

“Government has no other end, but the preservation of property.”

John Locke

HJR 38 - Restoring Property Rights

OFFICE OF REPRESENTATIVE CHUCK KOPP

What's the Harm?

Hundreds of landowners along the Alaska Railroad Corporation right-of-way have had property rights confiscated and a cloud put on their title through ARC's unlawful "exclusive use" easement claim to the entire ROW; and

The ARC acted in violation of AS 42.40.285 in 2005 and 2006 when they circumvented required legislative approval by applying for and receiving from BLM land patents within a municipality that overlaid original Homestead federal land patents.

All of which has resulted in great harm to property owners and Municipalities along the Railbelt.

HJR 38 - A Call to Action

The preservation of property rights is government's highest duty

A declaration of what the Alaska Legislature believes –

1. Regarding private lands burdened by the railroad Right-of-Way (ROW), that conveyances to the Alaska Railroad under the Alaska Railroad Transfer Act of 1982 of an “exclusive use” easement or any other property interest, where not conclusively owned by the federal government at the time of the transfer, are contrary to law; and

- That any right, title, or interest not conclusively owned by the federal government at the time of the Alaska Railroad Transfer Act of 1982 that was erroneously conveyed to the Alaska Railroad, and certain interests in land conveyed to the Alaska Railroad without required legislative approval under AS 42.40.285, should be disclaimed as a matter of law

A Brief History

1914 - Alaska Railroad Act

The federal government owned and operated the Alaska Railroad and some of the lands over which the railroad operated. However, there was much Railroad right of way across private land that had passed into non-federal ownership. Throughout Alaska's history, many citizens received homestead land patents from the federal government.

When those homestead patents included lands crossed by the Alaska Railroad, the federal government still transferred ownership of the homestead to the citizen, but reserved for itself a specific property interest called **a right of way**, so that it could continue to use **100 feet** on either side of the **centerline** of the railroad to operate the railroad, as well as telegraph and telephone lines.

Brief History (cont'd)

The 1914 Alaska Railroad Act right-of-way gave the Railroad a right to use land owned by others, as identified in each federal patent, but ***it did not transfer a right to own and control the property in a manner unrelated to the patent reservation.***

This is an important distinction because some railroad rights-of-way actually grant *title* (fee simple interest) to the railroads.

By its very terms, the 1982 ARTA should have had no impact on pre-existing private property rights. Unfortunately, the land transfer to the state was implemented in a way that violated the constitutional rights of an unknown number of homesteaders and their successors.

What is a standard railroad “easement”?

A standard railroad easement does not include fee simple ownership of land, or necessarily the right to exclusivity. It is an “interest” in land owned by others, usually limited in the extent of occupancy and use authorized.

Most post-1871 railroads in the United States, including the Alaska Railroad, were created in accordance with the General Railroad Act of 1875, which granted a limited interest right-of-way for “railroad, telegraph and telephone.” This limited interest presently supports 80% of all railroad tracks in the United States.

The “rail properties” ARTA granted to the state included only the “right, title and interest” which belonged to the United States in 1983. If the United States did not own the property interest at issue, it was not included in the transfer. Each parcel should be evaluated to determine whether the railroad’s reservation encompasses its perceived property rights, or just a limited interest right-of-way.

What is an “exclusive use easement”?

ARTA also grants an “exclusive use” easement in areas where the federal government owned the underlying land, such as within Denali National Park and Preserve and areas subject to unresolved Native land claims.

Due to a fundamental misreading of ARTA, the Alaska Railroad claims that at least an “exclusive use” easement must be granted to the state in the entire right-of-way ***regardless of what the federal interest was in the right-of-way over private property***. On its face, such an interpretation only serves to take property rights away from Alaskans living along the railroad right-of-way, without due process of law.

No credible argument can be made that an “exclusive use” easement belongs to the Alaska Railroad without establishing what the private parties and the federal government actually owned in 1983.

1 Relating to certain conveyances to the Alaska Railroad Corporation under the Alaska
2 Railroad Transfer Act of 1982.

3 **BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 **WHEREAS** the Alaska Railroad was authorized by former 43 U.S.C. 975 et seq.
5 (Alaska Railroad Act, repealed January 5, 1985), which directly granted interests in federal
6 land for railroad rights-of-way for "the construction of railroads, telegraph and telephone
7 lines"; and

8 **WHEREAS** construction of the Alaska Railroad was substantially completed in 1923;
9 and

10 **WHEREAS**, before and after completion of the Alaska Railroad, the federal
11 government conveyed into private ownership land affected and burdened by the rights-of-way

5 (Alaska Railroad Act, repealed January 5, 1985), which directly granted interests in federal
6 land for railroad rights-of-way for "the construction of railroads, telegraph and telephone
7 lines"; and

8 **WHEREAS** construction of the Alaska Railroad was substantially completed in 1923;

9 and **WHEREAS**, before and after completion of the Alaska Railroad, the federal
10 government conveyed into private ownership land affected and burdened by the rights-of-way
11 under former 43 U.S.C. 161 et seq. (Homestead Act, repealed October 21, 1976) and similar
12 enactments; and

14 **WHEREAS** patents and other conveyance documents show a railroad right-of-way
15 reserved over that land; and

16 **WHEREAS** the federal government operated the Alaska Railroad from the time of

completion until January 14, 1983, and held in escrow during that time the right-of-way reserved in land patents and other conveyance documents, and

WHEREAS the state acquired the Alaska Railroad from the federal government in 1983 and created the Alaska Railroad Corporation to oversee operations as an instrumentality of the state operating under the former Department of Commerce and Economic Development; and

WHEREAS 49 U.S.C. 1201 - 1214 (Alaska Railroad Transfer Act of 1982) provided for the transfer from the federal government of "all rail properties of the Alaska Railroad to the State," and 49 U.S.C. 1202(1)(b) provided a definition of "rail properties of the Alaska Railroad" to mean "all rights, title, and interest of the United States" in those properties, and

3 **WHEREAS** the state acquired the Alaska Railroad from the federal government in
4 1982 and created the Alaska Railroad Corporation to oversee operations as an instrumentality
5 of the state operating under the former Department of Commerce and Economic
6 Development; and

7 **WHEREAS** 45 U.S.C. 1201 - 1214 (Alaska Railroad Transfer Act of 1982) provided
8 for the transfer from the federal government of "all rail properties of the Alaska Railroad to
9 the State," and 45 U.S.C. 1202(10) provided a definition of "rail properties of the Alaska
10 Railroad" to mean "all right, title, and interest of the United States" in those properties; and

11 **WHEREAS**, on January 14, 1983, the federal Alaska Railroad reserved and owned
12 right-of-way interests on private properties that were provided for in patents and other
13 conveyance documents; and

14 **WHEREAS**, if "all right, title, and interest of the United States" in the right-of-way
15 and any interests in a railroad, as described, are transferred, as defined in 45 U.S.C. 1202(10),

10 Railroad" to mean "all right, title, and interest of the United States" in those properties, and
11 WHEREAS, on January 14, 1983, the Federal Alaska Railroad received and owned
12 rights-of-way interests in private properties that were provided for in patents and other
13 conveyance documents, and
14 **WHEREAS**, if "all right, title, and interest of the United States" in the rights-of-way
15 did not include, at a minimum, an "exclusive-use easement" as defined in 45 U.S.C. 1202(6),
16 the easement could not have been included in the transfer under the plain language of the
17 Alaska Railroad Transfer Act of 1982; and

18 WHEREAS, during the transfer of rail properties under the Alaska Railroad Transfer
19 Act of 1982, the United States Department of the Interior erroneously issued, and the Alaska
20 Railroad Corporation accepted, an Interior conveyance of interests in rail property not owned
21 by the federal government, including "exclusive-use easements" as defined in 45 U.S.C.
22

14 WHEREAS, if "right, title, and interest" in the United States
15 did not include, at a minimum, an "exclusive-use easement" as defined in 45 U.S.C. 1202(6),
16 the easement could not have been included in the transfer under the plain language of the
17 Alaska Railroad Transfer Act of 1982; and

18 **WHEREAS**, during the transfer of rail properties under the Alaska Railroad Transfer
19 Act of 1982, the United States Department of the Interior erroneously issued, and the Alaska
20 Railroad Corporation accepted, an interim conveyance of interests in real property not owned
21 by the federal government, including "exclusive-use easements" as defined in 45 U.S.C.
22 1202(6); and

23 **WHEREAS** the interim or actual conveyance of any "right, title, and interest" in
24 property not held in federal ownership on January 14, 1983, is contrary to the Alaska Railroad
25 Transfer Act of 1982 and to privately held property rights recognized by common law; and

26 WHEREAS property owners of land burdened by an easement can continue to have a
27 substantial common law interest and remaining rights of use in the easement area; and

28 WHEREAS the claim or transfer of an "exclusive-use easement" over what is

WHEREAS property owners of land burdened by an easement can continue to have a substantial common law interest and remaining rights of use in the easement area; and

WHEREAS the claim or transfer of an "exclusive-use easement" over what is otherwise reserved in patent and conveyance documents as a lesser property interest would constitute an unauthorized taking of validly held property rights, creating enormous liability for the state; and

WHEREAS, under AS 42.40.285, the Alaska Railroad Corporation must receive legislative approval before applying for or receiving a grant of federal land within a municipality, and the corporation has applied for and received transfers under the Alaska Railroad Transfer Act within a municipality without the requisite legislative approval; and

WHEREAS the exception under AS 42.40.285(5)(C) for a conveyance of all rail properties of the Alaska Railroad, as defined in 45 U.S.C 1202(10), would not apply to transfers of property not conclusively owned by the federal government at the time of transfer; and

WHEREAS the preservation of private property rights is secured by the Constitution of the State of Alaska and the United States Constitution;

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA that the Alaska State Legislature believes, as it pertains to privately held properties in the state that contain or are required to contain a reservation for

8 ~~WHEREAS~~ and

9 ~~WHEREAS~~ the preservation of private property rights is secured by the Constitution
10 of the State of Alaska and the United States Constitution;

11 **BE IT RESOLVED** that the Alaska State Legislature believes, as it pertains to
12 privately held properties in the state that contain or are required to contain a reservation for
13 the purposes set out in the Alaska Railroad Act, all conveyances to the Alaska Railroad
14 Corporation under the Alaska Railroad Transfer Act of 1982 that purport to convey an
15 "exclusive-use easement" as defined in 45 U.S.C. 1202(6), in which associated rights, titles,
16 or interests were not conclusively owned by the federal government at the time of the transfer,
17 are contrary to law; and be it

18 ~~FURTHER RESOLVED~~ that the Alaska State Legislature believes that certain

FURTHER RESOLVED that the Alaska State Legislature believes that certain conveyances to the Alaska Railroad Corporation under the Alaska Railroad Transfer Act of 1982 that were sought or obtained without the legislative approval required under AS 42.40.285 are contrary to law; and be it

FURTHER RESOLVED that the Alaska State Legislature believes that any right, title, or interest not conclusively owned by the federal government at the time of the Alaska Railroad Transfer Act of 1982 that was erroneously conveyed to the Alaska Railroad Corporation, and certain interests in land conveyed to the Alaska Railroad Corporation without the legislative approval required under AS 42.40.285, should be disclaimed as a matter of law; and be it

without the legislative approval required under AS 45.40.205, should be declared as a matter of law, and he is

FURTHER RESOLVED that the Alaska State Legislature urges the Alaska delegation in Congress to recognize the views of the Alaska State Legislature expressed in this resolution and to take appropriate action to encourage the recognition of validly held private property rights that were not conveyed under the Alaska Railroad Transfer Act of