

My family the “Therriault’s” are owners of the remaining portion of a US patented homestead located in North Pole, Alaska. For a number of years now we have had issues with the Alaska Railroad regarding reversionary and subsurface rights.

In 1946 Carl Finell submitted his homestead entry #06169 on 6/20/46. In 1947 the Alaska Railroad extended a spur line to Satellite Field (now known as Eielson Air Force Base), this spur line essentially bisected Finell’s homestead on the diagonal. Mr Finell was notified by the War Department that the railroad would **traverse** his property.<sup>1</sup> In 1949 Mr. Finell received his final patent US Patent #1127840 file #F06169 for the full 160 acres located in Section 9, Townsite 2, S., R.2 E. Fairbanks Meridian. Within the Patent was the reservation for the railroad right of way.

An there is, also, reserved to the United States a right of way for the construction of railroads, telegraph and telephone lines in accordance with the Act of March 12, 1947 (33 Stat.305) Excepting also, from the conveyance those certain pipeline and telephone lines, and all appurtenances thereto, **constructed by the United States** through, over, or upon the land herein described, and the right of the United States, its officers, agents, or employees to maintain, operate, repair, or improve the same **so long as needed or used for or by the United States.**<sup>2</sup>

Although under the 1914 law the Alaska Railroad had the ability to receive full title to the property through commendation, the federal government chose to instead use the traverse easement.

...to construct and build a railroad or railroads along such route or routes as he may so designate and locate, with the necessary branch lines, feeders sidings, switches, and spurs; to purchase or otherwise acquire all real ad personal property necessary to carry out the purposes of this Act; to exercise the power of eminent domain in acquiring property for such use, which use is hereby declared to be a public use by condemnation in the courts of Alaska in accordance with the laws now or hereafter in force; to acquire rights of way, terminal grounds, and all other rights, to purchase or otherwise acquire all necessary equipment...<sup>3</sup>

Mr. Finell continued to exercise his ownership to the property and issued an easement to GVEA on \_\_\_. The GVEA easements parallels the AK RR and is within the easement areas. On September 15 1969 my family purchased the remaining acreage for the Finell homestead including the acreage which the Alaska Railroad traverses.<sup>4</sup> While we have never objected to the Alaska Railroads ability to operate as a railroad we at no time ever relinquished any of our property rights.

In 2005 the Alaska Railroad moved to close what is known as the Ruby Crossing on our property. Our argument continues to be that the crossing should have remained open since it was

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<sup>1</sup> War Department letter 1/28/47 to affected entrymen

<sup>2</sup> Finell Patent

<sup>3</sup>Act of March 12, 1947 (33 Stat.305

<sup>4</sup> Therriault Deed

the Alaska Railroad that crossed the property not that the property crossed the easement.<sup>5</sup> During our discussion regarding the crossing closure we discovered that the Alaska Railroad had approached Congress to repeal sections 1208 and 1209 the Reversionary Clause of ARTA.<sup>6</sup> By requesting this repeal the Alaska Railroad has taken away the right for property owners to easements return to them if the Railroad no longer used the corridor.

It was also during this time that we learned that the Railroad is also collecting royalties on the fiber optics within our property. As a US patented homestead predating Alaska's statehood my family has the surface and subsurface for this property. Since the United States did not construct this fiber optic line, nor is the line owned by or needed for the United States, the reservation language should not apply. In fact there have been a number of class action suits regarding fiber optics royalties that have recently been settled in the lower 48 states.<sup>7</sup> We have continued to request an agreement be negotiate for a reasonable settlement to the use of our property with the Alaska railroad.

I believe that House Joint Resolution 38 is a good start. While we have never objected to the Alaska Railroad having an "exclusive" right to operate as the only railroad using the easement we do not believe that the United States government had the right or interest to transfer an "exclusive easement" which would diminish our property rights. In fact this issue has been known by the railroad for some time. In the Legislative Staff Reports to the Alaska Legislature this issue is raised.<sup>8</sup> For example, section 611 specifies that an "other disposition" is subject to valid existing rights, which introduces confusion.<sup>9</sup>

Related to this issue is the question of other third-party claims particularly outstanding against railroad holdings. These possible claims consist of other private sector interest which may have been established over the years on portions of the railroads 38,000 acres. Right-of-way lands appear to be the primary area where this type of problem is likely to exits. Indications suggest that in magnitude there are probably not that many problems of this nature. It should also be pointed out that our research suggest here is little to be gained by attempting to address this question in federal transfer legislation versus dealing with it later on a case by case basis.<sup>10</sup>

The major area of disagreement was the treatment of the purported claims against railroad properties.<sup>11</sup> Since transfer the Alaska Railroad has continued face issue related to prior existing claims.<sup>12</sup>

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<sup>5</sup> Letter to Phyllis Johnson General Council AKRR

<sup>6</sup> Alaska Railroad Transfer Act sections 1208 and 1209

<sup>7</sup> Information regarding fiber optic settlements

<sup>8</sup> March 30, 1982 Staff brief

<sup>9</sup> Alaska Railroad Transfer Team Office of the commission Dept of Transportation and Public Facilities December 15, 1983

<sup>10</sup> Staff Report

<sup>11</sup> Staff report Chronology

<sup>12</sup> Brunner Report April 16, 1998

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I believe HJR 38 is a good start at recognizing this difficult issue and the preexisting valid claims to property that now falls within the Alaska Railroad easement. I urge the Alaska Legislature to continue to look into this issue and assist my family and other Alaskans in finally receiving the proper adjudication of our claims.

Thank you  
Bonne' Woldstad  
COGS  
Citizen of Our Great State

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<sup>13</sup> Brunner Report pages 3-4