No. 22-35573

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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ALASKA RAILROAD CORPORATION,

Plaintiff – Appellee,

v.

FLYING CROWN SUBDIVISION ADDITION NO. 1 AND ADDITION NO. 2 PROPERTY OWNERS' ASSOCIATION, a non-profit,

Defendant – Appellant,

and

MUNICIPALITY OF ANCHORAGE, DEP'T OF LAW,

Intervenor-Defendant.

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On Appeal from the United States District Court
for the District of Alaska
Honorable Joshua M. Kindred, District Judge

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# APPELLANT'S OPENING BRIEF

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## CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, Defendant – Appellant Flying Crown Subdivision Addition No. 1 and Addition No. 2 Property Owners Association, a nonprofit corporation organized under the laws of Alaska, hereby states that it has no parent companies, subsidiaries, or affiliates that have issued shares to the public.

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## INTRODUCTION

Defendant-Appellant Flying Crown Subdivision Addition No. 1 and Addition No. 2 Property Owners' Association (Flying Crown) is a group of homeowners near Anchorage, Alaska. Many of the homeowners are pilots and Flying Crown's homes are adjacent to an airstrip. ER-173. For decades, many of the homeowners have used the airstrip to fly small planes and some homeowners purchased their homes specifically for the proximity to the airstrip. *Id.*

A portion of Flying Crown's property is covered by an easement held by Appellee the Alaska Railroad Corporation (ARRC), which is a public corporation that is an instrumentality of the State of Alaska. Alaska Stat. § 42.40.010. Recently, ARRC has claimed that the company can restrict Flying Crown's use of the airstrip because ARRC has exclusive rights under the easement, a small part of which overlaps with the airstrip. ER-174. ARRC filed this case requesting the District Court to quiet title to the easement and to declare that the easement is a unique "exclusive-use" easement as specifically defined in the Alaska Railroad Transfer Act of 1982 (ARTA), Pub. L. No. 97-468, §§ 601–615,

96 Stat. 2543 (Jan. 14, 1983), *codified at* 45 U.S.C. § 1201, *et seq*. *See* ER-194.

Flying Crown's predecessor-in-interest, Thomas Sperstad, acquired the property when the United States issued him a patent in 1950. ER-189. The patent "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, 1914 (38 Stat. 305) [the Alaska Railroad Act of 1914]." *Id.* In 1983, Congress passed ARTA, which transferred the federal government's interests in the reserved right-of-way to the State of Alaska.

When the federal government issued Sperstad the patent in 1950, it did not—and could not—reserve a unique type of "exclusive-use" easement created by a statute enacted three decades later. Rather, the patent reserved a nonexclusive easement, as defined by the Alaska Railroad Act of 1914. ER-189. When the federal government transferred the easement to the State of Alaska, it transferred only what it had reserved in the Sperstad Patent, and nothing more.

The District Court erred in holding that ARRC holds an "exclusive-use" easement across Flying Crown's property and this Court should reverse the judgment of the District Court.

## JURISDICTION

ARRC alleged that the District Court had federal question jurisdiction under 28 U.S.C. § 1331 because resolution of its claims turned on interpretation of federal law. ER-194.

This Court has jurisdiction under 28 U.S.C. § 1291 because the appeal is from the final judgment of the District Court which disposes of all parties' claims. The appeal is timely under Federal Rule of Appellate Procedure 4(a)(1)(B)(ii) and 4(a)(4)(A)(iv). Judgment was entered on April 5, 2022. ER-10. Flying Crown filed a timely motion to alter or amend the judgment under Federal Rule of Civil Procedure 59(e). The District Court denied the motion on June 30, 2022. ER-4. The notice of appeal was filed on July 22, 2022. ER-204.

## STATUTORY AUTHORITIES

All applicable statutes are set out in the addendum to this brief.

## ISSUES PRESENTED FOR REVIEW

1. Whether the federal government reserved an "exclusive-use" railroad easement, as defined by the 1982 Alaska Railroad Transfer Act, when it conveyed Flying Crown's property to its predecessor-in-interest in the 1950 Sperstad Patent.

2. Whether the Alaska Railroad Transfer Act purports to transfer an "exclusive-use" easement to Alaska across Flying Crown's property and, thus, whether the patent issued pursuant to the Act transferred to the State an "exclusive-use" easement across Flying Crown's property.

3. Whether the federal government—despite only reserving a nonexclusive easement in the 1950 Sperstad Patent—could transfer an "exclusive-use" easement across Flying Crown's property and, thus, whether Alaska Railroad Company legally holds such an easement across the property.

## STATEMENT OF THE CASE

### I. Factual and Legal Background

#### A. The Alaska Railroad

The Alaska Railroad Act of 1914 authorized the President to locate, construct, and operate a federal railroad in Alaska of up to 1,000 miles,

to purchase or otherwise acquire real and personal property, including by eminent domain, and "to acquire rights of way, terminal grounds, and all other rights" necessary for the construction of the federal Alaska Railroad. Act of March 12, 1914, 38 Stat. 305 (formerly codified at 43 U.S.C. § 975, *et seq*. and, prior to statehood, at 48 U.S.C. § 301, *et seq*.) ("1914 Act"), *repealed* Jan. 14, 1983, by ARTA, Pub. L. No. 97-468, Title VI, § 615(a)(1).

The 1914 Act also directed the federal government to reserve a right-of-way for the Alaska Railroad in land patents issued in Alaska after its enactment. Act of March 12, 1914, 38 Stat. at 307. Specifically, the act provided that the patents will reserve "to the United States a right of way for the construction of railroads, telegraph and telephone lines to the extent of one hundred feet on either side of the center line of any such road" and "twenty-five feet on either side of the center line of any such telegraph or telephone lines." *Id.*

### B. The Sperstad Patent and Flying Crown Subdivision

On February 15, 1950, the United States issued federal land patent No. 1128320 to Thomas Sperstad ("Sperstad Patent"), ER-189, Flying Crown's predecessor-in-interest. The Sperstad Patent expressly

"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, 1914 [(]38 Stat. 305)." *Id.* At the time the patent was issued, the Alaska Railroad's track already traversed the 120-acre Sperstad Homestead from north to south.[1]

An airstrip was developed on the Sperstad Homestead in the 1950s along the railroad right-of-way. *Oceanview Homeowners Ass'n, Inc. v. Quadrant Constr. & Eng'g*, 680 P.2d 793, 795 (Alaska 1984). A portion of the airstrip overlaps with the outer edges of the right-of-way. ER-173. In 1965, John Graham purchased what is now the Flying Crown Subdivision, and when the subdivision was developed a portion of the airstrip was included. *Oceanview Homeowners Ass'n, Inc.*, 680 P.2d at 795.

Flying Crown's homeowners, many of whom are pilots and who purchased their homes because of this airstrip access, continue to use the airstrip today. ER-173. And several of the homeowners have invested time and money to construct dedicated airplane hangars on their lots

[1] ARRC, *ARRC Historic Timeline* at 5, (updated July 2022), www.alaskarailroad.com/sites/default/files/Communications/Alaska_Railroad_Historic_Timeline.pdf.

with the expectation that they will continue to access and use the airstrip. *Id.*

Flying Crown has always maintained a good relationship with the Alaska Railroad, under both federal and state ownership. ER-173. The Flying Crown homeowners have always respected the need for safe railroad operations, and honored the rights of the easement holder. ER-173–74. In the early 1970s, Flying Crown erected a fence a safe distance from and parallel to the tracks but within the easement area, to inhibit casual pedestrian crossing. ER-173. Flying Crown still maintains the fence today. *Id.* There have never been any instances when the fence, the airstrip, Flying Crown, or its homeowners have impeded railroad operations. ER-174.

### C. ARTA and Transfer of Railroad to the State of Alaska

In 1983, Congress enacted the Alaska Railroad Transfer Act, 45 U.S.C. §§ 1201–14, and authorized the transfer of the federal Alaska Railroad to the State of Alaska. The statute authorized the transfer of nearly all of the federal property rights and interests to Alaska's new Alaska Railroad Corporation so that the State could take over operation of the railroad. Pursuant to ARTA, ARRC received all of the described

personal and real property interests—no more, and no less—that were owned by the federal government at the time of transfer. These interests included the 1914 Act right-of-way reserved in the Sperstad Patent.

ARTA listed four separate categories of property that the act would transfer from federal to state ownership, each of which had its own particular method of conveyance. 45 U.S.C. § 1203(b)(1). The first category included all federal personal property, but not real property, and was to be conveyed by delivery of a bill of sale. *Id.* § 1203(b)(1)(A). The second category included all federal real property interests that were "not subject to unresolved claims of valid existing rights" and was to be conveyed by means of an "interim conveyance." *Id.* § 1203(b)(1)(B). The third category included all rail properties not included in the first two categories—*i.e.*, property subject to unresolved claims of valid existing rights—and was to be conveyed by means of "an exclusive license … pending conveyances in accordance with the review and settlement or final administrative adjudication of claims of valid existing rights." *Id.* § 1203(b)(1)(C) The fourth and final category encompassed the railroad right-of-way within Denali National Park, which was to be conveyed by delivery of a deed.

In 1985, two years after the enactment of ARTA, the federal government issued the "interim conveyance" for right-of-way reservations and other uncontested interests in real property. ER-39. Most legal descriptions of the properties to be conveyed included "all right, title and interest" of the United States, including in the "Railroad Right-of-way as defined by Section 603(11) of ARTA[.]" *See, e.g.*, ER-43. But descriptions for just over 32 miles of right of way (740 acres) in the Anchorage Recording District purported to convey "not less than an exclusive use easement," ER-48–51, an interest different from the interest reserved in the Sperstad Patent, ER-189.

The interim conveyance also stipulated that, "[u]pon completion of the survey of the real property hereby granted and conveyed, a patent for said real property will be issued by the United States to the Alaska Railroad Corporation pursuant to Secs. 604(b)(2) and (3) of ARTA." ER-51. In 2006—twenty-three years after ARTA's passage—the United States suddenly issued to ARRC a patent that again purported to vest an exclusive-use easement across many previously-patented properties, including Flying Crown's property. ER-190–193. Flying Crown was not notified when either the interim conveyance or the 2006 patent was

issued and is unaware of any administrative process or adjudication that led to their issuance.

In 2018, the State of Alaska enacted House Bill 119, which clarified that, when the federal government transferred the railroad right-of-way, it did not transfer, and the State did not receive, any interest the federal government did not own at the time of ARTA's enactment. Alaska Stat. § 42.40.350(a), as amended. The statute explicitly prohibited ARRC from asserting an interest in the right-of-way that was not federally owned at the time of transfer, and from applying for or acquiring any land or interest in land from the federal government that was not federally owned at the time of transfer. Alaska Stat. §§ 42.40.350(a), 42.40.410.

Despite House Bill 119, ARRC has continued to assert fee rights for lands underlying its rights-of-way as part of its ratemaking process. An early 2021 draft appraisal of ARRC's lands reveals that ARRC directed the appraiser to assume that it owned its rights-of-way in fee simple, and to value it accordingly. ER-58–171. This continues a years-long policy of charging significant fees for use of any portion of its rights-of-way, including those portions not necessary for the operation of the railroad. For example, prior to public outcry over the practice, ARRC

charged Flying Crown $4,500 per year to use the small portion of property underlying the right-of-way. ER-174. That fee has been dropped under a current agreement with Flying Crown.

## II. Proceedings Below

On September 21, 2020, ARRC filed this action, seeking to quiet title to the right-of-way across Flying Crown's property, and requesting "a finding that ARRC's interest in that [right-of-way] includes the entire interest previously held by the United States federal government, and all rights contained within the definition of an 'exclusive use easement' under 45 U.S.C. § 1202(6)." ER-203.

Flying Crown filed its answer on November 12, 2020, and, eight days later, ARRC filed a motion for summary judgment. *See* District Court Dkt. Nos. 11, 13. On December 3, 2020, ARRC moved to stay discovery until resolution of its motion for summary judgment. Flying Crown opposed the motion, but on March 12, 2021, the District Court granted the motion and stayed discovery pending resolution of the motion for summary judgment. ER-175.

On August 16, 2021, Flying Crown filed a cross-motion for summary judgment and an opposition to ARRC's motion for summary

judgment. Following briefing and hearings on the motions, the District Court granted ARRC's motion for summary judgment and denied Flying Crown's cross-motion on March 10, 2022. ER-11–38. The District Court concluded that (1) the federal government reserved at least an "exclusive-use" easement, as defined in the 1982 Alaska Railroad Transfer Act, when it issued the Sperstad Patent in 1950 and (2) the entirety of the federal government's reserved interest was transferred to ARRC pursuant to ARTA and perfected via patent in 2006. ER-38.

Judgment was entered on April 5, 2022. ER-10. On April 7, Flying Crown filed a motion to alter or amend the judgment, which the District Court denied on June 30, 2022. ER-4. Flying Crown filed its timely notice of appeal on July 22, 2022. ER-204.

## SUMMARY OF THE ARGUMENT

The District Court erred in holding that ARRC holds at least an "exclusive-use" easement, as defined by ARTA—a statute enacted more than three decades after the federal government reserved the right-of-way at issue here—across Flying Crown's property. *See* ER-38. When the federal government patented the property to Flying Crown's predecessor-in-interest, it reserved a right-of-way as defined by the 1914

Alaska Railroad Act. ER-189. Nothing in the 1914 Act or the Sperstad Patent indicates that the federal government reserved anything more than a simple easement—that is, a nonexclusive easement—for railroad purposes.

The District Court also erred in holding that ARTA intended to, and did, transfer at least an "exclusive-use" easement across Flying Crown's property. The exclusive-use easement language in ARTA only applies to lands subject to "unresolved claims of valid existing rights" at the time ARTA was passed. 45 U.S.C. § 1205(b). Because the land at issue here was patented several decades prior to ARTA's enactment, the land was not subject to "unresolved claims of valid existing rights" in 1983. Any other interpretation of ARTA, like the interpretation adopted by the District Court here, would result in a taking of private property without just compensation, in violation of the Fifth Amendment to the Constitution.

Finally, even if the District Court were correct that ARTA intended to transfer an "exclusive-use" easement across Flying Crown's property, ARRC does not legally hold an "exclusive-use" easement across the property. A grantor, including the federal government, cannot transfer

property it does not own. *Beard v. Federy*, 70 U.S. (3 Wall.) 478, 491 (1865). Therefore, even if the federal government intended to transfer an "exclusive-use" easement, it only transferred what it owned at the time ARTA was enacted, *i.e.*, the nonexclusive easement it reserved in the Sperstad Patent.

## STANDARD OF REVIEW

This Court reviews "de novo the district court's grant or denial of summary judgment," and "determine[s], viewing the evidence in the light most favorable to the nonmoving party, whether there are any genuine issues of material fact and whether the district court correctly applied the relevant substantive law." *First Resort, Inc. v. Herrera*, 860 F.3d 1263, 1271 (9th Cir. 2017) (quotations omitted).

## ARGUMENT

### I. The Alaska Railroad Corporation Does Not Have the Right to Exclude Flying Crown's Use of Its Airstrip Because the Sperstad Patent Did Not Reserve an "Exclusive-Use" Easement

The District Court erred in holding that ARRC has at least an "exclusive-use" easement, as defined by ARTA, across Flying Crown's property. The term "exclusive-use" easement was first used in ARTA, almost seventy years after the 1914 Act and over thirty years after the

federal government reserved a railroad right-of-way in the Sperstad Patent. 45 U.S.C. § 1202(6). At common law, easements are presumed to be nonexclusive, unless the deed explicitly states otherwise. Restatement (Third) of Property (Servitudes) § 4.9 (2000). Even when a deed grants or reserves an exclusive easement, the default rule is that the easement holder only has exclusive use of the right to use facilities installed in furtherance of the easement's purpose, and the owners of the property can use other portions of the servient estate so long as they do not unreasonably interfere with the use of the easement. Restatement (Third) of Property (Servitudes) § 5.9 cmt. b (2000).

Nothing in the 1914 Act or the Sperstad Patent indicates that the federal government reserved an "exclusive-use" easement that allows ARRC to exclude Flying Crown from using the surface estate in ways that do not unreasonably interfere with the operation of the railroad.

### A. The 1914 Act and the Sperstad Patent Reserved a Nonexclusive Easement

"The solution of [ownership] questions [involving the railroad grants] depends, of course, upon the construction given to the acts making the grants[.]" *Leo Sheep Co. v. United States*, 440 U.S. 668, 682 (1979) (quoting *Winona & St. Peter R. Co. v. Barney*, 113 U.S. 618, 625

(1885)). Thus, a railroad act, and the interest granted or reserved under the act, should "receive such a construction as will carry out the intent of Congress, however difficult it might be to give full effect to the language used if the grants were by instruments of private conveyance." *Id.* (quoting *Winona*, 113 U.S. at 625). "To ascertain that intent we must look to the condition of the country when the acts were passed, as well as to the purpose declared on their face, and read all parts of them together." *Id.* (quoting same).

The stated purpose of the 1914 Act and the condition of the country at the time of its enactment demonstrate that Congress only intended to reserve a nonexclusive easement for railroad purposes in patented lands in Alaska.

### 1. The purpose of the 1914 Act was to assist in settling Alaska, and the statute reserves an easement across patented lands to achieve that purpose

Congress passed the 1914 Alaska Railroad Act to connect the harbors on the Pacific Coast of Alaska with the interior of Alaska, for the purpose of "aid[ing] in the development of the agricultural and mineral or other resources of Alaska, and the settlement of the public lands therein …." Act of March 12, 1914, 38 Stat. at 306. As with

previous railroad acts, Congress intended for the Alaska Railroad to assist in developing and settling a newly acquired portion of the country. *See Marvin M. Brandt Revocable Tr. v. United States*, 572 U.S. 93, 95, (2014) ("In the mid-19th century, Congress began granting private railroad companies rights of way over public lands to encourage the settlement and development of the West.").

Prior to 1871, Congress achieved its development and settlement goals through a "lavish policy of grants from the public domain" to railroad companies. *Great N. R. Co. v. United States*, 315 U.S. 262, 273 n.6 (1942). Congress passed numerous statutes that granted to railroad companies rights-of-way through the public land along with outright grants of land in fee along the rights of way. *Brandt*, 572 U.S. at 96–97 (citing P. Gates, *History of Public Land Law Development* 362–68 (1968)). The land was conveyed in checkerboard blocks and then the railroad could either develop the lots or sell them. *Id.* Under these pre-1871 acts, "the rights of way conveyed in such land-grant acts [were] held to be limited fees." *Great N. R. Co.*, 315 U.S. at 273 n.6.

But there was "sharp change in Congressional policy with respect to railroad grants after 1871 …." *Great N. R. Co.*, 315 U.S. at 275. In the

1860s, the public began to resent these generous land grants to railroads. *Brandt*, 572 U.S. at 97. "Citizens and Members of Congress argued that the grants conflicted with the goal of the Homestead Act of 1862 to encourage individual citizens to settle and develop the frontier lands." *Id.* "By the 1870s, legislators across the political spectrum had embraced a policy of reserving public lands for settlers rather than granting them to railroads." *Id.*

After 1871, Congress stopped land grants to the railroads and instead granted them "the right-of-way" through federal lands. *Id.* at 97–98. As an 1872 House resolution explained, "the policy of granting subsidies in public lands to railroads and other corporations" was discontinued and instead "every consideration of public policy and equal justice to the whole people requires that the public lands should be held for the purpose of securing homesteads to actual settlers, and for educational purposes, as may be provided by law." Cong. Globe, 42d Cong., 2d Sess., 1585 (1872); *see also Brandt*, 572 U.S. at 97.

In 1875, Congress passed the General Railroad Right-of-Way Act of 1875, 18 Stat. 482, 43 U.S.C. §§ 934–939, which removed the need for Congress to grant individual rights-of-way to railroads and further

solidified the change in national policy towards settlement. *Brandt*, 572 U.S. at 98. The 1875 Act provided that "[t]he right of way through the public lands of the United States is granted to any railroad company" meeting certain requirements, "to the extent of one hundred feet on each side of the central line of said road." 43 U.S.C. § 934.

With the 1875 Act, Congress intended to "promote the building of railroads through the immense public domain remaining unsettled and undeveloped at the time of its passage." *United States v. Denver & Rio Grande Ry. Co.*, 150 U.S. 1, 8 (1893). Unlike the pre-1871 railroad acts, the 1875 Act "was not a mere bounty for the benefit of the railroads that might accept its provisions." *Id.* Instead, it "was legislation intended to promote the interests of the government in opening to settlement and in enhancing the value of those public lands through or near which such railroads might be constructed." *Id.* In accordance with this policy, 1875 Act rights-of-way were "simple easement[s]" and nothing more. *Brandt*, 572 U.S. at 110.

Thus, after 1871, Congress facilitated the development of unsettled public lands by directly granting land patents to homesteaders subject to easements for railroad rights-of-way. *Denver & Rio Grande Ry. Co.*,

150 U.S. at 8; 43 U.S.C. § 937. The 1914 Act achieved its Alaska development goals in a similar manner, by directly granting land patents to homesteaders and reserving railroad rights-of-way in patented lands. Act of March 12, 1914, 38 Stat. at 306–07. As such, the 1914 Act uses the same term—"right-of-way"—as the 1875 Act when referring to the railroad's interest. The use of the same term, placed in context of the post-1871 change in railroad policy, demonstrates that Congress intended to reserve the same interest in the 1914 Act that it granted in the 1875 Act and other post-1871 Acts, *i.e.*, a simple easement. *See Smith v. City of Jackson, Miss.*, 544 U.S. 228, 233 (2005) ("[W]hen Congress uses the same language in two statutes having similar purposes, particularly when one is enacted shortly after the other, it is appropriate to presume that Congress intended that text to have the same meaning in both statutes."); *compare* Act of March 12, 1914, 38 Stat. at 307; *with* 43 U.S.C. § 937; *see also Brandt*, 572 U.S. at 110 (1875 Act granted a "simple easement").

### 2. At common law, an easement is presumed to be nonexclusive, and nothing in the 1914 Act or the Sperstad Patent indicates that the federal government intended to depart from that default rule

Similarly, the 1914 Act's purpose and the condition of the country at the time determines the scope of the easement and demonstrates that Congress intended to reserve only a nonexclusive easement in land patents issued to settlers in Alaska. At common law, easements are presumed to be nonexclusive, and nothing in the 1914 Act or the Sperstad Patent indicates that Congress intended to depart from this rule. Indeed, if Congress had reserved an "exclusive-use" easement for the Alaska Railroad, it would have contradicted the stated purpose of the 1914 Act.

"An easement is a 'nonpossessory right to enter and use land in the possession of another and obligates the possessor not to interfere with the uses authorized by the easement.'" *Brandt*, 572 U.S. at 105 (quoting Restatement (Third) of Property (Servitudes) § 1.2(1) (1998)). "The person who holds the land burdened by a servitude is entitled to make all uses of the land that are not prohibited by the servitude and that do not interfere unreasonably with the uses authorized by the easement or

profit." Restatement (Third) of Property (Servitudes) § 4.9 cmt. c (2000). "All residual use rights remain in the possessory estate—the servient estate." *Id.* Thus, "an exclusive easement is an unusual interest in land, amounting almost to a conveyance of the fee" and, therefore, courts do not interpret easements to be exclusive in the "absence of a clear indication of such an intention." *Mitchell v. Land*, 355 P.2d 682, 685 (Alaska 1960).

When interpreting the scope of an easement in a deed, courts should give effect to the intent and expectations to the parties subject to the easement. Restatement (Third) of Property (Servitudes) § 4.9 cmt. a (2000); *Leo Sheep*, 440 U.S. at 682. "In resolving conflicts among the parties to servitudes, the public policy favoring socially productive use of land generally leads to striking a balance that maximizes the aggregate utility of the servitude and the servient estate." Restatement (Third) of Property (Servitudes) § 4.9 cmt. b (2000). Thus, any ambiguities about the scope of the easement are generally resolved in favor of the servient estate's ability to reasonably use the land. *Id.*

Additionally, the scope of railroad rights-of-way issued under an act of Congress will depend upon the construction given to the act and the intent of Congress in passing the act. *Leo Sheep*, 440 U.S. at 682. Here, there is nothing to indicate that, in passing the 1914 Act, Congress intended to stray from the default rule that the servient estate can use the property so long as it does not interfere unreasonably with the railroad. Indeed, an "exclusive-use" easement would go against the stated purposes of the Act. *See* Act of March 12, 1914, 38 Stat. at 306. The railroad right-of-way was an aid to settlement and development of Alaska and its resources. *Id.* Similar to the 1875 Act, the railroad was a means to the end of homesteaders and other workers in Alaska. *Cf. Denver & Rio Grande Ry. Co.*, 150 U.S. at 8 (1875 Act was "intended to promote the interests of the government in opening to settlement" public lands). But an "exclusive-use" easement would put the interests of the railroad above the interests of those the railroad was created to assist, and hinder the government's interest in opening lands to settlement.

In many cases, an "exclusive-use" easement would prevent full use of patented homesteads in Alaska. Patents were issued as contiguous parcels, 43 C.F.R. § 65.8 (1949), and taken subject to the right-of-way.

*See* 43 C.F.R. § 74.2 (1949). If the right-of-way included a right to exclude, and fence, the entire width of the right-of-way, homesteaders would have been prevented from using the whole of the contiguous property because one portion of the property would be cut off from the other. An "exclusive-use" easement would thus be in direct conflict with the 1914 Act's stated policy "to aid in the development of the agricultural and mineral or other resources of Alaska, and the settlement of the public lands therein …." Act of March 12, 1914, 38 Stat. at 306.[2]

An "exclusive-use" easement would interfere with the purpose of the 1914 Act in other ways. Below, *amici* filed briefs demonstrating how ARRC's interpretation of the easement interferes with utility companies' ability to reasonably use portions of the right-of-way—uses that do not interfere with the operation of the railroad—to deliver services to their customers. *See* District Court Dkt. Nos. 88, 97; *see also* ER-12. The District Court stated that it "specifically declined to analyze this aspect

[2] Many still live and run businesses on properties bisected by the railroad and need the right to move across the rail line. *See, e.g.*, Renfro's Lakeside Retreat, *map*, https://www.renfroslakesideretreat.com/maps.html (last visited Jan. 12, 2023). If the ARRC has an "exclusive-use" easement, then it can prevent the owners of these lands from using the entirety of their land.

of ARRC's interest in the [right-of-way] when it denied [*amici*'s] Motions to Intervene." ER-22 n.51. But the implications of the District Court's interpretation are clear. If ARRC has an "exclusive-use" easement, then it can prevent anyone from using any portion of the right-of-way for any reason, even if such use does not interfere with the operation of the railroad.

No canon of construction supports an interpretation that the 1914 Act intended to reserve an "exclusive-use" easement. In holding otherwise, the District Court quoted the doctrine that "ambiguity in a grant should be resolved favorably to the sovereign grantor …." ER-25 (citing *Great N. R. Co.*, 315 U.S. at 272). But the whole doctrine underlying the canon states "the general rule of construction that any ambiguity in a grant is to be resolved favorably to a sovereign grantor—'*nothing passes but what is conveyed in clear and explicit language.*'" *Great N. R. Co.*, 315 U.S. at 272 (quoting *Caldwell v. United States*, 250 U.S. 14, 20 (1919)) (emphasis added). In other words, when the federal government grants, or retains, an easement, the scope of the easement is defined by the language of the deed at issue. Here, that is the Sperstad Patent.

As such, the "Court long ago declined to apply this [sovereign-grantor] canon in its full vigor to grants under the railroad Acts," *Leo Sheep*, 440 U.S. at 682. The canon is not a strict rule that a court should adopt whatever interpretation benefits the government. *See Great N. R. Co.*, 315 U.S. at 273 (courts "are not limited to the lifeless words of the statute and formalistic canons of construction in our search for the intent of Congress"). Instead, the rule that "public grants are construed strictly against the grantees" should not "'be so construed as to defeat the intent of the legislature, or to withhold what is given either expressly or by necessary or fair implication ….'" *Leo Sheep*, 440 U.S. at 682–83, (quoting *Denver & Rio Grande R. Co.*, 150 U.S. at 14). And further, when an act "'operat[es] as a general law, and manifest[s] clearly the intention of Congress to secure public advantages,'" such legislation "'stands upon a somewhat different footing from merely a private grant,'" and "'should receive at the hands of the court a more liberal construction in favor of the purposes for which it was enacted.'" *Id.* (quoting *Denver & Rio Grande R. Co.*, 150 U.S. at 14).

Indeed, the Supreme Court has never strictly applied the doctrine. For example, in *Leo Sheep*, the Court determined that a pre-1871 grant

of land to the railroad reserved only what was explicitly reserved in the act. 440 U.S. at 681. In *Great Northern R. Co.*, the Court read the doctrine in light of the purpose of the 1875 Act and concluded that the statute did not grant a fee simple or limited fee, but rather an easement because "a railroad may be operated though its right of way be but an easement[.]" 315 U.S. at 272. And in *Brandt*—where the federal government argued that the "sovereign grantor" rule of construction indicated that it retained a reversionary interest in an 1875 railroad right-of-way when it patented the fee title to the landowner—the Court went the other way, with only the lone dissenter accepting the government's interpretation. *See Brandt*, 572 U.S. at 116 (Sotomayor, J., dissenting).

Here, the sovereign grantor doctrine cannot overcome Congress's intent in passing the 1914 Act. That intent is not only reflected in the text of the statute, 38 Stat. at 306, but also in Congress's policy towards railroads at the time. *Cf. Great N. R. Co.*, 315 U.S. at 273 ("The [1875] Act was the product of a period, and, courts, in construing a statute, may with propriety recur to the history of the times when it was passed." (quotations omitted)). After 1871, there was a "sharp change in

Congressional policy with respect to railroad grants[.]" *Id.* at 275. Congress explicitly stated that it was the national policy that railroad rights-of-way were to help secure homesteads for actual settlers. Cong. Globe, 42d Cong., 2d Sess., 1585. Following this policy, Congress developed the Alaska Railroad to aid homesteaders and secure the settlement of the public lands in Alaska. 38 Stat. at 306. Interpreting the 1914 Act to reserve an "exclusive-use" easement contradicts the policy of the Act itself and the general national policy towards railroads at the time.

### 3. A railroad does not need an exclusive use easement to operate and many railroad easements in the United States are expressly nonexclusive

In holding that ARRC has an "exclusive-use" easement, the District Court stated that "[i]t is hard to imagine that an operational railroad would not possess" the right to exclude "all parties from the surface," "especially in a residential area such as the Flying Crown Subdivision where residents actively use the land burdened by the [right-of-way] and safety is of the utmost concern." ER-28. But a railroad does not need an exclusive-use easement to ensure safe operation of the railroad. *See* Restatement (Third) of Property (Servitudes) § 4.9 (2000).

The servient estate has no right to unreasonably interfere with use of the easement. *Id.* If the servient estate's actions were interfering with the safe operation of the railroad, then that would be an unreasonable interference with the easement.

Here, ARRC has not presented evidence that Flying Crown's use of the airstrip has interfered with the safe operation of the railroad.[3] Indeed, the owners of the property have been using the airstrip for decades without issue. ER-173. In the 1970s, Flying Crown even constructed a fence parallel to the tracks but within the easement area—something that would be prohibited under an exclusive-use easement—to prevent people from crossing the railroad track, and that fence remains in place today. *Id.*

Moreover, even if there were evidence of trouble, ARRC would not need an "exclusive-use" easement to ensure safe operation of the railroad

[3] In its memo in support of summary judgment, ARRC stated, without citation to any evidence, that it "cannot operate safely or efficiently without retaining authority over its ROW." District Court Dkt. 13 at 11 (Nov. 20, 2020). Putting aside that a nonexclusive easement holder does have authority over its easement, Flying Crown's ability to challenge ARRC's statement was limited by the District Court's order disallowing discovery, ER-175. Still, ARRC's generalized safety concerns are refuted by the unrebutted evidence in the record that there has never been a safety issue with Flying Crown's use of its airstrip. ER-173.

because a nonexclusive easement already prohibits any use of the servient estate that interferes with the operation of the railroad. And while safety is important to the operation of the railroad, railroads run on specific schedules, making it easier for the parties to know precisely when safety may be of concern. Railroad easements thus have fewer safety concerns than many other roadway easements—which have more frequent and unscheduled use and yet typically are nonexclusive. *See* Restatement (Third) of Property (Servitudes) § 1.2 cmt. c (2000).

Indeed, several states explicitly hold that railroad easements are nonexclusive, further demonstrating that exclusive use is not a necessary and inherent part of a railroad right-of-way. In North Carolina, for example, "[a]reas of a right-of-way not required for railroad purposes may be used by the servient owner in manners not inconsistent with the right-of-way." *Norfolk S. Ry. Co. v. Smith*, 611 S.E.2d 427, 430 (N.C. Ct. App. 2005). Similarly, in Florida all easements, including railroad easements, are "presumed to be nonexclusive and any intent to

grant exclusive use must be explicit." *Cheshire Hunt, Inc. v. United States*, 158 Fed. Cl. 101, 109 (2022).[4]

In concluding that a railroad right-of-way is a unique type of property interest, the District Court quoted extensively from *Western Union Telegraph Co. v. Pennsylvania Railroad Co.*, which stated that "[a] railroad right of way is a very substantial thing. It is more than a mere right of passage. It is more than an easement." 195 U.S. 540, 570 (1904); ER-24. But *Western Union* was interpreting a pre-1871 railroad right-of-way, 195 U.S. at 541, before Congress changed its policy to give

[4] The Alaska Supreme Court has not explicitly discussed the scope of railroad rights-of-way but, in the context of a highway right-of-way, the court has held that the right-of-way allows the easement holder to use the servient estate only to the extent reasonably necessary to serve the easement's purpose. *Andersen v. Edwards*, 625 P.2d 282, 286–87 (Alaska 1981). In a later case reaffirming *Andersen*, the Alaska Supreme Court upheld a superior court opinion that relied on cases interpreting the scope of railroad rights-of-way. *Simon v. State*, 996 P.2d 1211, 1215 (Alaska 2000) (superior court opinion citing *Energy Transp. Sys., Inc. v. Union Pac. R. Co.*, 456 F. Supp. 154, 162–63 (D. Kan. 1978), for the proposition that the fee owner could make use of or convey the land below the surface of the area subject to the railroad's easement if it didn't interfere with the construction, maintenance, or operation of the railroad); *see also Reeves v. Godspeed Properties, LLC*, 517 P.3d 31, 41–42 (Alaska 2022) ("[I]n *Andersen v. Edwards* we rejected the argument that an easement holder has an 'absolute right to clear' the entire width of the easement."). In short, "[a] right of way is primarily a privilege to pass over another's land[.]" *Gerstein v. Axtell*, 960 P.2d 599, 600 (Alaska 1998) (quotations omitted).

railroads less of an interest in land, *Great N. R. Co.*, 315 U.S. at 275. Notably *Western Union* figured prominently in the dissenting opinion in *Brandt*. *See Brandt*, 572 U.S. at 114 (Sotomayor, J., dissenting). The majority opinion, however, rejected the dissent's reading of *Western Union* and the special nature of railroad rights-of-way, instead holding that, after 1871, Congress intended to grant only a simple easement. *Id.* at 104. Whatever property interest Congress granted to railroads prior to 1871 was not the same interest that Congress granted to railroads after 1871. *Id.* Therefore, cases interpreting the nature of pre-1871 railroad rights-of-way have limited use in interpreting the nature of post-1871 railroad rights of way.

The District Court also cited the Tenth Circuit's decision in *LKL Associates, Inc., v. Union Pacific Railroad Co.*, which held that 1875 Act easements are exclusive, 17 F.4th 1287 (10th Cir. 2021); *see* ER-27. But *LKL* suffers from the same defect of relying on cases that interpreted pre-1871 rights-of-way. In *LKL*, the court briefly addressed the post-1871 change in policy by stating that the cases interpreting pre-1871 rights of way "are instructive to the extent they describe an intrinsic aspect of all railroad rights of way—whether granted pre-1871 or under

the 1875 Act, whether described as a fee interest or a nonpossessory easement." *LKL Assocs.*, 17 F.4th at 1296 n.2. But the distinction between a fee interest and a nonpossessory easement necessarily affects the analysis of who has the right to exclude. The right to exclude is a fundamental element of owning a fee interest, *Cedar Point Nursery v. Hassid*, 141 S. Ct. 2063, 2072 (2021), and thus it is not surprising that the pre-1871 fee rights-of-way would grant the railroad the right to exclude. On the other hand, an easement holder usually has no right to exclude, Restatement (Third) of Property (Servitudes) § 4.9 (2000), and, thus, one cannot presume that the post-1871 rights-of-way (which are not accompanied by any fee interest) granted the same right to exclude.

The district court opinion in *LKL* thus provides more persuasive reasoning on the issue of whether post-1871 railroad rights-of-way are exclusive. *LKL Assocs., Inc. v. Union Pac. R.R. Co.*, No. 2:15-CV-00347-BSJ, 2018 WL 2433563, at *7 (D. Utah May 29, 2018), *aff'd in part, rev'd in part and remanded LKL Assocs., Inc. v. Union Pac. R.R. Co.*, 17 F.4th 1287 (10th Cir. 2021). In interpreting the scope of 1875 Act rights-of-way, the court considered the post-1871 change in national policy, *id.* at *6, as one must when interpreting the scope of a railroad right-of-way,

*Great N. R. Co.*, 315 U.S. at 273. As a result of that policy, the *LKL* district court concluded that the servient estate "can occupy and utilize certain described property encumbered by the right of way insofar as it does not interfere with Union Pacific's election, now or in the future, to use and possess for a railroad purpose." *LKL Assocs.*, 2018 WL 2433563, at *7. The same pro-settlement national policy is reflected in the 1914 Act, which reserves the same type of easement that was granted in the 1875 Act.

Similarly, *Center for Biological Diversity v. U.S. Bureau of Land Management* (*CBD*) provides persuasive reasoning about the scope of post-1871 rights-of-way. No. CV 17-8587-GW(ASX), 2019 WL 2635587, at *18 (C.D. Cal. June 20, 2019). In holding that non-railroad uses exceed the scope of an 1875 Act easement, the Court analyzed *Brandt* and criticized the reasoning of a 2017 Department of Interior Solicitor Opinion (M-37048) that concluded that 1875 Act rights-of-way are exclusive easements. *Id.* at *18–20. While the court stated that *Brandt* did not fully define the scope of 1875 Act railroad easements, it recognized that "the Supreme Court added relevant gloss regarding the nature of the 1875 Act right-of-way" because the Court remarked that

"it was a 'simple easement,'" and that "'granting an easement merely gives the grantee the right to enter and use the grantor's land *for a certain purpose*.'" *Id.* at *18 (emphasis added in *CBD*) (quoting *Brandt*, 572 U.S. at 105 n.4, 110).

The *CBD* court stated that *Brandt* called into question the three cases the Department of Interior relied upon to conclude that 1875 Act rights-of-way are exclusive easements. *Id.* at *21 (citing *W. Union Tel. Co. v. Penn. R.R. Co.*, 195 U.S. 540, 570 (1904); *New Mexico v. U.S. Trust Co.*, 172 U.S. 171, 183 (1898); and *Idaho v. Oregon Short Line R.R. Co.*, 617 F. Supp. 207, 212 (D. Idaho 1985)). The court said that "the two Supreme Court cases are inapposite as both deal with pre-1875 Act grants to the railroads, and both express skepticism that such grants were easements." *Id.*[5]

*CBD* also called *Oregon Short Line* a "dead letter after *Brandt*[.]" 2019 WL 2635587, at *21. In *Oregon Short Line*, the court recognized that, "under traditional rules, a simple easement carries with it no right to exclusive use and occupancy of the land," but concluded that Congress

[5] In addition to *Western Union*, the District Court here relied on *New Mexico v. U.S. Trust* to conclude that a railroad right-of-way is a unique type of easement. ER-24.

intended to grant more than a simple easement. 617 F. Supp. at 212. Yet *Brandt* "specifically call[s] the 1875 Act rights-of-way 'simple easements'" and, thus, "dispels" *Oregon Short Line*'s conclusion that Congress intended to grant more than a common law easement. *CBD*, 2019 WL 2635587, at *21 (citing *Brandt*, 572 U.S. at 110).

Ultimately, *CBD* did not answer whether 1875 Act easements are exclusive or nonexclusive because the distinction did "not matter much" to the question presented in that case and both parties argued that the distinction did not matter to the outcome of the case. *Id.* at *21. Still, the decision provides persuasive reasoning undercutting the arguments—adopted by the District Court here—that *Brandt* is of limited value in interpreting the scope of post-1871 railroad easements and that exclusivity is an inherent aspect of a railroad easement. ER-28.[6]

Like the rights-of-way under the 1875 Act, the 1914 Act rights-of-way are simple, nonexclusive easements. *See* Section I-A-2, *supra*. As a

[6] Indeed, *CBD*'s "sharply critical" analysis of the 2017 Opinion's "legal interpretation of the 1875 Act" resulted in the Department of Interior withdrawing the 2017 Opinion. Department of Interior Solicitor Opinion M-37074, 2022 WL 657493, at *1 n.1 (Feb. 18, 2022).

result, ARRC does not have the right to exclude Flying Crown from using its airstrip.

#### 4. A statute passed decades after the 1914 Act, and decades after the Sperstad Patent was issued, cannot define the scope of the easement reserved in the Patent

Finally, the District Court looked to ARTA to interpret the 1914 Act. But as the Court stated in *Brandt*, later statutes transferring the federal government's interest do not determine what interest the government actually owns and can transfer. 572 U.S. at 109. "In other words, these [later] statutes do not tell us whether the United States has an interest in any particular right of way; they simply tell us how any interest the United States might have should be disposed of." *Id.* In *Brandt*, the Court rejected the idea that statutes adopted in 1906 and 1909 could interpret an 1875 Act. *Id.* But the District Court here looked to a statute passed almost seventy years later to interpret the meaning of the 1914 Act. A 1983 Act cannot determine what interests the government created decades earlier.[7]

[7] Furthermore, ARTA does not purport to transfer an exclusive-use easement in the lands at issue here. *See, infra*, Section II.

Even more doubtfully, the District Court did not rely on the text of ARTA to interpret the 1914 Act, but rather a mere Senate report for a version of the bill that did not pass. *Compare* ER-30 (citing S. Rep. No. 97-479, at 8 (1982)); *with* Library of Congress, *S. 1500 Alaska Railroad Transfer Act of 1982*.[8] Specifically, the District Court relied on Senate Report No. 97-479, which reported on S. 1500, a bill that was introduced in the Senate but never received a vote in that chamber, *see* Library of Congress, *S. 1500 Alaska Railroad Transfer Act of 1982—Actions*.[9] The version of ARTA that became law was the House bill, H.R. 3420. Library of Congress, *H.R. 3420 Rail Safety and Service Improvement Act of 1982*.[10]

The statements that the District Court relied on about the 1914 Act reserving a fee interest in the right-of-way are not reflected in the text of the adopted statute, 45 U.S.C. §§ 1201–14, or in the legislative history of the bill that became law. H.R. Rep. No. 97-571, 1982 U.S.C.C.A.N. 4536, 4536. As *Brandt* stated, later statutes cannot define

[8] https://www.congress.gov/bill/97th-congress/senate-bill/1500

[9] https://www.congress.gov/bill/97th-congress/senate-bill/1500/actions

[10] https://www.congress.gov/bill/97th-congress/house-bill/3420

the property interest that an earlier statute reserved. 572 U.S. at 109. *A fortiori*, legislative history for a version of a bill that did not become law provides little insight on what property interest a different Congress intended to reserve in a statute enacted more than a half-century earlier.

Indeed, a pre-ARTA 1982 decision by the Interior Board of Land Appeals, *The Alaska Railroad*, 65 IBLA 376 (July 20, 1982), contradicts the District Court's conclusion that the 1914 Act reserved a fee simple interest in the Alaska Railroad right-of-way. ER-30. In *The Alaska Railroad*, the IBLA relied heavily on *Great Northern* and concluded that the 1875 Act granted a "similar right-of-way" to the one granted in the 1914 Act, *i.e.*, a simple easement. 65 IBLA at 378. The opinion provides further evidence that the District Court erred in concluding that, when ARTA was passed, it was accepted that the 1914 Act reserved the right-of-way in fee simple. *See* ER-30.

*The Alaska Railroad* also provides further evidence that the 1914 Act, and the patents issued subject to the Act, reserved the same right-of-way as the rights-of-way granted in the 1875 Act. Because the 1875 Act granted only a "simple easement," likewise the 1914 Act only reserved a simple easement. At common law, a simple easement carries

with it no right to exclusive use and occupancy of the land. And nothing in the 1914 Act or the Sperstad Patent indicates that the federal government departed from the traditional rules and reserved an "exclusive-use" easement that allows ARRC to exclude Flying Crown from reasonable, non-interfering use of the surface estate.

### B. Even if the Sperstad Patent Reserved a Common Law Exclusive Easement, the Alaska Railroad Corporation Does Not Have the Right to Exclude Flying Crown from Using Its Airstrip

Even if the 1914 Act and the Sperstad Patent reserved a common-law exclusive easement, that does not mean that ARRC has an "exclusive-use" easement as defined in ARTA. "The degree of exclusivity of the rights conferred by an easement or profit is highly variable and includes two aspects: who may be excluded and the uses or area from which they may be excluded." Restatement (Third) of Property (Servitudes) § 1.2 cmt. c (2000). "At one extreme, the holder of the easement or profit has no right to exclude anyone from making any use that does not unreasonably interfere with the uses authorized by the servitude." *Id.* "At the other extreme, the holder of the easement or profit has the right to exclude everyone, including the servient owner, from making any use of the land within the easement boundaries." *Id.* The

District Court held that ARRC's easement was the latter, without analyzing the possibility that if the 1914 Act and the Sperstad Patent reserved an exclusive easement, the exclusivity is not on the extreme end of possible easements.

Even among exclusive easements, the default is to exclude the servient estate only from "the right to use facilities installed for enjoyment of the easement." Restatement (Third) of Property (Servitudes) § 5.9 cmt. b (2000). Indeed, even in jurisdictions where courts presume that a railroad has an exclusive easement, the railroad usually only has the exclusive use of the portion of the right-of-way actually being used by the railroad. *See, e.g.*, *Midland Valley R. Co. v. Sutter*, 28 F.2d 163, 168 (8th Cir. 1928). Thus, instead of being excluded from the entire width of the easement, "the owner of the fee may not use any portion of the right of way either in the immediate use of the railroad company or necessary to the safe and convenient use of that which is in actual service." *Id.* But the servient estate can make use of the portions of the easement not needed by the railroad.[11]

[11] Notably, in reaching its decision, the Eighth Circuit relied on cases from the Kansas Supreme Court that in turn relied on *Western Union*

Even if the 1914 Act and Sperstad Patent reserved a common-law exclusive easement, ARRC would still have no right to exclude Flying Crown's use of the airstrip. For decades, the residents have used the airstrip without interfering with the use of the railroad. ER-173. ARRC does not need to exclude Flying Crown from the entire width of the right-of-way to safely operate. Thus, even if the right-of-way could be characterized as to some degree "exclusive," this Court should still reverse the judgment of the District Court and hold that ARRC does not have an "exclusive-use" easement allowing it to absolutely exclude all servient owners from the entire width of the right-of-way.

## II. ARTA Does Not Purport to Transfer to the Alaska Railroad Corporation an Exclusive-Use Easement Across Flying Crown's Property

In addition to incorrectly relying on ARTA to interpret the 1914 Act, the District Court also erred in interpreting what interest ARTA intended to convey across Flying Crown's property. ARTA does not purport to transfer, nor does it transfer, to Alaska an "exclusive-use"

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and *New Mexico v. United States Trust Co*. *See Midland Valley R. Co.*, 28 F.2d at 167. Therefore, even in cases that rely on inapposite and outdated Supreme Court precedent to conclude that railroad easements are unique, those courts still conclude that a railroad cannot exclude the servient estate holders from the entire width of the easement.

easement across Flying Crown's property. The exclusive-use easement language in ARTA only applies to lands subject to a claim of valid existing rights at the time ARTA was passed, *see* 45 U.S.C. § 1205(b), and the portion of the railroad in Denali National Park, 45 U.S.C. § 1203(b)(1)(D). Because the land at issue here was patented several decades prior to ARTA, it was not subject to unresolved claims of valid existing rights in 1983.

### A. ARTA Distinguishes Property Subject to Claims of Valid Existing Rights from Property Not Subject to Such Claims

Throughout ARTA, the statute distinguishes between property subject to "claims of valid existing rights" and property not subject to such claims. *See* 45 U.S.C. §§ 1202(3), 1203(b)(1)(B), 1205(b). The statute defines a "claim of valid existing rights" as "any claim to the rail properties of the Alaska Railroad on record in the Department of the Interior as of January 13, 1983," 45 U.S.C. § 1202(3), the date on which ARTA was enacted, Pub. L. No. 97-468, 96 Stat. 2543 (Jan. 14, 1983). ARTA lays out how these different types of property are to be transferred to Alaska. 45 U.S.C. § 1203(b).

ARTA directs the Secretary of the Interior to "on the date of transfer … simultaneously" (1) "deliver to the State a bill of sale conveying title to all rail properties of the Alaska Railroad except any interest in real property," 45 U.S.C. § 1203(b)(1)(A); (2) "deliver to the State an interim conveyance of the rail properties of the Alaska Railroad that are not conveyed pursuant to subparagraph (A) of this paragraph and are not subject to unresolved claims of valid existing rights," *id.* § 1203(b)(1)(B); (3) deliver to Alaska "an exclusive license granting the State the right to use all rail properties of the Alaska Railroad not conveyed" in the other subsections "pending conveyances in accordance with the review and settlement or final administrative adjudication of claims of valid existing rights," *id.* § 1203(b)(1)(C); and (4) deliver an exclusive-use easement for the portion of the railroad that runs through Denali National Park, *id.* § 1203(b)(1)(D). The statute thus directs the Secretary of Interior to convey the railroad interests owned by the federal government to the State of Alaska, except for property subject to claims of valid existing rights, which was to be adjudicated and transferred after those claims were resolved. 45 U.S.C. § 1203(b)(2).

At the time of ARTA's enactment, there were numerous pending claims against the federal government on lands crossed by the Alaska Railroad. The Alaska Railroad Transfer Report, a joint report prepared by the state and federal governments after ARTA's passage, lays out the different types of claims of valid existing rights that were on record in January 1983. *See* The State of Alaska and the United States Department of Transportation, *Alaska Railroad Transfer Report* exhibit 1 p. 9 (July 14, 1983).[12]

The most significant claims of valid existing rights were unresolved claims by Village Corporations under the Alaska Native Claims Settlement Act, 43 U.S.C. § 1601–29h, which allowed Native Village Corporations to select lands to be conveyed from the federal government, *id.* § 1613. Other types of unresolved claims of valid existing rights included unpatented mining claims and lands available to be transferred (but not yet transferred) to the state under the Alaska Statehood Act. *Alaska Railroad Transfer Report* at exhibit 1 p. 9.

[12] A copy of the relevant portions of the report is available at https://pacificlegal.org/wp-content/uploads/2023/01/Alaska-Railroad-Transfer-Report-July-14-1983.pdf and https://pacificlegal.org/wp-content/uploads/2023/01/ARTR-Vol-2-Exhibit-1-Description-of-Real-Property.pdf.

Properties not subject to unresolved claims of valid existing rights include property that was previously patented, *id.* at exhibit 1 pp. 7–8, such as the property conveyed by the Sperstad Patent

### B. The Language in ARTA Transferring an "Exclusive-Use" Easement Must Be Read in Context

In determining that ARTA transfers an "exclusive-use" easement across Flying Crown's property, the District Court looked to the isolated language of 45 U.S.C. § 1205(b)(4)(B). ER-34. But "'[s]tatutory construction ... is a holistic endeavor[.]'" *Czyzewski v. Jevic Holding Corp.*, 580 U.S. 451, 466 (2017) (quoting *United Sav. Ass'n of Tex. v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 371 (1988)). Statutes "should not be read as a series of unrelated and isolated provisions," *Gustafson v. Alloyd Co.*, 513 U.S. 561, 570 (1995), and thus statutory language must be examined by "reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole[.]" *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997); *see also Kelly v. Robinson*, 479 U.S. 36, 43 (1986) (in interpreting a statute, a court "must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy" (quotation marks omitted)). Statutory

construction requires, "at a minimum," examination of "a statute's full text, language as well as punctuation, structure, and subject matter." *U.S. Nat'l Bank of Or. v. Indep. Ins. Agents of Am., Inc.*, 508 U.S. 439, 455 (1993).

Consequently, the language that the District Court relied upon cannot be read in isolation, but instead must be read in its context. The language appears in Section 1205, subsection (b). 45 U.S.C. § 1205(b)(4)(B). Subsection (b) deals with the final administrative adjudication of claims of valid existing rights and is titled "Review and settlement of claims; administrative adjudication; management of lands; procedures applicable." *Id.* § 1205(b). The following subsection reinforces the purpose of subsection (b) by stating that "[t]he final administrative adjudication pursuant to subsection (b) of this section shall be final agency action …." *Id.* § 1205(c)(1).

Paragraph (1) of subsection (b) directs the Secretary of the Interior, Village Corporations with claims of valid existing rights, and the State to settle as many claims of valid existing rights as possible. 45 U.S.C. § 1205(b)(1). Paragraph (2) gives the Secretary of Interior continuing jurisdiction to adjudicate claims of valid existing rights and directs the

Secretary to prioritize the adjudication of Village Corporation claims. *Id.* § 1205(b)(2). Paragraph (3) sets out how the lands should be managed pending settlement or final adjudication of "claims of valid existing rights filed by Village Corporations …." 45 U.S.C. § 1205(b)(3).

Paragraph (4) lays out the "following procedures and requirements" intended to

> promote finality of administrative adjudication of claims of valid existing rights filed by Village Corporations, to clarify and simplify the title status of lands subject to such claims, and to avoid potential impairment of railroad operations resulting from joint or divided ownership in substantial segments of right-of-way[.]

*Id.* § 1205(b)(4). It has two subparagraphs. Subparagraph (A) discusses "Village Corporation claims of valid existing rights," authorizing the Secretary of Interior to accept relinquishment of claims, *id.* § 1205(b)(4)(A)(i) and, if claims are not relinquished, authorizing the Secretary to convey to Alaska "all right, title and interest of the United States in and to the right-of-way free and clear of such Village Corporation's claim to and interest in lands within such right-of-way." 45 U.S.C. § 1205(b)(4)(A)(ii).

Subparagraph (B) deals with claims of valid existing rights by a party other than a Village Corporation. 45 U.S.C. § 1205(b)(4)(B). It

states: "Where lands within the right-of-way, or any interest in such lands, have been conveyed from Federal ownership prior to January 14, 1983, or is subject to a claim of valid existing rights by a party other than a Village Corporation" the federal government shall convey "not less than an exclusive-use easement in such properties." *Id.* § 1205(b)(4)(B). The District Court narrowly focused on the language discussing lands "conveyed from Federal ownership prior to January 14, 1983," noted that the Sperstad Patent was issued in 1950, and concluded that ARTA meant to convey an exclusive-use easement across Flying Crown's property. ER-34.

The District Court did not read the language in the context of the statute. Subsection (b) is about resolving claims of valid existing rights. 45 U.S.C. § 1205(b). Paragraph (4), subparagraph (A) deals with Village Corporation claims of valid existing rights. It logically follows that subparagraph (B) deals with claims of valid existing rights by a party other than a Village Corporation, as the text indicates. 45 U.S.C. § 1205(b)(4)(B).

Flying Crown's property was not subject to claims of valid existing rights at the time ARTA was passed because it was not subject to "any

claim to the rail properties of the Alaska Railroad on record in the Department of the Interior as of January 13, 1983[.]" 45 U.S.C. § 1202(3). Patented lands were not "claim[s] … on record in the Department of the Interior" because the Department of Interior did not have jurisdiction to resolve any claims disputing property interests in patented lands. If an owner of property has a dispute with the federal government over an interest in land, he or she must file an action under the Quiet Title Act, which gives "[t]he district courts … exclusive original jurisdiction … to quiet title to an estate or interest in real property in which an interest is claimed by the United States." 28 U.S.C. § 1346(f). The Alaska Railroad Transfer Report confirms that Flying Crown's property is not in the category of property subject to claims of valid existing rights because it lists the Sperstad Patent in a separate category. *See Alaska Railroad Transfer Report* Exhibit 1, worksheet reference number 24 (identifying patent No. 1128320 as included under "other patents" (reserved interests)). It would be unusual for Congress to discuss the transfer of claims not subject to claims of valid existing rights in Section 1205, subsection (b), which is dedicated to resolving claims of valid existing rights. 45 U.S.C. § 1205(b).

Thus, properly understood in context, 45 U.S.C. § 1205(b)(4)(B) does not discuss the transfer of the railroad interests reserved in the Sperstad Patent, or any other instance where fee title has been conveyed. The transfer of the interests reserved across Flying Crown's property are instead addressed in Section 1203(b)(1)(B), which requires the Secretary of the Interior to "deliver to the State an interim conveyance of the rail properties of the Alaska Railroad that are not conveyed pursuant to subparagraph (A) of this paragraph and are not subject to unresolved claims of valid existing rights," 45 U.S.C. § 1203(b)(1)(B). If Congress intended to, or believed it could, transfer an "exclusive-use" easement across lands—like Flying Crown's—that were previously patented, it would have said so in Section 1203(b)(1)(B). Indeed, two subparagraphs later, Congress explicitly states that it is transferring an "exclusive-use easement" for the portions of the railroad in Denali National Park. 45 U.S.C. § 1203(b)(1)(D).

While 45 U.S.C. § 1205(b)(4)(B) refers to "lands within the right-of-way, or any interest in such lands, [that] have been conveyed from Federal ownership prior to January 14, 1983, or is subject to a claim of valid existing rights by a party other than a Village Corporation," 45

U.S.C. § 1205(b)(4)(B), "statutory context can overcome the ordinary, disjunctive meaning of 'or.'" *Encino Motorcars, LLC v. Navarro*, 138 S. Ct. 1134, 1141 (2018). In particular, "'[w]here a sentence contains several antecedents and several consequents,' courts should 'read them distributively and apply the words to the subjects which, by context, they seem most properly to relate.'" *Id.* (quoting 2A N. Singer & S. Singer, Sutherland Statutes and Statutory Construction § 47:26, p. 448 (rev. 7th ed. 2014)). Here, read in context of the statutory structure, the sentence refers to property interests that have been conveyed and are subject to a claim of valid existing rights *or* property interests that have not been conveyed and are subject to a claim of valid existing rights.

Such an interpretation would raise no risk of a null set, for certain interests would have been conveyed prior to ARTA (like the Sperstad Patent) but also (unlike the Sperstad Patent) been subject to a claim of valid existing rights at the time of the statute's enactment. For example, those who made mining claims under the Mining Law of 1872 were granted a property right in the mineral deposit—conveyed from Federal ownership—and a possessory interest in the surface estate of the claim. *See Swanson v. Babbitt*, 3 F.3d 1348, 1353 (9th Cir. 1993). And, prior to

1994, the owners of a mining claim could eventually patent the mining claim and acquire fee title to the land. *Id.* at 1350. Mining claims—and especially unpatented mining claims with the potential to become patented mining claims—are thus exactly the type of property interests Congress would need to deal with to "avoid potential impairment of railroad operations," 45 U.S.C. § 1205(b)(4), because the government had not yet reserved a railroad right-of-way across the land because it had not yet been patented, but the mining claim owner still had the right to patent the land.

Mining claims were "on record in the Department of the Interior" at the time ARTA was passed because an owner of a mining claim must annually report to the Bureau of Land Management (BLM) about the claim. 43 U.S.C. § 1744. Furthermore, there were likely situations where an owner of a mining claim had applied for a patent, but the BLM had disputed the validity of the claim. *See, e.g.*, *Swanson*, 3 F.3d at 1350. Those disputes were resolved by the IBLA, *id.*, and thus "on record in the Department of Interior."

At the time of ARTA, there were also property interests that had not been conveyed and were subject to a claim of valid existing rights. In

particular, the Alaska Statehood Act gives the State the right, within thirty-five years, to select federal lands for state ownership with "the approval of the Secretary of Agriculture as to national forest lands and with the approval of the Secretary of the Interior as to other public lands." Pub. L. No. 85-508, § 6, 72 Stat. 339, 340 (July 7, 1958). The situation was similar to Village Corporations, addressed in 45 U.S.C. § 1205(b)(4)(A), in that Alaska had not yet acquired land but was entitled to it.

Subsection (b) is about resolving claims of valid existing rights, like claims from Village Corporations, the State of Alaska, or owners of mining claims. Accordingly, the Alaska Railroad Transfer Report identifies these three types of claims as property interests subject to unresolved claims of valid existing rights under ARTA. *Alaska Railroad Transfer Report* exhibit 1 p. 9 (July 14, 1983). Subsection (b) does not deal with property, like Flying Crown's property, that was patented prior to the enactment of ARTA.

The District Court here relied on the IBLA's *Peter Slaiby & Rejani Slaiby* decision to support its interpretation of ARTA. ER-34–35 (citing 186 IBLA 143 (Sept. 10, 2015)). The District Court correctly noted that

*Slaiby* did not bind it, ER-34, but it mistakenly found the IBLA's decision persuasive. The *Slaiby* ruling provides little insight into the issues presented here because it did not involve or even mention a 1914 Act easement reservation. 186 IBLA at 146.

The easement at issue in *Slaiby* was a replacement right-of-way obtained by the Alaska Railroad in 1965, after the 1964 Alaska Earthquake had made the original location of the tracks unusable. 186 IBLA at 146. Indeed, the opinion did not even address whether the 1965 right-of-way "included the right to erect a fence and/or exclude successors-in-interest from their land[.]" *Id.* at 148. Instead, the IBLA stated that "we express no view as to what was acquired by the United States in 1965" and that, "[a]s to those and other issues, the parties may wish to have their rights determined by an appropriate court." *Id.*

To the extent that the IBLA addressed ARTA in a way that may be relevant to this case, its reasoning is unpersuasive. *Slaiby* did not analyze the context, structure, or history of Section 1205(b)(4)(B) and instead merely quoted the section out of context. 186 IBLA at 148. As such, the IBLA's opinion provides unconvincing statutory analysis of the text at issue. *See Czyzewski*, 580 U.S. at 466.

Neither the IBLA in *Slaiby*, nor the District Court here, applied the traditional tools of statutory construction in interpreting Section 1205(b)(4)(B), and instead interpreted the provision's words devoid of context. Had the District Court interpreted the provision in context, it would have correctly concluded that the "exclusive-use" easement language does not apply to Flying Crown's property.

### C. This Court Must Interpret ARTA in a Way That Avoids Serious Constitutional Problems

By interpreting ARTA as purporting to convey an "exclusive-use" easement across Flying Crown's property, the District Court interpreted the statute in a way that raises serious constitutional problems. The federal government only reserved a nonexclusive easement when it granted the Sperstad Patent. *See* Section I, *supra*. If ARTA intended to transfer something more than a nonexclusive easement across Flying Crown's property, then ARTA would allow the federal and state governments to take property without paying just compensation, in violation of the Fifth Amendment to the Constitution. *See* U.S. Const. amend. V; *Cedar Point Nursery*, 141 S. Ct. at 2071 (The government commits a *per se* physical taking when "the government physically takes possession of property without acquiring title to it.").

"It is elementary law that if the Government uses ... or authorizes the use of ... an existing railroad easement for purposes and in a manner not allowed by the terms of the grant of the easement, the Government has taken the landowner's property for the new use." *Toews v. United States*, 376 F.3d 1371, 1376 (Fed. Cir. 2004); *see also Moffitt v. United States*, 147 Fed. Cl. 505, 518 (2020) (conversion of the rail corridor to recreational trails exceeded the scope of the easement, constituting a Fifth Amendment taking). The District Court here interpreted ARTA to authorize the State to use the railroad easement in a manner not allowed by the terms of the right-of-way reservation. *See* Section I, *supra*. Thus, the District Court believed that Congress, in passing ARTA, intended to take private property without paying just compensation.

Courts normally "construe the statute to avoid such [constitutional] problems unless such construction is plainly contrary to the intent of Congress." *Edward J. DeBartolo Corp. v. Fla. Gulf Coast Bldg. & Constr. Trades Council*, 485 U.S. 568, 575 (1988). ARTA does not purport to transfer an "exclusive-use" easement across Flying Crown's property. *See* Sections II-A and II-B, *supra*. But even if this Court thinks that ARTA can be interpreted in multiple ways, it should

adopt the interpretation that avoids an unconstitutional taking of property.

### D. The 2006 Patent Transferring the Railroad Right-of-Way to Alaska Must Be Construed in a Manner Consistent with ARTA

Below, ARRC pointed to the 2006 patent transferring the right-of-way to the state of Alaska to argue that ARTA transferred an "exclusive-use" easement across Flying Crown's property. But the patent states that it is transferring "the full and complete right, title, and interest of the United States in and to said real property," subject to reservations and, thus, does not intend to convey any interest the federal government did not own at the time. ER-191.

And while the patent purports to transfer an "exclusive-use" easement, it does so "[p]ursuant to Sec. 606(b)(4)(B) of ARTA." ER-191. Thus, the patent cannot be interpreted without interpreting ARTA. *See Leo Sheep*, 440 U.S. at 682. ARTA recognizes a difference between lands subject to unresolved claims of valid existing rights and those that were already patented. *See, supra*, Section II-A and II-B. Thus, the patent transferring the railroad to Alaska should be interpreted under the

correct interpretation of ARTA and should not be read to transfer an "exclusive-use" easement across Flying Crown's property.

## III. Even if ARTA Purported to Transfer an "Exclusive-Use" Easement Across Flying Crown's Property, ARRC Does Not Legally Hold an "Exclusive-Use" Easement Across the Property

Even if the District Court were correct that ARTA intended to convey an "exclusive-use" easement across Flying Crown's property, the court still erred in quieting title to such an easement in ARRC. In passing ARTA, and issuing the 2006 patent, the federal government could not and did not transfer an "exclusive-use" easement over Flying Crown's property, and, thus, ARRC does not hold an "exclusive-use" easement across the property. Regardless of how this Court interprets ARTA, it should reverse the judgment of the District Court.

"[T]he patent is a deed of the United States. As a deed, its operation is that of a quit-claim, or rather of a conveyance of such interest as the United States possessed in the land …." *Beard*, 70 U.S. at 491. "As a quitclaim deed, a land patent conveys whatever interest the government has in the soil and the land, and cannot transfer what the grantor does not possess." 63C Am. Jur. 2d Public Lands § 49 (footnote omitted). As demonstrated above, the Federal Government retained only a

nonexclusive easement when it patented the land in 1950 and, thus, the 2006 patent only transferred a nonexclusive easement to the State of Alaska. *See* Section I, *supra*.

Moreover, it is "one of the fundamental principles underlying the land system of this country" that "no subsequent law or proclamation" can alter a transfer of public lands into private ownership. *Hastings & D.R. Co. v. Whitney*, 132 U.S. 357, 360–61 (1889). As Justice Story stated, "a grant or title to lands once made by the legislature to any person or corporation is irrevocable, and cannot be re-assumed by any subsequent legislative act" because any "different doctrine is utterly inconsistent with the great and fundamental principle of a republican government, and with the right of the citizens to the free enjoyment of their property *lawfully* acquired." *Wilkinson v. Leland*, 27 U.S. 627, 657–58 (1829). Thus, ARTA and the 2006 patent could not alter the earlier transfer of property made in the Sperstad Patent. So even if ARTA, and the patents, purported to transfer an "exclusive-use" easement, the government had no legal authority or ability to do so.

Indeed, the State of Alaska—the grantee of the Alaska Railroad—has confirmed that it did not receive any interest the federal government did not own at the time of the transfer. Alaska Stat. § 42.40.350(a).[13] Thus, the 2006 patent transferring the railroad, like ARTA, can only tell how to convey any interest the United States might have. *Cf. Brandt*, 572 U.S. at 109. But the 2006 patent cannot convey interests the United States does not own. *See Id.* Because the Sperstad Patent only reserved a simple easement under the 1914 Act, the federal government could only transfer a simple easement to the State of Alaska and ARRC does not hold an "exclusive-use" easement across Flying Crown's property.[14]

## CONCLUSION

The judgment of the District Court should be reversed, and this Court should hold that ARRC holds only a nonexclusive easement for railroad purposes across Flying Crown's property.

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[13] Furthermore, the original statute establishing ARRC explicitly refers to the Alaska Railroad Transfer Report as describing what was transferred to the state. Alaska Stat. § 42.40.250(10).

[14] Additionally, as demonstrated above, if the 2006 patent transferred to the State more than the federal government owned, then one or both of the federal and state governments would have to pay Flying Crown just compensation for the taking. *See* Section II-C, *supra*.

DATED: January 17, 2023.

Respectfully submitted,

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## STATEMENT OF RELATED CASES

Under Circuit Rule 28-2.6, Defendant – Appellant states that they are unaware of any related pending cases before this Court.

**UNITED STATES COURT OF APPEALS**
**FOR THE NINTH CIRCUIT**

## Form 8. Certificate of Compliance for Briefs

*Instructions for this form: http://www.ca9.uscourts.gov/forms/form08instructions.pdf*

**9th Cir. Case Number 22-35573**

I am the attorney or self-represented party.

**This brief contains 12,458 words,** excluding the items exempted by FRAP 32(f). The brief's type size and typeface comply with FRAP 32(a)(5) and (6).

I certify that this brief *(select only one)*:

[x] complies with the word limit of Cir. R. 32-1.

[ ] is a **cross-appeal** brief and complies with the word limit of Cir. R. 28.1-1.

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[ ] complies with the length limit designated by court order dated _____.

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**Signature** /s/ Jeffrey W. McCoy **Date** January 17, 2023
*(use "*s/[typed name]*" to sign electronically-filed documents)*

# ADDENDUM

## Index

**An Act To authorize the President of the United State to locate, construct, and operate railroads in the Territory of Alaska, and for other purposes, 38 Stat. 305 (March 12, 1914)**

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the President of the United States is hereby empowered, authorized, and directed to adopt and use a name by which to designate the railroad or railroads and properties to be  be located, owned, acquired, or operated under the authority of this Act; to employ such officers, agents, or agencies, in his discretion, as may be necessary to enable him to carry out the purposes of this Act; to authorize and require such officers, agents, or agencies to perform any or all of the duties imposed upon him by the terms of this Act; to detail and require any officer or officers in the Engineer Corps in the Army or Navy to perform service under this Act; to fix the compensation of all officercers, agents, or employees appointed or designated by him; to designate and cause to be locatedd a route or routes for a line or lines of railroad in the Territory of Alaska not to exceed in the aggregate one thousand miles, to be so located as to connect one or more of the open Pacific Ocean harbors on the southern coast of Alaska with the navigable waters in the interior of Alaska, and with a coal field or fields so as best to aid in the development of the agricultural and mineral or other resources of Alaska, and the settlement of the public lands therein, and so as to provide transportation of coal for the Army and Navy, transportation of troops, arms, munitions of war, the mails, and for other governmental and public uses, and for the transportation of passengers and property; 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 and personal property necessary to carry out the purposes of this Act; to exercise the power of eminent domain to acquire 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 there; to acquire rights of way, terminal grounds, and all other rights; to purchase or otherwise acquire all necessary equipment for the construction and operation of such railroad or railroads; to build or otherwise acquire docks, wharves, terminal facilities, and all structures needed for the equipment and operation of such railroad or railroads; to fix, change, or modify rates for the transportation of passengers and property, which rates shall be equal and uniform, but no free transportation or passes shall be permitted except, that the provisions of the interstate commerce laws relating to the transportation of employees and their families shall be in force as to the lines constructed under this Act; to receive compensation for the transportation of passengers and property, and to perform generally all the usual duties of a common carrier by railroad; to make and establish rules and regulations for the control and operation of said railroad or railroads; in his discretion, to lease the said railroad or railroads, or any portion thereof, including telegraph and telephone lines, after completion under such terms as he may deem proper, but no lease shall be for a longer period than twenty years, or in the event of failure to lease, to operate the same until the further action of Congress: *Provided,* That if said railroad or railroads, including telegraph and telephone lines, are leased under the authority herein given, then and in that event they shall be operated under the jurisdiction and control of the provisions of the interstate commerce laws; to purchase, condemn, or otherwise acquire upon such terms as he may deem proper any other line or lines of railroad in Alaska which may be necessary to complete the construction of the line or lines of railroad designated or located by him: *Provided*, That the price to be paid in case of purchase shall in no case exceed the actual physical value of the railroad; to make contracts or agreements with any railroad or steamship company or vessel owner for joint transportation of passengers or property over the road or roads herein provided for, and such railroad or steamship line or by such vessel, and to make such other contracts as may be necessary to carry out any of the purposes of this Act; to utilize in carrying on the work herein provided for any and all machinery, equipment, instruments, material, and other property of any sort whatsoever used or acquired in

connection with the construction of the Panama Canal, so far and as rapidly as the same is no longer needed at Panama, and the Isthmian Canal Commission is hereby authorized to deliver said property to such officers or persons as the President may designate, and to take credit therefor at such percentage of its original cost as the President may approve, but this amount shall not be charged against the fund provided for in this Act.

The authority herein granted shall include the power to construct, maintain, and operate telegraph and telephone lines so far as they may be necessary or convenient in the construction and operation of the railroad or railroads as herein authorized and they shall perform generally all the usual duties of telegraph and telephone limes for hire.

That it is the intent and purpose of Congress through this Act to authorize and empower the President of the United States, and he is hereby fully authorized and empowered, through such officers, agents, or agencies he may appoint or employ, to do all necessary acts and things in addition to those specifically authorized in this Act to enable him to accomplish the purposes and objects of this Act.

The President is hereby authorized to withdraw, locate, and dispose of, under such rules and regulations as he may proscribe, such area or areas of the public domain along the line or lines of such proposed railroad or railroads for town-site purposes as he may from time to time designate.

Terminal and stati6n grounds and rights of way through the lands of the United States in the Territory of Alaska are hereby granted for the construction of railroads, telegraph and telephone lines authorized by this Act, and in all patents for lands hereafter taken up, entered or located in the Territory of Alaska there shall be expressed that there is reserved to the United States a right of way for the construction of railroads, telegraph and telephone lines to the extent of one hundred feet on either side of the center line of any such road and twenty-five feet on either side of the center line of any such telegraph or telephone lines, and the President may, in such manner as he deems advisable,

make reservation of such lands as are or may be useful for furnishing materials for construction and for stations, terminals, docks, and for such other purposes in connection with the construction and operation of such railroad lines as he may deem necessary and desirable.

SEC. 2. That the cost of the work authorized by this Act shall not exceed $35,000,000, and in executing the authority granted by this Act the President shall not expend nor obligate the United States to expend more than the said sum; and there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of $1,000,000 to be used for carrying out the provisions of this Act, to continue available until expended

SEC. 3. That all moneys derived from the lease, sale, or disposal of any of the public lands, including townsites, in Alaska, or the coal or mineral therein contained, or the timber thereon, and the earnings of said railroad or railroads, together with the earnings of the telegraph and telephone lines constructed under this Act, above maintenance charges and operating expenses, shall be paid into the Treasury of the United States as other miscellaneous receipts are paid, and a separate account thereof shall be kept and annually reported to Congress.

SEC. 4. That the officers, agents, or agencies placed in charge of the work by the President shall make to the President annually, and at such other periods as may be required by the President or by either House of Congress, full and complete reports of all their acts and doings and of all moneys received and expended in the construction of said work and in the operation of said work or works and in the performance of their duties in connection therewith. The annual reports herein provided for shall be by the President transmitted to Congress._

Approved, March 12, 1914.

## Alaska Railroad Transfer Act, 45 U.S.C. §§ 1201–1214

### § 1201. Findings

The Congress finds that--

**(1)** the Alaska Railroad, which was built by the Federal Government to serve the transportation and development needs of the Territory of Alaska, presently is providing freight and passenger services that primarily benefit residents and businesses in the State of Alaska;

**(2)** many communities and individuals in Alaska are wholly or substantially dependent on the Alaska Railroad for freight and passenger service and provision of such service is an essential governmental function;

**(3)** continuation of services of the Alaska Railroad and the opportunity for future expansion of those services are necessary to achieve Federal, State, and private objectives; however, continued Federal control and financial support are no longer necessary to accomplish these objectives;

**(4)** the transfer of the Alaska Railroad and provision for its operation by the State in the manner contemplated by this chapter is made pursuant to the Federal goal and ongoing program of transferring appropriate activities to the States;

**(5)** the State's continued operation of the Alaska Railroad following the transfer contemplated by this chapter, together with such expansion of the railroad as may be necessary or convenient in the future, will constitute an appropriate public use of the rail system and associated properties, will provide an essential governmental service, and will promote the general welfare of Alaska's residents and visitors; and

**(6)** in order to give the State government the ability to determine the Alaska Railroad's role in serving the State's transportation needs in the future, including the opportunity to extend rail service, and to provide a savings to the Federal Government, the

Federal Government should offer to transfer the railroad to the State, in accordance with the provisions of this chapter, in the same manner in which other Federal transportation functions (including highways and airports) have been transferred since Alaska became a State in 1959.

**§ 1202. Definitions**

As used in this chapter, the term--

**(1)** "Alaska Railroad" means the agency of the United States Government that is operated by the Department of Transportation as a rail carrier in Alaska under authority of the Act of March 12, 1914 (43 U.S.C. 975 et seq.) (popularly referred to as the "Alaska Railroad Act") and section 6(i) of the Department of Transportation Act, or, as the context requires, the railroad operated by that agency;

**(2)** "Alaska Railroad Revolving Fund" means the public enterprise fund maintained by the Department of the Treasury into which revenues of the Alaska Railroad and appropriations for the Alaska Railroad are deposited, and from which funds are expended for Alaska Railroad operation, maintenance and construction work authorized by law;

**(3)** "claim of valid existing rights" means any claim to the rail properties of the Alaska Railroad on record in the Department of the Interior as of January 13, 1983;

**(4)** "date of transfer" means the date on which the Secretary delivers to the State the four documents referred to in section 1203(b)(1) of this title;

**(5)** "employees" means all permanent personnel employed by the Alaska Railroad on the date of transfer, including the officers of the Alaska Railroad, unless otherwise indicated in this chapter;

**(6)** "exclusive-use easement" means an easement which affords to the easement holder the following:

**(A)** the exclusive right to use, possess, and enjoy the surface estate of the land subject to this easement for transportation, communication, and transmission purposes and for support functions associated with such purposes;

**(B)** the right to use so much of the subsurface estate of the lands subject to this easement as is necessary for the transportation, communication, and transmission purposes and associated support functions for which the surface of such lands is used;

**(C)** subjacent and lateral support of the lands subject to the easement; and

**(D)** the right (in the easement holder's discretion) to fence all or part of the lands subject to this easement and to affix track, fixtures, and structures to such lands and to exclude other persons from all or part of such lands;

**(7)** "Native Corporation" has the same meaning as such term has under section 102(6) of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3102(6));

**(8)** "officers of the Alaska Railroad" means the employees occupying the following positions at the Alaska Railroad as of the day before the date of transfer: General Manager; Assistant General Manager; Assistant to the General Manager; Chief of Administration; and Chief Counsel;

**(9)** "public lands" has the same meaning as such term has under section 3(e) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(e));

**(10)** "rail properties of the Alaska Railroad" means all right, title, and interest of the United States to lands, buildings, facilities, machinery, equipment, supplies, records, rolling stock, trade names, accounts receivable, goodwill, and other real and personal property, both tangible and intangible, in which there is an interest reserved, withdrawn, appropriated, owned, administered

or otherwise held or validly claimed for the Alaska Railroad by the United States or any agency or instrumentality thereof as of January 14, 1983, but excluding any such properties disposed of, and including any such properties acquired, in the ordinary course of business after that date but before the date of transfer, and also including the exclusive-use easement within the Denali National Park and Preserve conveyed to the State pursuant to this chapter and also excluding the following:

> **(A)** the unexercised reservation to the United States for future rights-of-way required in all patents for land taken up, entered, or located in Alaska, as provided by the Act of March 12, 1914 (43 U.S.C. 975 et seq.);

**(B)** the right of the United States to exercise the power of eminent domain;

**(C)** any moneys in the Alaska Railroad Revolving Fund which the Secretary demonstrates, in consultation with the State, are unobligated funds appropriated from general tax revenues or are needed to satisfy obligations incurred by the United States in connection with the operation of the Alaska Railroad which would have been paid from such Fund but for this chapter and which are not assumed by the State pursuant to this chapter;

**(D)** any personal property which the Secretary demonstrates, in consultation with the State, prior to the date of transfer under section 1203 of this title, to be necessary to carry out functions of the United States after the date of transfer; and

**(E)** any lands or interest therein (except as specified in this chapter) within the boundaries of the Denali National Park and Preserve;

**(11)** "right-of-way" means, except as used in section 1208 of this title--

**(A)** an area extending not less than one hundred feet on both sides of the center line of any main line or branch line of the Alaska Railroad; or

**(B)** an area extending on both sides of the center line of any main line or branch line of the Alaska Railroad appropriated or retained by or for the Alaska Railroad that, as a result of military jurisdiction over, or non-Federal ownership of, lands abutting the main line or branch line, is of a width less than that described in subparagraph (A) of this paragraph;

**(12)** "Secretary" means the Secretary of Transportation;

**(13)** "State" means the State of Alaska or the State-owned railroad, as the context requires;

**(14)** "State-owned railroad" means the authority, agency, corporation or other entity which the State of Alaska designates or contracts with to own, operate or manage the rail properties of the Alaska Railroad or, as the context requires, the railroad owned, operated, or managed by such authority, agency, corporation, or other entity; and

**(15)** "Village Corporation" has the same meaning as such term has under section 3(j) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(j)).

### § 1203. Transfer authorization

**(a) Authority of Secretary; time, manner, etc., of transfer**

Subject to the provisions of this chapter, the United States, through the Secretary, shall transfer all rail properties of the Alaska Railroad to the State. Such transfer shall occur as soon as practicable after the Secretary has made the certifications required by subsection (d) of this section and shall be accomplished in the manner specified in subsection (b) of this section.

**(b) Simultaneous and interim transfers, conveyances, etc.**

**(1)** On the date of transfer, the Secretary shall simultaneously:

**(A)** deliver to the State a bill of sale conveying title to all rail properties of the Alaska Railroad except any interest in real property;

**(B)** deliver to the State an interim conveyance of the rail properties of the Alaska Railroad that are not conveyed pursuant to subparagraph (A) of this paragraph and are not subject to unresolved claims of valid existing rights;

**(C)** deliver to the State an exclusive license granting the State the right to use all rail properties of the Alaska Railroad not conveyed pursuant to subparagraphs (A) or (B) of this paragraph pending conveyances in accordance with the review and settlement or final administrative adjudication of claims of valid existing rights;

**(D)** convey to the State a deed granting the State (i) an exclusive-use easement for that portion of the right-of-way of the Alaska Railroad within the Denali National Park and Preserve extending not less than one hundred feet on either side of the main or branch line tracks, and eight feet on either side of the centerline of the "Y" track connecting the main line of the railroad to the power station at McKinley

Park Station and (ii) title to railroad-related improvements within such right-of-way.

Prior to taking the action specified in subparagraphs (A) through (D) of this paragraph, the Secretary shall consult with the Secretary of the Interior. The exclusive-use easement granted pursuant to subparagraph (D) of this paragraph and all rights afforded by such easement shall be exercised only for railroad purposes, and for such other transportation, transmission, or communication purposes for which lands subject to such easement were utilized as of January 14, 1983.

**(2)** The Secretary shall deliver to the State an interim conveyance of rail properties of the Alaska Railroad described in paragraph (1)(C) of this subsection that become available for conveyance to the State after the date of transfer as a result of settlement, relinquishment, or final administrative adjudication pursuant to section 1205 of this title. Where the rail properties to be conveyed pursuant to this paragraph are surveyed at the time they become available for conveyance to the State, the Secretary shall deliver a patent therefor in lieu of an interim conveyance.

**(3)** The force and effect of an interim conveyance made pursuant to paragraphs (1)(B) or (2) of this subsection shall be to convey to and vest in the State exactly the same right, title, and interest in and to the rail properties identified therein as the State would have received had it been issued a patent by the United States. The Secretary of the Interior shall survey the land conveyed by an interim conveyance to the State pursuant to paragraphs (1)(B) or (2) of this subsection and, upon completion of the survey, the Secretary shall issue a patent therefor.

**(4)** The license granted pursuant to paragraph (1)(C) of this subsection shall authorize the State to use, occupy, and directly receive all benefits of the rail properties described in the license for the operation of the State-owned railroad in conformity with the Memorandum of Understanding referred to in section 1205(b)(3) of this title. The license shall be exclusive, subject only

to valid leases, permits, and other instruments issued before the date of transfer and easements reserved pursuant to subsection (c)(2) of this section. With respect to any parcel conveyed pursuant to this chapter, the license shall terminate upon conveyance of such parcel.

**(c) Reservations to United States in interim conveyances and patents**

**(1)** Interim conveyances and patents issued to the State pursuant to subsection (b) of this section shall confirm, convey and vest in the State all reservations to the United States (whether or not expressed in a particular patent or document of title), except the unexercised reservations to the United States for future rights-of-way made or required by the first section of the Act of March 12, 1914 (43 U.S.C. 975d). The conveyance to the State of such reservations shall not be affected by the repeal of such Act under section 615 of this title.

**(2)** In the license granted under subsection (b)(1)(C) of this section and in all conveyances made to the State under this chapter, there shall be reserved to the Secretary of the Interior, the Secretary of Defense and the Secretary of Agriculture, as appropriate, existing easements for administration (including agency transportation and utility purposes) that are identified in the report required by section 1204(a) of this title. The appropriate Secretary may obtain, only after consent of the State, such future easements as are necessary for administration. Existing and future easements and use of such easements shall not interfere with operations and support functions of the State-owned railroad.

**(3)** There shall be reserved to the Secretary of the Interior the right to use and occupy, without compensation, five thousand square feet of land at Talkeetna, Alaska, as described in ARR lease numbered 69-25-0003-5165 for National Park Service administrative activities, so long as the use or occupation does not interfere with the operation of the State-owned railroad. This

reservation shall be effective on the date of transfer under this section or the expiration date of such lease, whichever is later.

**(d) Certifications by Secretary; scope, subject matter, etc.**

**(1)** Prior to the date of transfer, the Secretary shall certify that the State has agreed to operate the railroad as a rail carrier in intrastate and interstate commerce.

**(2)**

**(A)** Prior to the date of transfer, the Secretary shall also certify that the State has agreed to assume all rights, liabilities, and obligations of the Alaska Railroad on the date of transfer, including leases, permits, licenses, contracts, agreements, claims, tariffs, accounts receivable, and accounts payable, except as otherwise provided by this chapter.

**(B)** Notwithstanding the provisions of subparagraph (A) of this paragraph, the United States shall be solely responsible for--

**(i)** all claims and causes of action against the Alaska Railroad that accrue on or before the date of transfer, regardless of the date on which legal proceedings asserting such claims were or may be filed, except that the United States shall, in the case of any tort claim, only be responsible for any such claim against the United States that accrues before the date of transfer and results in an award, compromise, or settlement of more than $2,500, and the United States shall not compromise or settle any claim resulting in State liability without the consent of the State, which consent shall not be unreasonably withheld; and

**(ii)** all claims that resulted in a judgment or award against the Alaska Railroad before the date of transfer.

**(C)** For purposes of subparagraph (B) of this paragraph, the term "accrue" shall have the meaning contained in section 2401 of Title 28.

**(D)** Any hazardous substance, petroleum or other contaminant release at or from the State-owned rail properties that began prior to January 5, 1985, shall be and remain the liability of the United States for damages and for the costs of investigation and cleanup. Such liability shall be enforceable under 42 U.S.C. 9601 et seq. for any release described in the preceding sentence.

**(3)**

**(A)** Prior to the date of transfer, the Secretary shall also certify that the State-owned railroad has established arrangements pursuant to section 1206 of this title to protect the employment interests of employees of the Alaska Railroad during the two-year period commencing on the date of transfer. These arrangements shall include provisions--

**(i)** which ensure that the State-owned railroad will adopt collective bargaining agreements in accordance with the provisions of subparagraph (B) of this paragraph;

**(ii)** for the retention of all employees, other than officers of the Alaska Railroad, who elect to transfer to the State-owned railroad in their same positions for the two-year period commencing on the date of transfer, except in cases of reassignment, separation for cause, resignation, retirement, or lack of work;

**(iii)** for the payment of compensation to transferred employees (other than employees provided for in subparagraph (E) of this paragraph), except in cases of separation for cause, resignation, retirement, or lack of work, for two years commencing on the date of transfer at or above the base salary levels in effect for such

employees on the date of transfer, unless the parties otherwise agree during that two-year period;

**(iv)** for priority of reemployment at the State-owned railroad during the two-year period commencing on the date of transfer for transferred employees who are separated for lack of work, in accordance with subparagraph (C) of this paragraph (except for officers of the Alaska Railroad, who shall receive such priority for one year following the date of transfer);

**(v)** for credit during the two-year period commencing on the date of transfer for accrued annual and sick leave, seniority rights, and relocation and turnaround travel allowances which have been accrued during their period of Federal employment by transfered2 employees retained by the State-owned railroad (except for officers of the Alaska Railroad, who shall receive such credit for one year following the date of transfer);

**(vi)** for payment to transferred employees retained by the State-owned railroad during the two-year period commencing on the date of transfer, including for one year officers retained or separated under subparagraph (E) of this paragraph, of an amount equivalent to the cost-of-living allowance to which they are entitled as Federal employees on the day before the date of transfer, in accordance with the provisions of subparagraph (D) of this paragraph; and

**(vii)** for health and life insurance programs for transferred employees retained by the State-owned railroad during the two-year period commencing on the date of transfer, substantially equivalent to the Federal health and life insurance programs available to employees on the day before the date of transfer (except for officers of the Alaska Railroad, who shall

receive such credit for one year following the date of transfer).

**(B)** The State-owned railroad shall adopt all collective bargaining agreements which are in effect on the date of transfer. Such agreements shall continue in effect for the two-year period commencing on the date of transfer, unless the parties agree to the contrary before the expiration of that two-year period. Such agreements shall be renegotiated during the two-year period, unless the parties agree to the contrary. Any labor-management negotiation impasse declared before the date of transfer shall be settled in accordance with chapter 71 of Title 5. Any impasse declared after the date of transfer shall be subject to applicable State law.

**(C)** Federal service shall be included in the computation of seniority for transferred employees with priority for reemployment, as provided in subparagraph (A)(iv) of this paragraph.

**(D)** Payment to transferred employees pursuant to subparagraph (A)(vi) of this paragraph shall not exceed the percentage of any transferred employee's base salary level provided by the United States as a cost-of-living allowance on the day before the date of transfer, unless the parties agree to the contrary.

**(E)** Prior to the date of transfer, the Secretary shall also certify that the State-owned railroad has agreed to the retention, for at least one year from the date of transfer, of the offices of the Alaska Railroad, except in cases of separation for cause, resignation, retirement, or lack of work, at or above their base salaries in effect on the date of transfer, in such positions as the State-owned railroad may determine; or to the payment of lump-sum severance pay in an amount equal to such base salary for one year to officers

not retained by the State-owned railroad upon transfer or, for officers separated within one year on or after the date of transfer, of a portion of such lump-sum severance payment (diminished pro rata for employment by the State-owned railroad within one year of the date of transfer prior to separation).

**(4)** Prior to the date of transfer, the Secretary shall also certify that the State has agreed to allow representatives of the Secretary adequate access to employees and records of the Alaska Railroad when needed for the performance of functions related to the period of Federal ownership.

**(5)** Prior to the date of transfer, the Secretary shall also certify that the State has agreed to compensate the United States at the value, if any, determined pursuant to section 1204(d) of this title.

**§ 1204. Transition period**

**(a) Joint report by Secretary and Governor of Alaska; contents, preparation, etc.**

Within 6 months after January 14, 1983, the Secretary and the Governor of Alaska shall jointly prepare and deliver to the Congress of the United States and the legislature of the State a report that describes to the extent possible the rail properties of the Alaska Railroad, the liabilities and obligations to be assumed by the State, the sum of money, if any, in the Alaska Railroad Revolving Fund to be withheld from the State pursuant to section 1202(10)(C)1 of this title, and any personal property to be withheld pursuant to section 1202(10)(D)1 of this title. The report shall separately identify by the best available descriptions (1) the rail properties of the Alaska Railroad to be transferred pursuant to section 1203(b)(1)(A), (B), and (D) of this title; (2) the rail properties to be subject to the license granted pursuant to section 1203(b)(1)(C) of this title; and (3) the easements to be reserved pursuant to section 1203(c)(2) of this title. The Secretaries of Agriculture, Defense, and the Interior and the Administrator of the General Services Administration shall provide the Secretary with all

information and assistance necessary to allow the Secretary to complete the report within the time required.

**(b) Inspection, etc., of rail properties and records; terms and conditions; restrictions**

During the period from January 14, 1983, until the date of transfer, the State shall have the right to inspect, analyze, photograph, photocopy and otherwise evaluate all of the rail properties of the Alaska Railroad and all records related to the rail properties of the Alaska Railroad maintained by any agency of the United States under conditions established by the Secretary to protect the confidentiality of proprietary business data, personnel records, and other information, the public disclosure of which is prohibited by law. During that period, the Secretary and the Alaska Railroad shall not, without the consent of the State and only in conformity with applicable law and the Memorandum of Understanding referred to in section 1205(b)(3) of this title--

> **(1)** make or incur any obligation to make any individual capital expenditure of money from the Alaska Railroad Revolving Fund in excess of $300,000;
>
> **(2)** (except as required by law) sell, exchange, give, or otherwise transfer any real property included in the rail properties of the Alaska Railroad; or
>
> **(3)** lease any rail property of the Alaska Railroad for a term in excess of five years.

**(c) Format for accounting practices and systems**

Prior to transfer of the rail properties of the Alaska Railroad to the State, the Alaska Railroad's accounting practices and systems shall be capable of reporting data to the Interstate Commerce Commission in formats required of comparable rail carriers subject to the jurisdiction of the Interstate Commerce Commission.

**(d) Fair market value; determination, terms and conditions, etc.**

**(1)** Within nine months after January 14, 1983, the United States Railway Association (hereinafter in this section referred to as the "Association") shall determine the fair market value of the Alaska Railroad under the terms and conditions of this chapter, applying such procedures, methods and standards as are generally accepted as normal and common practice. Such determination shall include an appraisal of the real and personal property to be transferred to the State pursuant to this chapter. Such appraisal by the Association shall be conducted in the usual manner in accordance with generally accepted industry standards, and shall consider the current fair market value and potential future value if used in whole or in part for other purposes. The Association shall take into account all obligations imposed by this chapter and other applicable law upon operation and ownership of the State-owned railroad. In making such determination, the Association shall use to the maximum extent practicable all relevant data and information, including, if relevant, that contained in the report prepared pursuant to subsection (a) of this section.

**(2)** The determination made pursuant to paragraph (1) of this subsection shall not be construed to affect, enlarge, modify, or diminish any inventory, valuation, or classification required by the Interstate Commerce Commission pursuant to subchapter V of chapter 107 of Title 49.

## § 1205. Lands to be transferred

### (a) Availability of lands among rail properties

Lands among the rail properties of the Alaska Railroad shall not be--

**(1)** available for selection under section 12 of the Act of January 2, 1976, as amended (43 U.S.C. 1611, note), subject to the exception contained in section 12(b)(8)(i)(D) of such Act, as amended by subsection (d)(5) of this section;

**(2)** available for conveyance under section 1425 of the Alaska National Interest Lands Conservation Act (Public Law 96-487; 94 Stat. 2515);

**(3)** available for conveyance to Chugach Natives, Inc., under sections 1429 or 1430 of the Alaska National Interest Lands Conservation Act (Public Law 96-487; 94 Stat. 2531) or under sections 12(c) or 14(h)(8) of the Alaska Native Claims Settlement Act (43 U.S.C. 1611(c) and 1613(h)(8), respectively); or

**(4)** available under any law or regulation for entry, location, or for exchange by the United States, or for the initiation of a claim or selection by any party other than the State or other transferee under this chapter, except that this paragraph shall not prevent a conveyance pursuant to section 12(b)(8)(i)(D) of the Act of January 2, 1976 (43 U.S.C. 1611, note), as amended by subsection (d)(5) of this section.

### (b) Review and settlement of claims; administrative adjudication; management of lands; procedures applicable

**(1)**

**(A)** During the ten months following January 14, 1983, so far as practicable consistent with the priority of preparing the report required pursuant to section 1204(a) of this title, the Secretary of the Interior, Village Corporations with claims of valid existing rights, and the State shall review and make a good faith effort to settle as many of the claims

as possible. Any agreement to settle such claims shall take effect and bind the United States, the State, and the Village Corporation only as of the date of transfer of the railroad.

**(B)** At the conclusion of the review and settlement process provided in subparagraph (A) of this paragraph, the Secretary of the Interior shall prepare a report identifying lands to be conveyed in accordance with settlement agreements under this chapter or applicable law. Such settlement shall not give rise to a presumption as to whether a parcel of land subject to such agreement is or is not public land.

**(2)** The Secretary of the Interior shall have the continuing jurisdiction and duty to adjudicate unresolved claims of valid existing rights pursuant to applicable law and this chapter. The Secretary of the Interior shall complete the final administrative adjudication required under this subsection not later than three years after January 14, 1983, and shall complete the survey of all lands to be conveyed under this chapter not later than five years after January 14, 1983, and after consulting with the Governor of the State of Alaska to determine priority of survey with regard to other lands being processed for patent to the State. The Secretary of the Interior shall give priority to the adjudication of Village Corporation claims as required in this section. Upon completion of the review and settlement process required by paragraph (1)(A) of this subsection, with respect to lands not subject to an agreement under such paragraph, the Secretary of the Interior shall adjudicate which lands subject to claims of valid existing rights filed by Village Corporations, if any, are public lands and shall complete such final administrative adjudication within two years after January 14, 1983.

**(3)** Pending settlement or final administrative adjudication of claims of valid existing rights filed by Village Corporations prior to the date of transfer or while subject to the license granted to the State pursuant to section 1203(b)(1)(C) of this title, lands subject

to such claims shall be managed in accordance with the Memorandum of Understanding among the Federal Railroad Administration, the State, Eklutna, Incorporated, Cook Inlet Region, Incorporated (as that term is used in section 12 of the Act of January 2, 1976 (Public Law 94-204; 89 Stat. 1150)), and Toghotthele Corporation, executed by authorized officers or representatives of each of these entities. Duplicate originals of the Memorandum of Understanding shall be maintained and made available for public inspection and copying in the Office of the Secretary, at Washington, District of Columbia, and in the Office of the Governor of the State of Alaska, at Juneau, Alaska.

**(4)** The following procedures and requirements are established to promote finality of administrative adjudication of claims of valid existing rights filed by Village Corporations, to clarify and simplify the title status of lands subject to such claims, and to avoid potential impairment of railroad operations resulting from joint or divided ownership in substantial segments of right-of-way:

**(A)**

**(i)** Prior to final administrative adjudication of Village Corporation claims of valid existing rights in land subject to the license granted under section 1203(b)(1)(C) of this title, the Secretary of the Interior may, notwithstanding any other provision of law, accept relinquishment of so much of such claims as involved lands within the right-of-way through execution of an agreement with the appropriate Village Corporation effective on or after the date of transfer. Upon such relinquishment, the interest of the United States in the right-of-way shall be conveyed to the State pursuant to section 1203(b)(1)(B) or (2) of this title.

**(ii)** With respect to a claim described in clause (i) of this subparagraph that is not settled or relinquished

prior to final administrative adjudication, the Congress finds that exclusive control over the right-of-way by the Alaska Railroad has been and continues to be necessary to afford sufficient protection for safe and economic operation of the railroad. Upon failure of the interested Village Corporation to relinquish so much of its claims as involve lands within the right-of-way prior to final adjudication of valid existing rights, the Secretary shall convey to the State pursuant to section 1203(b)(1)(B) or (2) of this title all right, title and interest of the United States in and to the right-of-way free and clear of such Village Corporation's claim to and interest in lands within such right-of-way.

**(B)** Where lands within the right-of-way, or any interest in such lands, have been conveyed from Federal ownership prior to January 14, 1983, or is subject to a claim of valid existing rights by a party other than a Village Corporation, the conveyance to the State of the Federal interest in such properties pursuant to section 1203(b)(1)(B) or (2) of this title shall grant not less than an exclusive-use easement in such properties. The foregoing requirements shall not be construed to permit the conveyance to the State of less than the entire Federal interest in the rail properties of the Alaska Railroad required to be conveyed by section 1203(b) of this title. If an action is commenced against the State or the United States contesting the validity or existence of a reservation of right-of-way for the use or benefit of the Alaska Railroad made prior to January 14, 1983, the Secretary of the Interior, through the Attorney General, shall appear in and defend such action.

**(c) Judicial review; remedies available; standing of State**

**(1)** The final administrative adjudication pursuant to subsection (b) of this section shall be final agency action and subject to

judicial review only by an action brought in the United States District Court for the District of Alaska.

**(2)** No administrative or judicial action under this chapter shall enjoin or otherwise delay the transfer of the Alaska Railroad pursuant to this chapter, or substantially impair or impede the operations of the Alaska Railroad or the State-owned railroad.

**(3)** Before the date of transfer, the State shall have standing to participate in any administrative determination or judicial review pursuant to this chapter. If transfer to the State does not occur pursuant to section 1203 of this title, the State shall not thereafter have standing to participate in any such determination or review.

**(d) Omitted**

**(e) Liability of State for damage to land while used under license**

The State shall be liable to a party receiving a conveyance of land among the rail properties of the Alaska Railroad subject to the license granted pursuant to section 1203(b)(1)(C) of this title for damage resulting from use by the State of the land under such license in a manner not authorized by such license.

## § 1206. Employees of Alaska Railroad

### (a) Coverage under Federal civil service retirement laws; election, funding, nature of benefits, etc., for employees transferring to State-owned railroad; voluntary separation incentives

**(1)** Any employees who elect to transfer to the State-owned railroad and who on the day before the date of transfer are subject to the civil service retirement law (subchapter III of chapter 83 of Title 5) shall, so long as continually employed by the State-owned railroad without a break in service, continue to be subject to such law, except that the State-owned railroad shall have the option of providing benefits in accordance with the provisions of paragraph (2) of this subsection. Employment by the State-owned railroad without a break in continuity of service shall be considered to be employment by the United States Government for purposes of subchapter III of chapter 83 of Title 5. The State-owned railroad shall be the employing agency for purposes of section 8334(a) of Title 5 and shall contribute to the Civil Service Retirement and Disability Fund a sum as provided by such section, except that such sum shall be determined by applying to the total basic pay (as defined in section 8331(3) of Title 5) paid to the employees of the State-owned railroad who are covered by the civil service retirement law, the per centum rate determined annually by the Director of the Office of Personnel Management to be the excess of the total normal cost per centum rate of the civil service retirement system over the employee deduction rate specified in section 8334(a) of Title 5. The State-owned railroad shall pay into the Federal Civil Service Retirement and Disability Fund that portion of the cost of administration of such Fund which is demonstrated by the Director of the Office of Personnel Management to be attributable to its employees.

**(2)** At any time during the two-year period commencing on the date of transfer, the State-owned railroad shall have the option of providing to transferred employees retirement benefits, reflecting

prior Federal service, in or substantially equivalent to benefits under the retirement program maintained by the State for State employees. If the State decides to provide benefits under this paragraph, the State shall provide such benefits to all transferred employees, except those employees who will meet the age and service requirements for retirement under section 8336(a), (b), (c) or (f) of Title 5 within five years after the date of transfer and who elect to remain participants in the Federal retirement program.

**(3)** If the State provides benefits under paragraph (2) of this subsection--

> **(A)** the provisions of paragraph (1) of this subsection regarding payments into the Civil Service Retirement and Disability Fund for those employees who are transferred to the State program shall have no further force and effect (other than for employees who will meet the age and service requirements for retirement under section 8336(a), (b), (c) or (f) of Title 5 within five years after the date of transfer and who elect to remain participants in the Federal retirement program); and
>
> **(B)** all of the accrued employee and employer contributions and accrued interest on such contributions made by and on behalf of the transferred employees during their prior Federal service (other than amounts for employees who will meet the age and service requirements for retirement under section 8336(a), (b), (c) or (f) of Title 5 within five years after the date of transfer and who elect to remain participants in the Federal retirement program) shall be withdrawn from the Federal Civil Service Retirement and Disability Fund and shall be paid into the retirement fund utilized by the State-owned railroad for the transferred employees, in accordance with the provisions of paragraph (2) of this subsection. Upon such payment, credit for prior Federal service under the Federal civil service retirement system

shall be forever barred, notwithstanding the provisions of section 8334 of Title 5.

**(4)**

**(A)** The State-owned railroad shall be included in the definition of "agency" for purposes of section 3(a), (b), (c), and (e) of the Federal Workforce Restructuring Act of 1994 and may elect to participate in the voluntary separation incentive program established under such Act. Any employee of the State-owned railroad who meets the qualifications as described under the first sentence of paragraph (1) shall be deemed an employee under such Act.

**(B)** An employee who has received a voluntary separation incentive payment under this paragraph and accepts employment with the State-owned railroad within 5 years after the date of separation on which payment of the incentive is based shall be required to repay the entire amount of the incentive payment unless the head of the State-owned railroad determines that the individual involved possesses unique abilities and is the only qualified applicant available for the position.

**(b) Coverage for employees not transferring to State-owned railroad**

Employees of the Alaska Railroad who do not transfer to the State-owned railroad shall be entitled to all of the rights and benefits available to them under Federal law for discontinued employees.

**(c) Rights and benefits of transferred employees whose employment with State-owned railroad is terminated**

Transferred employees whose employment with the State-owned railroad is terminated during the two-year period commencing on the date of transfer shall be entitled to all of the rights and benefits of discontinued employees that such employees would have had under Federal law if their termination had occurred immediately before the

date of the transfer, except that financial compensation paid to officers of the Alaska Railroad shall be limited to that compensation provided pursuant to section 1203(d)(3)(E) of this title. Such employees shall also be entitled to seniority and other benefits accrued under Federal law while they were employed by the State-owned railroad on the same basis as if such employment had been Federal service.

**(d) Lump-sum payment for unused annual leave for employees transferring to State-owned railroad**

Any employee who transfers to the State-owned railroad under this chapter shall not be entitled to lump-sum payment for unused annual leave under section 5551 of Title 5, but shall be credited by the State with the unused annual leave balance at the time of transfer.

**(e) Continued coverage for certain employees and annuitants in Federal health benefits plans and life insurance plans**

**(1)** Any person described under the provisions of paragraph (2) may elect life insurance coverage under chapter 87 of Title 5 and enroll in a health benefits plan under chapter 89 of Title 5 in accordance with the provisions of this subsection.

**(2)** The provisions of paragraph (1) shall apply to any person who-

**(A)** on March 30, 1994, is an employee of the State-owned railroad;

**(B)** has 20 years or more of service (in the civil service as a Federal employee or as an employee of the State-owned railroad, combined) on the date of retirement from the State-owned railroad; and

**(C)**

**(i)** was covered under a life insurance policy pursuant to chapter 87 of Title 5 on January 4, 1985, for the purpose of electing life insurance coverage under the provisions of paragraph (1); or

**(ii)** was enrolled in a health benefits plan pursuant to chapter 89 of Title 5 on January 4, 1985, for the purpose of enrolling in a health benefits plan under the provisions of paragraph (1).

**(3)** For purposes of this section, any person described under the provisions of paragraph (2) shall be deemed to have been covered under a life insurance policy under chapter 87 of Title 5 and to have been enrolled in a health benefits plan under chapter 89 of Title 5 during the period beginning on January 5, 1985, through the date of retirement of any such person.

**(4)** The provisions of paragraph (1) shall not apply to any person described under paragraph (2) until the date such person retires from the State-owned railroad.

### § 1207. State operation

**(a) Laws, authorities, etc., applicable to State-owned railroad with status as rail carrier engaged in interstate and foreign commerce**

**(1)** After the date of transfer to the State pursuant to section 1203 of this title, the State-owned railroad shall be a rail carrier engaged in interstate and foreign commerce subject to part A of subtitle IV of Title 49 and all other Acts applicable to rail carriers subject to that chapter1, including the antitrust laws of the United States, except, so long as it is an instrumentality of the State of Alaska, the Railroad Retirement Act of 1974 (45 U.S.C. 231 et seq.), the Railroad Retirement Tax Act (26 U.S.C. 3201 et seq.), the Railway Labor Act (45 U.S.C. 151 et seq.), the Act of April 22, 1908 (45 U.S.C. 51 et seq.) (popularly referred to as the "Federal Employers' Liability Act"), and the Railroad Unemployment Insurance Act (45 U.S.C. 351 et seq.). Nothing in this chapter shall preclude the State from explicitly invoking by law any exemption from the antitrust laws as may otherwise be available.

**(2)** The transfer to the State authorized by section 1203 of this title and the conferral of jurisdiction to the Interstate Commerce Commission pursuant to paragraph (1) of this subsection are intended to confer upon the State-owned railroad all business opportunities available to comparable railroads, including contract rate agreements meeting the requirements of section 10713 of Title 49, notwithstanding any participation in such agreements by connecting water carriers.

**(3)** All memoranda which sanction noncompliance with Federal railroad safety regulations contained in 49 CFR Parts 209-236, and which are in effect on the date of transfer, shall continue in effect according to their terms as "waivers of compliance" (as that term is used in section 20103(d) of Title 49).

**(4)** The operation of trains by the State-owned railroad shall not be subject to the requirement of any State or local law which specifies the minimum number of crew members which must be employed in connection with the operation of such trains.

(5) Revenues generated by the State-owned railroad, including any amount appropriated or otherwise made available to the State-owned railroad, shall be retained and managed by the State-owned railroad for railroad and related purposes.

**(6)**

> **(A)** After the date of transfer, continued operation of the Alaska Railroad by a public corporation, authority or other agency of the State shall be deemed to be an exercise of an essential governmental function, and revenue derived from such operation shall be deemed to accrue to the State for the purposes of section 115(a)(1) of Title 26. Obligations issued by such entity shall also be deemed obligations of the State for the purposes of section 103(a)(1) of Title 26, but not obligations within the meaning of section 103(b)(2) of Title 26.

**(B)** Nothing in this chapter shall be deemed or construed to affect customary tax treatment of private investment in the equipment or other assets that are used or owned by the State-owned railroad.

**(b) Procedures for issuance of certificate of public convenience and necessity; inventory, valuation, or classification of property; additional laws, authorities, etc., applicable**

As soon as practicable after January 14, 1983, the Interstate Commerce Commission shall promulgate an expedited, modified procedure for providing on the date of transfer a certificate of public convenience and necessity to the State-owned railroad. No inventory, valuation, or classification of property owned or used by the State-owned railroad pursuant to subchapter V of chapter 107 of Title 49 shall be required during the two-year period after the date of transfer. The provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and section 382(b) of the Energy Policy and Conservation Act (42 U.S.C. 6362(b)) shall not apply to actions of the Commission under this subsection.

**(c) Eligibility for participation in Federal railroad assistance programs**

The State-owned railroad shall be eligible to participate in all Federal railroad assistance programs on a basis equal to that of other rail carriers subject to part A of subtitle IV of Title 49.

**(d) Laws and regulations applicable to National Forest and Park lands; limitations on Federal actions**

After the date of transfer to the State pursuant to section 1203 of this title, the portion of the rail properties within the boundaries of the Chugach National Forest and the exclusive-use easement within the boundaries of the Denali National Park and Preserve shall be subject to laws and regulations for the protection of forest and park values. The right to fence the exclusive-use easement within Denali National Park and Preserve shall be subject to the concurrence of the Secretary of the Interior. The Secretary of the Interior, or the Secretary of Agriculture

where appropriate, shall not act pursuant to this subsection without consulting with the Governor of the State of Alaska or in such a manner as to unreasonably interfere with continued or expanded operations and support functions authorized under this chapter.

**(e) Preservation and protection of rail properties**

The State-owned railroad may take any necessary or appropriate action, consistent with Federal railroad safety laws, to preserve and protect its rail properties in the interests of safety.

**§ 1208. Future rights-of-way**

**(a) Access across Federal lands; application approval**

After January 14, 1983, the State or State-owned railroad may request the Secretary of the Interior or the Secretary of Agriculture, as appropriate under law, to expeditiously approve an application for a right-of-way in order that the Alaska Railroad or State-owned railroad may have access across Federal lands for transportation and related purposes. The State or State-owned railroad may also apply for a lease, permit, or conveyance of any necessary or convenient terminal and station grounds and material sites in the vicinity of the right-of-way for which an application has been submitted.

**(b) Consultative requirements prior to approval of application; conformance of rights-of-way, etc.**

Before approving a right-of-way application described in subsection (a) of this section, the Secretary of the Interior or the Secretary of Agriculture, as appropriate, shall consult with the Secretary. Approval of an application for a right-of-way, permit, lease, or conveyance described in subsection (a) of this section shall be pursuant to applicable law. Rights-of-way, grounds, and sites granted pursuant to this section and other applicable law shall conform, to the extent possible, to the standards provided in the Act of March 12, 1914 (43 U.S.C. 975 et seq.) and section 1202(6) of this title. Such conformance shall not be affected by the repeal of such Act under section 615 of this title.1

**(c) *Reversion to the United States* (Repealed. Pub.L. 108-7, Div. I, Title III, § 345(5), 117 Stat. 418 (Feb. 20, 2003)).**

Reversion to the United States of any portion of any right-of-way or exclusive-use easement granted to the State or State-owned railroad shall occur only as provided in section 1209 of this title. For purposes of such section, the date of the approval of any such right-of-way shall be deemed the "date of transfer."

***§ 1209 Reversion***
**(Repealed. Pub.L. 108-7, Div. I, Title III, § 345(5), 117 Stat. 418 (Feb. 20, 2003))**

**(a) Reversion or payment to Federal Government for conversion to use preventing State-owned railroad from continuing to operate**

If, within ten years after the date of transfer to the State authorized by section 1203 of this title, the Secretary finds that all or part of the real property transferred to the State under this chapter, except that portion of real property which lies within the boundaries of the Denali National Park and Preserve, is converted to a use that would prevent the State-owned railroad from continuing to operate, that real property (including permanent improvements to the property) shall revert to the United States Government, or (at the option of the State) the State shall pay to the United States Government an amount determined to be the fair market value of that property at the time its conversion prevents continued operation of the railroad.

**(b) Reversion upon discontinuance by State of use of any land within right-of-way; criteria for discontinuance**

If, after the date of transfer pursuant to section 1203 of this title, the State discontinues use of any land within the right-of-way, the State's interest in such land shall revert to the United States. The State shall be considered to have discontinued use within the meaning of this subsection and subsection (d) of this section when:

**(1)** the Governor of the State of Alaska delivers to the Secretary of the Interior a notice of such discontinuance, including a legal description of the property subject to the notice, and a quitclaim deed thereto; or

**(2)** the State has made no use of the land for a continuous period of eighteen years for transportation, communication, or transmission purposes. Notice of such discontinuance shall promptly be published in the Federal Register by the Secretary, the Secretary of the Interior, or the Secretary of Agriculture, and reversion shall be effected one year after such notice, unless within such one-year period the State brings an appropriate action in the United States District Court for the District of Alaska to establish that the use has been continuing without an eighteen-year lapse. Any such action shall have the effect of staying reversion until exhaustion of appellate review from the final judgment in that action or termination of the right to seek such review, whichever first occurs.

**(c) Conveyances by United States subsequent to reversion**

Upon such reversion pursuant to subsection (b) of this section, the Secretary of the Interior shall immediately convey by patent to abutting landowners all right, title and interest of the United States. Where land abutting the reverted right-of-way is owned by different persons or entities, the conveyance made pursuant to this subsection shall extend the property of each abutting owner to the centerline of the right-of-way.

**(d) Discontinuance by State of use of national park or forest lands; jurisdiction upon reversion**

If use is discontinued (as that term is used in subsection (b) of this section) of all or part of those properties of the Alaska Railroad transferred to the State pursuant to this chapter which lie within the boundaries of the Denali National Park and Preserve or the Chugach National Forest, such properties or part thereof (including permanent improvements to the property) shall revert to the United States and

shall not be subject to subsection (c) of this section. Upon such reversion, jurisdiction over that property shall be transferred to the Secretary of the Interior or the Secretary of Agriculture, as appropriate, for administration as part of the Denali National Park and Preserve or the Chugach National Forest.

**(e) Payment into Treasury of United States of excess proceeds from sale or transfer of all or substantially all of State-owned railroad; limitations**

Except as provided in subsections (a) through (d) of this section, if, within five years after the date of transfer to the State pursuant to section 1203 of this title, the State sells or transfers all or substantially all of the State-owned railroad to an entity other than an instrumentality of the State, the proceeds from the sale or transfer that exceed the cost of any rehabilitation and improvement made by the State for the State-owned railroad and any net liabilities incurred by the State for the State-owned railroad shall be paid into the general fund of the Treasury of the United States.

**(f) Enforcement by Attorney General**

The Attorney General, upon the request of the Secretary, the Secretary of the Interior, or the Secretary of Agriculture, shall institute appropriate proceedings to enforce this section in the United States District Court for the District of Alaska

**§ 1210. Other disposition**

If the Secretary has not certified that the State has satisfied the conditions under section 1203 of this title within one year after the date of delivery of the report referred to in section 1204(a) of this title, the Secretary may dispose of the rail properties of the Alaska Railroad. Any disposal under this section shall give preference to a buyer or transferee who will continue to operate rail service, except that--

> **(1)** such preference shall not diminish or modify the rights of the Cook Inlet Region, Incorporated (as that term is used in section 12 of the Act of January 2, 1976 (Public Law 94-204; 89 Stat. 1150)),

pursuant to such section, as amended by section 606(d) of this title;1 and

**(2)** this section shall not be construed to diminish or modify the powers of consent of the Secretary or the State under section 12(b)(8) of such Act, as amended by section 606(d)(5) of this title.

Any disposal under this section shall be subject to valid existing rights.

### § 1211. Denali National Park and Preserve lands

On the date of transfer to the State (pursuant to section 1203 of this title) or other disposition (pursuant to section 1210 of this title), that portion of rail properties of the Alaska Railroad within the Denali National Park and Preserve shall, subject to the exclusive-use easement granted pursuant to section 1203(b)(1)(D) of this title, be transferred to the Secretary of the Interior for administration as part of the Denali National Park and Preserve, except that a transferee under section 1210 of this title shall receive the same interest as the State under section 1203(b)(1)(D) of this title.

### § 1212. Applicability of other laws

#### (a) Actions subject to other laws

The provisions of chapter 5 of Title 5 (popularly known as the Administrative Procedure Act, and including provisions popularly known as the Government in the Sunshine Act), the Federal Advisory Committee Act (5 U.S.C.App. 2 et seq.), division A of subtitle III of Title 54, section 303 of Title 49, and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) shall not apply to actions taken pursuant to this chapter, except to the extent that such laws may be applicable to granting of rights-of-way under section 1208 of this title.

#### (b) Federal surplus property disposal; withdrawal or reservation of land for use of Alaska Railroad

The enactment of this chapter, actions taken during the transition period as provided in section 1204 of this title, and transfer of the rail properties of the Alaska Railroad under authority of this chapter shall

be deemed not to be the disposal of Federal surplus property under sections 541 to 555 of Title 40 or the Act of October 3, 1944, popularly referred to as the "Surplus Property Act of 1944" (50 U.S.C.App. 1622)1. Such events shall not constitute or cause the revocation of any prior withdrawal or reservation of land for the use of the Alaska Railroad under the Act of March 12, 1914 (43 U.S.C. 975 et seq.), the Alaska Statehood Act (note preceding 48 U.S.C. 21), the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), the Act of January 2, 1976 (Public Law 94-204; 89 Stat. 1145), the Alaska National Interest Lands Conservation Act (Public Law 96-487; 94 Stat. 2371), and the general land and land management laws of the United States.

**(c) Ceiling on Government contributions for Federal employees health benefits insurance premiums**

Beginning on January 14, 1983, the ceiling on Government contributions for Federal employees health benefits insurance premiums under section 8906(b)(2) of Title 5 shall not apply to the Alaska Railroad.

**(d) Acreage entitlement of State or Native Corporation**

Nothing in this chapter is intended to enlarge or diminish the acreage entitlement of the State or any Native Corporation pursuant to existing law.

**(e) Judgments involving interests, etc., of Native Corporations**

With respect to interests of Native Corporations under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) and the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.), except as provided in this chapter, nothing contained in this chapter shall be construed to deny, enlarge, grant, impair, or otherwise affect any judgment heretofore entered in a court of competent jurisdiction, or valid existing right or claim of valid existing right.

**§ 1213. Conflict with other laws**

The provisions of this chapter shall govern if there is any conflict between this chapter and any other law.

### § 1214. Separability

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the remainder of this chapter and the application of such provision to other persons or circumstances shall not be affected thereby.

**From:** ca9_ecfnoticing@ca9.uscourts.gov
**To:** Incoming Lit
**Subject:** 22-35573 Alaska Railroad Corporation v. Flying Crown Subdivision Addition No. 1 & No. 2, et al "Brief on the Merits (Opening, Answering, Reply, Supplemental, etc)"
**Date:** Tuesday, January 17, 2023 7:22:17 PM

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**United States Court of Appeals for the Ninth Circuit**

**Notice of Docket Activity**

The following transaction was entered on 01/17/2023 at 4:21:52 PM Pacific Standard Time and filed on 01/17/2023

**Case Name:** Alaska Railroad Corporation v. Flying Crown Subdivision Addition No. 1 & No. 2, et al
**Case Number:** 22-35573
**Document(s):** Document(s)

**Docket Text:**
Submitted (ECF) Opening Brief for review. Submitted by Appellant Flying Crown Subdivision Addition No. 1 and Addition No. 2 Property Owners Association. Date of service: 01/17/2023. [12632071] [22-35573] (McCoy, Jeffrey)

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The following document(s) are associated with this transaction:
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