

PROPERTY RIGHTS

Many regulatory decisions by federal agencies are based on the belief that private ownership of property is harmful to the environment. Private property owners have very little recourse when regulators engage in overreach or regulatory takings. Because private property is a cornerstone of freedom, the taking of private property by regulatory agencies must be stopped.

MAJOR POINTS

- Environmental laws should not be allowed to erode the sanctity of private property, and the costs of national conservation programs should not be imposed through regulation upon private property owners.
- The Environmental Protection Agency and the Army Corps of Engineers are attempting to reclassify vast swaths of private property as “Waters of the United States” in order to place them under the government’s regulatory authority. If successful, this reclassification would result in a massive devaluation of the affected properties, and do so without an effective means for property owners to collect compensation. The only remedy for a property owner would be to file a claim with the Court of Federal Claims—but only after applying for and being denied a permit, all of which amounts to an extraordinarily time-consuming, costly, and often futile process.
- The U.S. Fish and Wildlife Service routinely designates vast acreages of private land as “critical habitat” for species listed under the Endangered Species Act. A landowner’s only recourse is to file a claim with the Court of Federal Claims—but only after applying for and being denied a permit.
- Although the Department of Commerce has been repeatedly rebuffed by the federal courts, including the United States Supreme Court,¹⁶ the federal government continues to abuse private landowners under the rubric of the Rails to Trails program. Under this program, abandoned railroad

right-of-ways are “rail-banked” for use as public biking and hiking trails. Landowners have been forced to pursue expensive litigation to obtain the fair market value of easements imposed on their property to accommodate the trails. Although many private landowners have been successful in dozens of cases, the federal government refuses to make reasonable offers for the easements, forcing citizens to re-litigate the same issues repeatedly.

- The Land and Water Conservation Fund turns vast acreages of private property into public land. This is an entirely money-driven program, often with no ecological, environmental, or economic benefits.

APPROPRIATIONS

Congress should prohibit agencies from expending any funds for:

- Grants for infrastructure development to states or other jurisdictions that invoke eminent domain for purposes of economic development (as in the *Kelo* case) rather than for public use, such as roads, utilities, or government buildings.
- Expanding the EPA’s regulatory definition of “Waters of the United States.”¹⁷
- The designation of critical habitat unless such designations consider the economic impact of both listing and critical habitat designations in the notice and comment period.
- Accepting any additional railroad right-of-ways into the Department of Transportation’s rail-banking inventory.
- Garnishing wages for the payment of fines or penalties imposed without court order by the EPA, the U.S. Fish and Wildlife Service, or the National Marine Fisheries Service.

LEGISLATION

To achieve the necessary statutory reforms to strengthen private property rights, Congress must:

- Amend the Endangered Species Act and the Clean Water Act to provide just compensation to landowners whose private property has been taken through wetlands regulations, as just compensation is due whether the taking of property for a public purpose is a physical taking or a regulatory taking.¹⁸

- Amend the Rails to Trails Act so that abandoned railroad right-of-ways can be rail-banked only if they are first purchased at fair-market value from the affected landowners when those fee holders would otherwise obtain title to the abandoned right-of-way under state and federal law.
- Amend the Debt Consolidation Improvement Act to prohibit the EPA, the Fish and Wildlife Service, and the National Marine Fisheries Service from garnishing wages without a court order to collect fines or other penalties, or to refer such cases to the Treasury Department for wage garnishment without a court order.

OVERSIGHT SUBJECTS

Congress should examine the following:

- The amount of property held by the federal government, whether there is any limiting principle on government acquisition of private property, and how environmental conditions on public lands compare to private property.
- The economic impacts on landowners of the government designation of private property as wetlands.
- The economic impacts on landowners of the government designating their property as “critical habitat” under the Endangered Species Act.
- The amount of private property taken through the rail-banking program, and the difficulties experienced by private property owners in obtaining compensation.