

Testimony Before the Alaska House State Affairs Committee – March 1, 2018

My name is Robert Gastrock. I had hoped to provide these comments regarding HJR 38 in person, but am on an airplane traveling back to Alaska today. I respectfully request you accept this written statement in my absence.

My wife Judy and I have lived in South Anchorage for 45 years. In 1976, we moved to our home on Nora Drive in the Oceanview area. The Alaska Railroad right-of-way (ROW) passes over the rear portion of our lot. We estimate that some 45,000 Alaska Railroad trains have passed behind our house since we moved there.

We like the railroad. Our kids and grandkids still get excited whenever a train goes by, and we often join them in waving to the tourists arriving in Southcentral Alaska on their once-in-a-lifetime visit.

We bought our home with the understanding that we could use the back portion of our property to plant grass, park our airplane and taxi to and from the Flying Crown Airstrip, which the railroad easement also traverses. We have done so for more than 40 years. We are now told that “exclusive use” of the ROW allows the Railroad to fence off the entire 200 ft ROW, even though they only use a small portion of it, and our use as property owners has no impact on their operations. This would be devastating, as it would completely block access to the runway.

The easement held by the federal railroad (and reserved in the Patent granted to Tom Sperstad, the homesteader who preceeded us in ownership of the land) allowed us to use our land in a manner that did not adveresely impact railroad operations. Exclusive use by the railroad takes that right away. Our rights were taken without due process. We were never informed that a possessory change was contemplated or implemented. This is a violation of our Constitutional rights under the 5th Amendment.

The Railroad argues that EU is necessary to ensure safe operations. Yet 80% of all railroads in the U.S.function full well under the guidelines of the Railroad Act of 1875, which established that railroads could operate safely with a simple easement over the property of others. How can the railroad justify that charging landowners to use their own property ensures any safer operations? The answer: they can't! And that is why they embarrassingly withdrew the Railroad ROW Use Policy (RRUP) after they were caught with their hand in the cookie jar!

The Railroad has stated that losing EU rights will destroy their financial model. I thought their business was to profitably run a railroad, not make money as a land baron. How dare they argue that they are entitled to complete control of someone else's property in order to generate money for themselves?

With several others concerned individuals, I have spent countless hours trying to resolve this issue since I became aware of it more than 5 years ago. It is consuming my retirement years, and jeopardizes the value of my home. I am tired of fighting a bureaucracy that doesn't seem to care about property rights or government overreach.

We have met personally with many public officials to request help restoring of our property rights, including Senator Murkowski, Representative Young, Governor Walker, numerous State Legislators, and Mayor Berkowitz. All agree that a wrong was done, but none have stepped forward to fix the problem. I guess business alliances, political pressure, and the fear of losing campaign contributions are more important to them than protecting the rights of their constituents. That is sad.

Representative Kopp is an exception, and a breath of fresh air. Since we explained the problem to him, two years ago, he has taken the moral high ground and worked tirelessly to correct the problem. We know this has cost him political capital. But he persists, and we appreciate it. As a result of his efforts, some symptoms of the EU disease, like RRUP, have been stifled – at least temporarily. But the disease persists. Until the EU claim is extinguished from lands previously conveyed to private parties, there is no guarantee the Railroad will not resume their bullying tactics. Conflicting EU patents create clouds on titles, restrict reasonable enjoyment of our land, and diminish our property values.

This committee is in a position to join Representative Kopp and a growing number of Alaskans who now realize what has happened and are demanding that this wrong be righted. I urge you to endorse passage of HJR 38 so that our property rights can be expeditiously restored.

Thank you,
/s/
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