accept Mr. Nunnink's higher value, \$2,500 per acre, of land, as explained above.

Harrison: