

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

DEBORAH E. BARRON, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 21-2181
	)	
UNITED STATES OF AMERICA,	)	Judge Edward H. Meyers
	)	
Defendant.	)	

**LANDOWNERS’ NOTICE OF ADDITIONAL AUTHORITY**

The plaintiff-landowners file this notice of additional authority to supplement their motion for partial summary judgment, response in opposition to the government’s cross-motion for summary judgment, and reply in support of their motion for partial summary judgment, ECF Nos. 31 and 39, with recent authority issued by the U.S. Court of Appeals for the Federal Circuit.

Less than two weeks ago, on November 22, the U.S. Court of Appeals for the Federal Circuit issued its decision in *Barlow v. United States*, No. 22-1381, 2023 WL 8102421 (Fed. Cir. Nov. 22, 2023). A copy of the Federal Circuit’s slip opinion accompanies this notice. *Barlow* is a Trails Act taking case in which the fundamental issue was the nature of the railroad’s interest in land used for a railway line. Three categories of properties were considered: 1) properties where the railroad’s interest was obtained through “instruments including the words ‘right of way’ (‘ROW Agreements’)...;” (ii) properties where the railroad’s interest was obtained through “instruments including the words ‘for railroad purposes’ (‘Purpose Agreements’)...;” and (iii) properties where the landowners “have not produced relevant instruments....” *Id.* at \*1.

The government argued the railroad held fee simple title to these strips of land. Judge Griggsby of this Court agreed with the government and, on that basis, granted the government’s motion for summary judgment. The landowners appealed. The Federal Circuit reversed Judge Griggsby. 2023 WL 8102421, at \*5-7. The Federal Circuit held,

We conclude that the ROW Agreements and the Purpose Agreements conveyed easements to [the railroad]. We also conclude that Appellants met their burden to show a cognizable property interest in parcel[s for which the landowners have not produced relevant instruments] and that [the railroad] could not have held interests greater than easements in these parcels. Accordingly, we reverse the grants of the government's motions for partial summary judgment and denials of Appellants' motions for partial summary judgment....

*Barlow*, 2023 WL 8102421, at \*9.

Because the Federal Circuit's recent decision in *Barlow* bears directly on those issues now pending before this Court in the parties' cross-motions for partial summary judgment, we file *Barlow* as supplemental authority.

Respectfully submitted,

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