

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

## **HJR 38 - RESTORING PROPERTY RIGHTS**



Office of Representative Chuck Kopp

# PURPOSE

HJR 38 is targeted at recent Alaska Railroad Corporation wrongful claims to an “exclusive use easement,” conveyed over property patented to others where the United States did not conclusively hold such an interest in the right-of-way at the time of transfer from federal to state ownership in 1983.

# WHAT'S THE HARM?

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

The Alaska Railroad 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.

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Calls upon our congressional delegation to help resolve wrongful claims to the right-of-way as a result of misapplication of the Alaska Railroad Transfer Act.

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Affect any ***lawfully obtained*** property of the Alaska Railroad Corporation, including any right, title, or interest which passed from federal to state ownership in 1983.



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Remove the Alaska Railroad Corporation's ability and duty to police and keep tracks and right-of-way safe, affect their speeds, etc.

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Affect any ***lawfully obtained*** property of the Alaska Railroad Corporation, including any right, title, or interest which passed from federal to state ownership in 1983.

3

Impact the railroad's ability to profit or its economic model.

# 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.

# A BRIEF HISTORY

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.

The federal government cannot transfer a property interest to the state of Alaska if it never owned the property interest in the first place.

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# 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**. Is an interest in land owned by another that entitles its holder to a specific limited use or enjoyment. It can involve a general or specific portion of the property.

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?

An “exclusive use” easement is an easement that the holder has the right to enjoy to the **exclusion** of all others.

ARTA 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.

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**BE IT RESOLVED** 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 the purposes set out in the Alaska Railroad Act, all conveyances to the Alaska Railroad Corporation under the Alaska Railroad Transfer Act of 1982 that purport to convey an "exclusive-use easement" as defined in 45 U.S.C. 1202(6), in which associated rights, titles, or interests were not conclusively owned by the federal government at the time of the transfer, 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

**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 1982

# WHO SUPPORTS HJR 38?

Adventure 60  
North, Seward

Municipality of  
Anchorage

Alaska Association  
of Realtors

Anchorage  
Association of  
Realtors

The Bradley  
Company  
Construction

Dimond Center

Flying Crown  
Homeowners  
Association

Lynden Air Cargo

National  
Association of  
Reversionary  
Property Owners

Old Seward  
Oceanview  
Community  
Council

South Anchorage  
Red Robin

Taku Campbell  
Community  
Council

Talkeetna  
Historical Society

Tantikil Unlimited  
– Land and  
Resource  
Management

Countless private  
property owners  
along the Railroad  
Right-of-Way

# PROPERTY OWNERS SPEAK OUT

"The land under the Dimond Center was purchased directly from the original homesteader, the Tetze family. It is therefore subject to the Homestead act in which we own the property to the center line of the railroad right of way (along the western border of Dimond Center) subject to the Railroad Act of 1914.

The exclusive use easement that the AK RR surreptitiously received not only clouds our title but the inability to access and denial of use constitutes an economic taking of millions of dollars!"

Hugh Ashlock, Managing Member - Dimond Center

# PROPERTY OWNERS SPEAK OUT

“As 34 year residents of our home on Jarvi Dr. in Anchorage, we support your efforts on HJR 38. I wish I could write more but I am limited in time. I have spent day and night in hospital facilities by my husband's side for the last 5 months. I am told he is dying. He is a veteran whose illness and disabilities are directly related to his service of our country. His and my goal is to get him home...to be at peace. We don't need the AKRR robbing us of the peace of mind that we still live in a country where our property rights and homes are secure and protected by his military sacrifice and those of others.”

Joan Stolle

# PROPERTY OWNERS SPEAK OUT

“I am a property owner affected by the Alaska Railroad easement. Alaska Railroad's attempt to re-characterize the railroad easement on my property as an "exclusive-use" easement is an illegal taking of my property rights, a cloud on the title to my property and has a detrimental effect on the value of my property - as well as hundreds of other Alaska property owners adjoining the rail belt. I am also a lawyer that has extensively researched this issue for a client in the Oceanview area. I have reviewed, and strongly support the legal analysis and statements in your HJR 38 Overview and Backdrop as well as the contents of Resolution 38 itself.”

Roy Longacre, Esq.