

Alaska State Legislature

Representative Chuck Kopp
House Majority Leader
House District 10
907-465-3892



120 4th Street
Alaska State Capitol,
Room 204
Juneau, AK 99801

Supporting Documents for House Bill 136

1. Congressman Don Young Letter on ARTA (2018)
2. Alaska Railroad Act (1914)
3. Alaska Railroad Transfer Act (1983)
4. Anchorage Townsite Homestead Land Patent (1924)
5. Sperstad Homestead Patent (1948)
6. Dept of Interior Solicitor Opinion (2022)

DON YOUNG
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Congress of the United States
House of Representatives
Washington, D.C. 20515

COMMITTEE ON
NATURAL RESOURCES
CHAIRMAN EMERITUS

COMMITTEE ON
TRANSPORTATION & INFRASTRUCTURE

REPUBLICAN
POLICY COMMITTEE

CANADA-U.S.
INTER-PARLIAMENTARY GROUP

April 16, 2018

The Honorable Chuck Kopp
Alaska State House of Representatives
State Capitol Room 13
Juneau, Alaska 99801

Dear Representative Kopp,


As the Alaska Representative to the U.S. Congress during the debate and passage of the Alaska Railroad Transfer Act of 1982 (ARTA), I am writing today to thank you for shining a spotlight on some troubling issues regarding the Act's implementation, as well as to provide some background regarding my understanding of what ARTA authorized.

House Joint Resolution 38 outlines what can only be described as a failure by the agencies to understand clear direction from Congress and to dutifully recognize basic tenets of due process, needlessly resulting in a cloud on title for both the Alaska Railroad and its neighbors along the right-of-way. There is no way a bill quietly annexing private property rights, especially without any notice or compensation, would have passed Congress in 1982. You only have to read the plain language of ARTA to know that – the transfer of “rail properties of the Alaska Railroad” over privately owned land only included the “Federal interest” in those lands. If the federal government did not own it, it was not included in the transfer. There is no canon of statutory construction, or even common sense reading, that could argue an unconstitutional taking of private property rights was the intent of Congress.

The intent was to transfer the federally owned Alaska Railroad's existing assets, which can be clearly noted throughout the Act itself and the record. Where the underlying estate was federally owned, as well, the issue became how much of an interest to pass along in the right-of-way over those lands, which is spelled out in the Act. The federal government obviously had sufficient proprietary interest in the transfer of rail properties – defined in ARTA as federally held rights, titles, and interests – which were directed to be transferred; but, nowhere in ARTA did Congress authorize the transfer of privately owned property interests, nor could it do so in such a cavalier and vague manner as is being suggested.

I am committed to working with my colleagues to see this situation resolved for all concerned. If you have any questions or require assistance in this effort, please do not hesitate to let me or my staff know.

Sincerely,


DON YOUNG
Congressman for All Alaska

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CHAP. 34.—An Act To repeal an Act regulating the construction of bridges across the Muskingum River in Ohio.

March 9, 1914.
[H. R. 13351.]

[Public, No. 66.]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act of Congress entitled "An Act regulating the construction of bridges over the Muskingum River in Ohio," approved April second, eighteen hundred and eighty-eight, be, and the same is hereby, repealed.

Approved, March 9, 1914.

Muskingum River,
Ohio.
Restrictions on
bridges across, re-
moved.
Vol. 25, p. 74, re-
pealed.

CHAP. 35.—An Act To authorize the construction, maintenance, and operation of a bridge across the Tombigbee River near Old Cotton Gin Port, in Monroe County, Mississippi.

March 9, 1914.
[H. R. 13365.]

[Public, No. 67.]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the board of supervisors of Monroe County, Mississippi, is hereby authorized to construct, maintain, and operate a bridge and approaches thereto across the Tombigbee River, at a point suitable to the interests of navigation, near Old Cotton Gin Port, in Monroe County, Mississippi, in accordance with the provisions of an Act entitled "An Act to regulate the construction of bridges over navigable waters," approved March twenty-third, nineteen hundred and six.

SEC. 2. That the right to alter, amend, or repeal this Act is hereby expressly reserved.

Approved, March 9, 1914.

Tombigbee River,
Monroe County,
Miss., may bridge, at
Old Cotton Gin Port.
Construction.
Vol. 34, p. 84.

Amendment.

CHAP. 36.—An Act To extend the time for constructing a bridge across the Mississippi River at the town site of Sartell, Minnesota.

March 11, 1914.
[H. R. 13345.]

[Public, No. 68.]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the time for commencing and completing the bridge authorized by the Act of Congress approved August twenty-fourth, nineteen hundred and twelve, to be built across the Mississippi River, at the town site of Sartell, Stearns County, Minnesota, is hereby extended to one year and three years, respectively, from date of approval hereof.

SEC. 2. That the right to alter, amend, or repeal this Act is hereby expressly reserved.

Approved, March 11, 1914.

Mississippi River.
Time extended for
bridging, by Sartell,
Minn.
Vol. 37, p. 494,
amended.

Amendment.

CHAP. 37.—An Act To authorize the President of the United States to locate, construct, and operate railroads in the Territory of Alaska, and for other purposes.

March 12, 1914.
[S. 48.]

[Public, No. 69.]

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 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 officers, agents, or employees appointed or designated by him; to designate and cause to be located a route or routes for a line or lines of railroad in the Territory of Alaska not to exceed in the aggregate one thousand

Alaska.
President authorized
to operate, etc., rail-
roads in.

Location and pur-
pose

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 in acquiring property for such use, which use is hereby declared to be a public use, by condemnation in the courts of Alaska in accordance with the laws now or hereafter in force 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.

Construction, etc.

Rights of way, terminals, etc.

Transportation rates, etc.

Common carrier duties.

Lease after completion.

Proviso.
Subject to interstate commerce laws if leased.

Purchase of existing lines.

Price.

Joint agreements with other carriers.

Use of Panama Canal machinery, etc., for construction.

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 lines for hire.

Operation of telegraph and telephone lines.

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 as he may appoint or employ, to do all necessary acts and things in addition to those specially authorized in this Act, enable him to accomplish the purposes and objects of this Act.

Full powers vested in President.

The President is hereby authorized to withdraw, locate, and dispose of, under such rules and regulations as he may prescribe, 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.

Townsites authorized.

Terminal and station 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.

Public lands subject to reservations for terminals, rights of way, etc.

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.

Construction materials.

Limit of cost.

Appropriation.

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.

Specified receipts to be paid into Treasury.

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.

Reports to be made.

Approved, March 12, 1914.

45 USC Ch. 21: ALASKA RAILROAD TRANSFER

From Title 45—RAILROADS

CHAPTER 21—ALASKA RAILROAD TRANSFER

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§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.

(Pub. L. 97–468, [title VI](#), [§602](#), [Jan. 14, 1983](#), 96 Stat. 2556.)

REFERENCES IN TEXT

This chapter, referred to in pars. (4) to (6), was in the original "this title", meaning title VI (§601 et seq.) of Pub. L. 97–468, [Jan. 14, 1983](#), 96 Stat. 2556, known as the Alaska Railroad Transfer Act of 1982, which is classified principally to this chapter (§1201 et seq.). For complete classification of title VI to the Code, see Short Title note below and Tables.

SHORT TITLE

Pub. L. 97–468, [title VI](#), [§601](#), [Jan. 14, 1983](#), 96 Stat. 2556, provided that: "This title [enacting this chapter, amending sections 231, 712, and 802 of this title, sections 305, 3401, 5102, 5342, and 7327 of Title 5, Government Organization and Employees, section 410hh–1 of Title 16, Conservation, section 251 of Title 42, The Public Health and Welfare, section 10749 of Title 49, Transportation, and section 1655 of the Appendix to Title 49, repealing section 353a of Title 16, section 208a of Title 30, Mineral Lands and Mining, sections 975, 975a, and 975c to 975g of Title 43, Public Lands, and section 301a of Title 48, Territories and Insular Possessions, and amending provisions set out as a note under section 1611 of Title 43] may be cited as the 'Alaska Railroad Transfer Act of 1982'."

§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) ¹ 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)).

(Pub. L. 97–468, [title VI](#), [§603](#), [Jan. 14, 1983](#), 96 Stat. 2556.)

REFERENCES IN TEXT

Act of March 12, 1914 (43 U.S.C. 975 et seq.) (popularly referred to as the "Alaska Railroad Act"), referred to in pars. (1) and (10)(A), is act [Mar. 12, 1914](#), [ch. 37](#), 38 Stat. 305, as amended, which enacted section 353a of Title 16, Conservation, and sections 975 to 975g of Title 43, Public Lands, and which was repealed by section 615(a)(1) of Pub. L. 97–468 effective on the date of transfer of Alaska Railroad to the State [Jan. 5, 1985], pursuant to section 1203 of this title.

Section 6(i) of the Department of Transportation Act, referred to in par. (1), is section 6(i) of Pub. L. 89–670, which was classified to section 1655(i) of former Title 49, Transportation, prior to repeal by Pub. L. 97–468, [title VI](#), [§615\(a\)\(4\)](#), [Jan. 14, 1983](#), 96 Stat. 2578.

¹ See References in Text note below.

§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.¹

(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.¹ 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 transferred ²employees 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.

(Pub. L. 97–468, [title VI, §604, Jan. 14, 1983](#), 96 Stat. 2559; Pub. L. 108–7, [div. I, title III, §345\(5\), Feb. 20, 2003](#), 117 Stat. 418; Pub. L. 108–447, [div. H, title I, §152\(3\), Dec. 8, 2004](#), 118 Stat. 3222.)

REFERENCES IN TEXT

Act of March 12, 1914, and such Act, referred to in subsec. (c)(1), is act [Mar. 12, 1914, ch. 37](#), 38 Stat. 305, as amended, popularly known as the Alaska Railroad Act, which enacted section 353a of Title 16, Conservation, and sections 975 to 975g of Title 43, Public Lands, and which was repealed by section 615(a)(1) of Pub. L. 97–468 effective on the date of transfer of Alaska Railroad to the State [Jan. 5, 1985], pursuant to this section.

Section 615 of this title, referred to in subsec. (c)(1), means section 615 of title VI of Pub. L. 97–468, [Jan. 14, 1983](#), 96 Stat. 2577. Title VI of Pub. L. 97–468 is known as the Alaska Railroad Transfer Act of 1982 and is classified principally to this chapter. Under section 615, the repeal is effective on the date of transfer to the State of Alaska (pursuant to section 1203 of this title) or other disposition (pursuant to section 1210 of this title), whichever first occurs.

42 U.S.C. 9601 et seq., referred to in subsec. (d)(2)(D), probably means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. 96–510, [Dec. 11, 1980](#), 94 Stat. 2767, as amended, which is classified principally to chapter 103 (§9601 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 9601 of Title 42 and Tables.

AMENDMENTS

2004—Subsec. (d)(2)(D). Pub. L. 108–447 added subpar. (D).

2003—Subsec. (b)(1). Pub. L. 108–7 struck out at end: "In the event of reversion to the United States, pursuant to section 1209 of this title, of the State's interests in all or part of the lands subject to such easement, such easement shall terminate with respect to the lands subject to such reversion, and no new exclusive-use easement with respect to such reverted lands shall be granted except by Act of Congress."

TRANSFER OF ALASKA RAILROAD TO STATE OF ALASKA

The State of Alaska accepted the certification requirements of the Alaska Railroad Transfer Act [this chapter] by 1984 SLA ch. 54, eff. May 19, 1984. Thereafter, by 1984 SLA ch. 153, eff. July 6, 1984, the Alaska Railroad Corporation was established to manage and operate the Alaska Railroad. The transfer of the Alaska Railroad to the State of Alaska was carried out on January 5, 1985.

DENALI NATIONAL PARK AND ALASKA RAILROAD CORPORATION EXCHANGE

Pub. L. 110–229, [title III, §351, May 8, 2008](#), 122 Stat. 800, provided that:

"(a) DEFINITIONS.—In this section:

"(1) CORPORATION.—The term 'Corporation' means the Alaska Railroad Corporation owned by the State of Alaska.

"(2) SECRETARY.—The term 'Secretary' means the Secretary of the Interior.

"(b) EXCHANGE.—

"(1) IN GENERAL.—

"(A) EASEMENT EXPANDED.—The Secretary is authorized to grant to the Alaska Railroad Corporation an exclusive-use easement on land that is identified by the Secretary within Denali National Park for the purpose of providing a location to the Corporation for construction, maintenance, and on-going operation of track and associated support facilities for turning railroad trains around near Denali Park Station.

"(B) EASEMENT RELINQUISHED.—In exchange for the easement granted in subparagraph (A), the Secretary shall require the relinquishment of certain portions of the Corporation's existing exclusive use easement within the boundary of Denali National Park.

"(2) CONDITIONS OF THE EXCHANGE.—

"(A) EQUAL EXCHANGE.—The exchange of easements under this section shall be on an approximately equal-acre basis.

"(B) TOTAL ACRES.—The easement granted under paragraph (1)(A) shall not exceed 25 acres.

"(C) INTERESTS CONVEYED.—The easement conveyed to the Alaska Railroad Corporation by the Secretary under this section shall be under the same terms as the exclusive use easement granted to the Railroad in Denali National Park in the Deed for Exclusive Use Easement and Railroad Related Improvements filed in Book 33, pages 985–994 of the Nenana Recording District, Alaska, pursuant to the Alaska Railroad Transfer Act of 1982 (45 U.S.C. 1201 et seq.). The easement relinquished by the Alaska Railroad Corporation to the United States under this section shall, with respect to the portion being exchanged, be the full title and interest received by the Alaska Railroad in the Deed for Exclusive Use Easement and Railroad Related Improvements filed in Book 33, pages 985–994 of the Nenana Recording District, Alaska, pursuant to the Alaska Railroad Transfer Act of 1982 (45 U.S.C. 1201 et seq.).

"(D) COSTS.—The Alaska Railroad shall pay all costs associated with the exchange under this section, including the costs of compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the costs of any surveys, and other reasonable costs.

"(E) LAND TO BE PART OF WILDERNESS.—The land underlying any easement relinquished to the United States under this section that is adjacent to designated wilderness is hereby designated as wilderness and added to the Denali Wilderness, the boundaries of which are modified accordingly, and shall be managed in accordance with applicable provisions of the Wilderness Act (78 Stat. 892) [16 U.S.C. 1131 et seq.] and the Alaska National Interest Lands Conservation Act of 1980 (94 Stat. 2371) [see Tables for classification].

"(F) OTHER TERMS AND CONDITIONS.—The Secretary shall require any additional terms and conditions under this section that the Secretary determines to be appropriate to protect the interests of the United States and of Denali National Park."

¹ See References in Text note below.

² So in original.

§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 ² of chapter 107 of title 49.

(Pub. L. 97–468, [title VI](#), [§605\(a\)–\(d\)](#), [Jan. 14, 1983](#), 96 Stat. 2562, [2563](#).)

REFERENCES IN TEXT

Subchapter V of chapter 107 of title 49, referred to in subsec. (d)(2), was omitted in the general amendment of subtitle IV of Title 49, Transportation, by Pub. L. 104–88, [title I](#), [§102\(a\)](#), [Dec. 29, 1995](#), 109 Stat. 804.

CODIFICATION

In subsec. (a), references to section 1202(10)(C) and (D) of this title were in the original references to section 603(8)(C) and (D) of title VI of Pub. L. 97–468, and were editorially translated as section 1202(10)(C) and (D), as the probable intent of Congress, in view of section 1202(8) containing no subpars. (C) and (D) and the subject matter of section 1202(10)(C), which relates to money in the Alaska Railroad Revolving Fund being withheld from the State, and section 1202(10)(D), which relates to personal property being withheld.

Section is comprised of subsecs. (a) to (d) of section 605 of Pub. L. 97–468. Subsec. (e) of section 605 of Pub. L. 97–468 amended section 712 of this title.

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104–88, to Surface Transportation Board effective Jan. 1, 1996, by section 1302 of Title 49, Transportation, and section 101 of Pub. L. 104–88, set out as a note under section 1301 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 1301 of Title 49.

ABOLITION OF UNITED STATES RAILWAY ASSOCIATION AND TRANSFER OF FUNCTIONS AND SECURITIES

See section 1341 of this title.

¹ See Codification note below.

² See References in Text note below.

§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.

(Pub. L. 97–468, title VI, §606(a)–(c), (e), Jan. 14, 1983, 96 Stat. 2564–2566, 2571; Pub. L. 98–620, title IV, §402(52), Nov. 8, 1984, 98 Stat. 3361.)

REFERENCES IN TEXT

Section 12 of the Act of January 2, 1976, as amended, referred to in subsecs. (a)(1), (4) and (b)(3), is section 12 of Pub. L. 94–204, Jan. 2, 1976, 89 Stat. 1150, as amended, which is set out as a note under section 1611 of Title 43, Public Lands. Section 12(b)(8)(i)(D) of such Act as amended by subsection (d)(5) of this section is the amendment of subsection (b)(8)(i)(D) of section 12 of Pub. L. 94–204 by section 606(d)(5) of Pub. L. 97–468, title VI, Jan. 14, 1983, 96 Stat. 2566.

The Alaska National Interest Lands Conservation Act, referred to in subsecs. (a)(2) and (c), is Pub. L. 96–497, Dec. 2, 1980, 94 Stat. 2371, as amended. Sections 1425, 1429, and 1430 of the Act (94 Stat. 2515, 2531) were not classified to the Code. For complete classification of this Act to the Code, see Short Title note set out under section 3101 of Title 16, Conservation, and Tables.

CODIFICATION

Section is comprised of subsecs. (a)–(c) and (e) of section 606 of Pub. L. 97–468. Subsec. (d) of section 606 of Pub. L. 97–468 amended section 12 of Pub. L. 94–204, which is set out as a note under section 1611 of Title 43, Public Lands.

AMENDMENTS

1984—Subsec. (c)(1). Pub. L. 98–620 struck out provision that required review of agency

action pursuant to this chapter to be expedited to same extent as expedited review provided by section 1108 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3168).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98–620, set out as a note under section 1657 of Title 28, Judiciary and Judicial Procedure.

§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.

(Pub. L. 97–468, [title VI, §607, Jan. 14, 1983](#), 96 Stat. 2571; Pub. L. 100–238, [title I, §136\(a\), Jan. 8, 1988](#), 101 Stat. 1766; Pub. L. 103–226, [§10, Mar. 30, 1994](#), 108 Stat. 122.)

REFERENCES IN TEXT

The Federal Workforce Restructuring Act of 1994, referred to in subsec. (a)(4)(A), is Pub. L. 103–226, [Mar. 30, 1994](#), 108 Stat. 111. Section 3 of the Act is set out as a note under section 5597 of Title 5, Government Organization and Employees. For complete classification of this Act to the Code, see Short Title of 1994 Amendment note set out under section 2101 of Title 5 and Tables.

AMENDMENTS

1994—Subsec. (a)(4). Pub. L. 103–226, §10(a), added par. (4).

Subsec. (e). Pub. L. 103–226, §10(b), added subsec. (e) and struck out former subsec. (e) which related to continued coverage for certain employees and annuitants in Federal health benefits and life insurance plans.

1988—Subsec. (e). Pub. L. 100–238 added subsec. (e).

ADMINISTRATIVE PROVISION

Pub. L. 100–238, [title I, §136\(b\)](#), [Jan. 8, 1988](#), 101 Stat. 1767, provided that: "Within 180 days after the date of enactment of this section [Jan. 8, 1988], the Director of the Office of Personnel Management shall notify any person described under the provisions of section 607(e)(2)(A) of such Act [45 U.S.C. 1206(e)(2)(A)], for the purpose of the election of a life insurance policy or the enrollment in a health benefits plan pursuant to the provisions of section 607(e)(1) of the Alaska Railroad Transfer Act of 1982 [45 U.S.C. 1206(e)(1)] (as amended by subsection (a) of this section)."

§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 chapter,¹ 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 ² 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) ² of title 26, but not obligations within the meaning of section 103(b)(2) 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 ² 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.

(Pub. L. 97–468, [title VI, §608, Jan. 14, 1983](#), 96 Stat. 2573; Pub. L. 99–514, [§2, Oct. 22, 1986](#), 100 Stat. 2095; Pub. L. 104–88, [title III, §326, Dec. 29, 1995](#), 109 Stat. 951; Pub. L. 108–447, [div. H, title I, §152\(1\), \(2\), Dec. 8, 2004](#), 118 Stat. 3222.)

REFERENCES IN TEXT

The Railroad Retirement Act of 1974, referred to in subsec. (a)(1), is act Aug. 29, 1935, ch. 812, as amended generally by Pub. L. 93–445, [title I, §101, Oct. 16, 1974](#), 88 Stat. 1305, which is classified generally to subchapter IV (§231 et seq.) of chapter 9 of this title. For further details and complete classification of this Act to the Code, see Codification note set out preceding section 231 of this title, section 231t of this title, and Tables.

The Railroad Retirement Tax Act, referred to in subsec. (a)(1), is act [Aug. 16, 1954, ch. 736, §§3201, 3202, 3211, 3212, 3221, and 3231 to 3233](#), 68A Stat. 431, as amended, which is classified generally to chapter 22 (§3201 et seq.) of Title 26, Internal Revenue Code. For complete classification of this Act to the Code, see section 3233 of Title 26 and Tables.

The Railway Labor Act, referred to in subsec. (a)(1), is act [May 20, 1926, ch. 347](#), 44 Stat. 577, as amended, which is classified principally to chapter 8 (§151 et seq.) of this title. For complete classification of this Act to the Code, see section 151 of this title and Tables.

Act of April 22, 1908 (45 U.S.C. 51 et seq.) (popularly referred to as the "Federal Employers' Liability Act"), referred to in subsec. (a)(1), is act [Apr. 22, 1908, ch. 149](#), 35 Stat. 65, as amended, and is classified generally to chapter 2 (§51 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 51 of this title and Tables.

The Railroad Unemployment Insurance Act, referred to in subsec. (a)(1), is act [June 25, 1938, ch. 680](#), 52 Stat. 1094, as amended, which is classified principally to chapter 11 (§351 et seq.) of this title. For complete classification of this Act to the Code, see section 367 of this title and Tables.

Section 10713 of title 49, referred to in subsec. (a)(2), was omitted in the general amendment of subtitle IV of Title 49, Transportation, by Pub. L. 104–88, [title I, §102\(a\), Dec. 29, 1995](#), 109 Stat. 804. Provisions similar to those in section 10713 are contained in section 10709 of Title 49.

Section 103, referred to in subsec. (a)(6)(A), which related to interest on certain governmental obligations was amended generally by Pub. L. 99–514, [title XIII, §1301\(a\), Oct. 22, 1986](#), 100 Stat. 2602, and as so amended relates to interest on State and local bonds. Section 103(b)(2), which prior to the general amendment defined industrial development bond, relates to the applicability of the interest exclusion to arbitrage bonds.

Subchapter V of chapter 107 of title 49, referred to in subsec. (b), was omitted in the general amendment of subtitle IV of Title 49, Transportation, by Pub. L. 104–88, [title I, §102\(a\), Dec. 29, 1995](#), 109 Stat. 804.

The National Environmental Policy Act of 1969, referred to in subsec. (b), is Pub. L. 91–190, [Jan. 1, 1970](#), 83 Stat. 852, as amended, which is classified generally to chapter 55 (§4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

CODIFICATION

In subsec. (a)(3), "section 20103(d) of title 49" substituted for "section 202(c) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 431(c))" on authority of Pub. L. 103–272, [§6\(b\), July 5, 1994](#), 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

AMENDMENTS

2004—Subsec. (a)(5). Pub. L. 108–447, §152(1), inserted ", including any amount appropriated or otherwise made available to the State-owned railroad," before "shall be retained".

Subsec. (e). Pub. L. 108–447, §152(2), added subsec. (e).

1995—Subsecs. (a)(1), (c). Pub. L. 104–88 substituted "part A" for "the jurisdiction of the Interstate Commerce Commission under chapter 105".

1986—Subsec. (a)(6)(A). Pub. L. 99–514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–88 effective Jan. 1, 1996, see section 2 of Pub. L. 104–88, set out as an Effective Date note under section 1301 of Title 49, Transportation.

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104–88, to Surface Transportation Board effective Jan. 1, 1996, by section 1302 of Title 49, Transportation, and section 101 of Pub. L. 104–88, set out as a note under section 1301 of Title 49. References to Interstate Commerce Commission deemed

to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 1301 of Title 49.

ALASKA RAILROAD

Pub. L. 109–59, [title IX, §9006, Aug. 10, 2005](#), 119 Stat. 1925, provided that:

"(a) GRANTS.—The Secretary [of Transportation] shall make grants to the Alaska Railroad for capital rehabilitation and improvements benefiting its passenger operations.

"(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary."

Similar provisions were contained in Pub. L. 105–178, [title VII, §7204, June 9, 1998](#), 112 Stat. 477.

¹ *So in original. Probably should be "that part."*

² *See References in Text note below.*

§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

(Pub. L. 97–468, [title VI, §609, Jan. 14, 1983](#), 96 Stat. 2574; Pub. L. 108–7, [div. I, title III, §345\(5\), Feb. 20, 2003](#), 117 Stat. 418.)

REFERENCES IN TEXT

Act of March 12, 1914 (43 U.S.C. 975 et seq.), referred to in subsec. (b), is act [Mar. 12, 1914, ch. 37](#), 38 Stat. 305, as amended, popularly known as the Alaska Railroad Act, which enacted section 353a of Title 16, Conservation, and sections 975 to 975g of Title 43, Public Lands, and which was repealed by section 615(a)(1) of Pub. L. 97–468 effective on the date of transfer of Alaska Railroad to the State [Jan. 5, 1985], pursuant to section 1203 of this title.

Section 615 of this title, referred to in subsec. (b), means section 615 of title VI of Pub. L. 97–468, [Jan. 14, 1983](#), 96 Stat. 2577. Title VI of Pub. L. 97–468 is known as the Alaska Railroad Transfer Act of 1982 and is classified principally to this chapter. Under section 615, the repeal is effective on the date of transfer to the State of Alaska (pursuant to section 1203 of this title) or other disposition (pursuant to section 1210 of this title), whichever first occurs.

AMENDMENTS

2003—Subsec. (c). Pub. L. 108–7 struck out subsec. (c) which read as follows: "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'."

¹ See References in Text note below.

§1209. Repealed. Pub. L. 108–7, **div. I, title III, §345(5), Feb. 20, 2003, 117 Stat. 418**

Section, Pub. L. 97–468, **title VI, §610, Jan. 14, 1983, 96 Stat. 2575**, related to reversion from the State of railroad property to the United States.

§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.¹

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

(Pub. L. 97–468, **title VI, §611, Jan. 14, 1983, 96 Stat. 2576.**)

REFERENCES IN TEXT

Section 12 of the Act of January 2, 1976, referred to in pars. (1) and (2), is section 12 of Pub. L. 94–204, **Jan. 2, 1976, 89 Stat. 1150**, as amended, which is set out as a note under section 1611 of Title 43, Public Lands.

Section 606(d) of this title, referred to in pars. (1) and (2), means section 606(d) of title VI of Pub. L. 97–468, **Jan. 14, 1983, 96 Stat. 2566.**

¹ See References in Text note below.

§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.

(Pub. L. 97–468, **title VI, §612, Jan. 14, 1983, 96 Stat. 2576.**)

§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. 1 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.

(Pub. L. 97–468, [title VI](#), [§613](#), [Jan. 14, 1983](#), 96 Stat. 2577; Pub. L. 113–287, [§5\(m\)\(2\)](#), [Dec. 19, 2014](#), 128 Stat. 3271.)

REFERENCES IN TEXT

The Administrative Procedure Act, referred to in subsec. (a), is act [June 11, 1946](#), [ch. 324](#), 60 Stat. 237, as amended, which was classified to sections 1001 to 1011 of former title 5 and which was repealed and reenacted as subchapter II (§551 et seq.) of chapter 5, and chapter 7 (§701 et seq.), of Title 5, Government Organization and Employees, by Pub. L. 89–554, [Sept. 6, 1966](#), 80 Stat. 378.

The Government in the Sunshine Act, referred to in subsec. (a), is Pub. L. 94–409, [Sept. 13, 1976](#), 90 Stat. 1241, which enacted section 552b of Title 5, Government Organization and Employees, amended sections 551, 552, 556, and 557 of Title 5, section 10 of Pub. L. 92–463, set out in the Appendix to Title 5, and section 410 of Title 39, Postal Service, and enacted provisions set out as notes under section 552b of Title 5. For complete classification of this Act to the Code, see Short Title of 1976 Amendment note set out under section 552b of Title 5 and Tables.

The Federal Advisory Committee Act, referred to in subsec. (a), is Pub. L. 92–463, [Oct. 6, 1972](#), 86 Stat. 770, as amended, which is set out in the Appendix to Title 5.

The National Environmental Policy Act of 1969, referred to in subsec. (a), is Pub. L. 91–190, [Jan. 1, 1970](#), 83 Stat. 852, as amended, which is classified generally to chapter 55 (§4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

Act of October 3, 1944, popularly referred to as the "Surplus Property Act of 1944", referred to in subsec. (b), is act [Oct. 3, 1944, ch. 479](#), 58 Stat. 765, known as the Surplus Property Act of 1944, which was classified principally to sections 1611 to 1646 of the former Appendix to Title 50, War and National Defense, and was repealed effective July 1, 1949, with the exception of sections 1622, 1631, 1637, and 1641 of the former Appendix to Title 50 by act [June 30, 1949, ch. 288, title VI, §602\(a\)\(1\)](#), 63 Stat. 399, renumbered [Sept. 5, 1950, ch. 849, §6\(a\), \(b\)](#), 64 Stat. 583. Sections 1622 and 1641 were partially repealed by the 1949 act, and section 1622 was editorially reclassified and is set out as a note under section 545 of Title 40, Public Buildings, Property, and Works. Section 1622(g) was repealed and reenacted as sections 47151 to 47153 of Title 49, Transportation, by Pub. L. 103–272, [§§1\(e\), 7\(b\), July 5, 1994](#), 108 Stat. 1278–1280, [1379](#). Section 1631 was repealed by act June 7, 1939, ch. 190, §6(e), as added by act [July 23, 1946, ch. 590](#), 60 Stat. 599, and is covered by sections 98 et seq. of Title 50. Section 1637 was repealed by act [June 25, 1948, ch. 645, §21](#), 62 Stat. 862, eff. Sept. 1, 1948, and is covered by section 3287 of Title 18, Crimes and Criminal Procedure. Provisions of section 1641 not repealed by the 1949 act were repealed by Pub. L. 87–256, [§111\(a\)\(1\), Sept. 21, 1961](#), 75 Stat. 538, and are covered by chapter 33 (§2451 et seq.) of Title 22, Foreign Relations and Intercourse.

Act of March 12, 1914, referred to in subsec. (b), is act [Mar. 12, 1914, ch. 37](#), 38 Stat. 305, as amended, popularly known as the Alaska Railroad Act, which enacted section 353a of Title 16, Conservation, and sections 975 to 975g of Title 43, Public Lands, and which was repealed by section 615(a)(1) of Pub. L. 97–468 effective on the date of transfer of Alaska Railroad to the State [Jan. 5, 1985], pursuant to section 1203 of this title.

The Alaska Statehood Act, referred to in subsec. (b), is Pub. L. 85–508, [July 7, 1958](#), 72 Stat. 339, as amended, which is set out as a note preceding section 21 of Title 48, Territories and Insular Possessions. For complete classification of this Act to the Code, see Tables.

The Alaska Native Claims Settlement Act, referred to in subsecs. (b) and (e), is Pub. L. 92–203, [Dec. 18, 1971](#), 85 Stat. 688, as amended, which is classified generally to chapter 33 (§1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

Act of January 2, 1976 (Public Law 94–204; 89 Stat. 1145), referred to in subsec. (b), amended the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.). For complete classification of this Act to the Code, see Tables.

The Alaska National Interest Lands Conservation Act, referred to in subsecs. (b) and (e), is Pub. L. 96–487, [Dec. 2, 1980](#), 94 Stat. 2371, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 3101 of Title 16, Conservation, and Tables.

CODIFICATION

In subsec. (a), "section 303 of title 49" substituted for "section 4(f) of the Department of Transportation Act (49 U.S.C. 1653(f))" on authority of Pub. L. 97–449, [§6\(b\), Jan. 12, 1983](#), 96 Stat. 2443, the first section of which enacted subtitle I (§101 et seq.) and chapter 31 (§3101 et seq.) of subtitle II of Title 49, Transportation.

In subsec. (b), "sections 541 to 555 of title 40" substituted for "the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484)" on authority of Pub. L. 107–217, [§5\(c\), Aug. 21, 2002](#), 116 Stat. 1303, which Act enacted Title 40, Public Buildings, Property, and Works.

AMENDMENTS

2014—Subsec. (a). Pub. L. 113–287 substituted "division A of subtitle III of title 54" for "the National Historic Preservation Act (16 U.S.C. 470 et seq.)".

¹ See References in Text note below.

§1213. Conflict with other laws

The provisions of this chapter shall govern if there is any conflict between this chapter and any other law.
(Pub. L. 97–468, [title VI](#), [§614](#), Jan. 14, 1983, 96 Stat. 2577.)

§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.

(Pub. L. 97–468, [title VI](#), [§616](#), Jan. 14, 1983, 96 Stat. 2578.)

The United States of America,

To all to whom these presents shall come, Greeting:

WHEREAS, there has been deposited in the General Land Office of the United States evidence whereby it appears that Jennie Silver is entitled to a patent for the Lot two of Block one hundred eighteen in the Townsite of Anchorage, Alaska,

according to the approved Plat of the Survey of said Townsite on file in the General Land Office, containing seven thousand square feet:

NOW KNOW YE, That the UNITED STATES OF AMERICA, in consideration of the premises, and in conformity with the several Acts of Congress in such case made and provided, HAS GIVEN AND GRANTED, and by these presents DOES GIVE AND GRANT, unto the said Jennie Silver

the Tract of land above described; TO HAVE AND TO HOLD the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said Jennie Silver and to her heirs

and assigns forever; subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local customs, laws, and decisions of courts. But excepting, nevertheless, and reserving unto the United States, rights of way over, across, and through said lands for canals and ditches constructed by its authority, all in the manner prescribed and directed by the Act of Congress approved August 30, 1890 (26 Stat., 391). And there is also reserved to the United States a right of way for the construction of railroads, telegraph and telephone lines, in accordance with the Act of March 12, 1914 (38 Stat., 305).

IN TESTIMONY WHEREOF, I, Calvin Coolidge,

President of the United States of America, have caused these letters to be made Patent, and the Seal of the General Land Office to be hereunto affixed.

GIVEN under my hand, at the City of Washington, the EIGHTH

(SEAL)

day of DECEMBER in the year of our Lord one thousand nine hundred and TWENTY-FOUR and of the Independence of the United States the one hundred and FORTY-NINTH

By the President:

By

Calvin Coolidge
Viola B. Pugh, Secretary.
M. P. LeRoy
Recorder of the General Land Office.

RECORD OF PATENTS: Patent Number 949520

Anchorage 012525

4-1040
(October 1948)

The United States of America

To all to whom these presents shall come, Greeting:

WHEREAS, a Certificate of the District Land Office at Anchorage, Alaska, is now deposited in the Bureau of Land Management, whereby it appears that pursuant to the Act of Congress of May 20, 1862, "To Secure Homesteads to Actual Settlers on the Public Domain," and the acts supplemental thereto, the claim of Thomas W. Sperstad has been established and duly consummated, in conformity to law for the following described land:

Seaward Meridian, Alaska

T. 12 N., R. 3 W.
Sec. 29, W $\frac{1}{2}$ NW $\frac{1}{4}$;
Sec. 30, SE $\frac{1}{4}$ NE $\frac{1}{4}$.

The area described contains 120 acres, according to the Official Plat of the Survey of the said Land, on file in the Bureau of Land Management:

NOW KNOW YE, That there is, therefore, granted by the UNITED STATES unto the said claimant the tract of Land above described; TO HAVE AND TO HOLD the said tract of Land, with the appurtenances thereof, unto the said claimant and to the heirs and assigns of the said claimant forever; subject to any vested and accrued water rights for mining, agricultural, manufacturing or other purposes and rights to ditches and reservoirs used in connection with such water rights, as may be recognized and

acknowledged by the local customs, laws, and decisions of courts; and there is reserved from the lands hereby granted a right of way thereon for ditches or canals constructed by the authority of the United States. And there is, also, reserved to the United States a right of way for the construction of railroads, telegraph and telephone lines in accordance with the Act of March 12, 1914 (38 Stat. 305). Excepting and reserving, however, 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). Excepting and reserving, however, to the United States, pursuant to the provisions of the Act of August 1, 1946 (60 Stat. 755) all uranium, thorium or any other material which is or may be determined to be peculiarly essential to the production of fissionable materials, whether or not of commercial value, together with the right of the United States through its authorized agents or representatives at any time to enter upon the land and prospect for, mine, and remove the same. And there is reserved from the lands hereby granted, a right of way thereon for roads, roadways, highways, tramways, trails, bridges, and appurtenant structures constructed or to be constructed by or under authority of the United States or of any State created out of the Territory of Alaska, in accordance with the Act of July 24, 1947 (61 Stat., 418)

IN TESTIMONY WHEREOF, the undersigned authorized officer of the Bureau of Land Management, in accordance with the provisions of the Act of June 17, 1948 (62 Stat., 476), has, in the name of the United States, caused these letters to be made Patent, and the Seal of the Bureau to be hereunto affixed.

[SEAL]

GIVEN under my hand, in the District of Columbia, the FIFTEENTH day of FEBRUARY in the year of our Lord one thousand nine hundred and FIFTY and of the Independence of the United States the one hundred and SEVENTY-FOURTH.

For the Director, Bureau of
Land Management.

Patent No. 1128320

By /s/ Jas. F. Homer
Chief, Patents Section



United States Department of the Interior
OFFICE OF THE SOLICITOR
Washington, D.C. 20240

February 18, 2022

M-37074

Memorandum

To: Secretary
Assistant Secretary for Land and Minerals Management
Assistant Secretary for Water and Science
Director, Bureau of Land Management

From: Solicitor

Subject: The Scope of a Railroad's Rights under the General Railroad Right-of-Way Act of March 3, 1875 – Withdrawal of Solicitor's Opinion M-37048 and Reinstatement of Solicitor's Opinion M-37025

This opinion addresses competing Solicitor's opinions regarding the scope of a railroad's rights under the General Railroad Right-of-Way Act of March 3, 1875, 18 Stat. 482, 43 U.S.C. §§ 934-39 ("1875 Act"). In particular, it responds to a federal court decision critical of the interpretation of the 1875 Act as expressed in Solicitor's Opinion M-37048.¹ I have reviewed the Jorjani M-Opinion, as well as relevant statutes, legislative history, and caselaw regarding the scope of the 1875 Act. For the reasons set forth below, I hereby withdraw the Jorjani M-Opinion and reinstate Solicitor's Opinion M-37025.² Based on my review, I have concluded that the Jorjani M-Opinion misinterprets the 1875 Act by applying incorrect canons of statutory construction and misconstruing or ignoring federal court decisions to find that railroad companies received the right to use, or authorize third parties to use, their easement for any purpose as long as such uses do not interfere with railroad operations.³ By contrast, the Tompkins M-Opinion accurately

¹ Solicitor's Opinion M-37048, *Withdrawal of Solicitor's Opinion M-37025 issued on November 4, 2011, and Partial Withdrawal of Solicitor's Opinion M-36964 issued on January 5, 1989*, 2017 WL 7805667 (Sept. 1, 2017) ("Jorjani M-Opinion"). The district court in *Ctr. for Biological Diversity, et al. v. BLM, et al.*, No. 2:17-cv-08587, 2019 WL 2635587 (C.D. Cal. June 20, 2019) ("CBD") was sharply critical of the Jorjani M-Opinion's legal interpretation of the 1875 Act. In that case, the Bureau of Land Management ("BLM") relied on the Opinion for its determination that a proposed water pipeline was within the scope of a railroad right-of-way under the 1875 Act, which the district court rejected. *See also L.K.L. Assocs., Inc. v. Union Pacific R.R.*, 17 F.4th 1287, 1301 n.4 (10th Cir. 2021) (declining the railroad's invitation to rely on the Jorjani M-Opinion in support of its interpretation of the 1875 Act).

² Solicitor's Opinion M-37025, *Partial Withdrawal of M-36964—Proposed Installation of MCI Fiber Optic Communications Line Within Southern Pacific Transportation Co.'s Railroad Right-of-Way*, 2011 WL 13277688 (Nov. 4, 2011) ("Tompkins M-Opinion").

³ Notably, the Jorjani M-Opinion did offer a secondary, alternative interpretation of the 1875 Act, focusing on the incidental use doctrine. That portion of the Jorjani M-Opinion is largely consistent with the interpretation of the incidental use doctrine explained in the Tompkins M-Opinion, but the Tompkins M-Opinion provides a more

reflects the legislative history, canons of statutory construction, and federal court decisions to conclude that the 1875 Act provided railroad companies with an exclusive right-of-way easement across federal land limited to those activities that derive from or further a railroad purpose. Moreover, the Tompkins M-Opinion is consistent with the holding in *CBD* and other recent federal court decisions, including *Barahona v. Union Pacific R.R. Co.*, 881 F.3d 1122 (9th Cir. 2018) and *L.K.L. Assocs., Inc. v. Union Pacific R.R.*, 17 F.4th 1287 (10th Cir. 2021).

Background

Over the last thirty years, the Solicitor has issued several opinions interpreting the 1875 Act. These opinions have examined the scope of rights railroad companies received through a right-of-way grant under the 1875 Act. The conclusions in these Opinions, in turn, largely inform whether federal agencies, including the BLM, have any authority over proposed activities within 1875 Act railroad rights-of-way crossing over federal lands.

In 1989, the Solicitor issued Solicitor's Opinion M-36964, *Proposed Installation of MCI Fiber Optic Communications Line Within Southern Pacific Transportation Co.'s Railroad Right-of-Way*, 96 I.D. 439 (Jan. 5, 1989) ("Solicitor's Opinion M-36964"). This opinion primarily focuses on interpreting the rights of the pre-1871 Acts,⁴ but it also opined on the rights granted by the 1875 Act.⁵ Despite acknowledging that the 1875 Act granted an "easement, and not [a fee]" to the railroad, citing *Great Northern R.R. Co. v. United States*, 315 U.S. 262 (1942), it nevertheless concluded that "[t]he scope of this easement, unlike an ordinary common law easement, is an interest tantamount to fee ownership, including the right to use and authorize others to use (where not inconsistent with railroad operations) the surface, subsurface, and airspace."⁶

In 2011, the Solicitor reviewed Solicitor's Opinion M-36964 in response to criticisms and concerns about that Opinion's interpretation of the 1875 Act, and ultimately withdrew that portion of the Opinion and replaced it with the Tompkins M-Opinion. The Tompkins M-

precise and complete summary and analysis of the applicable law. Accordingly, I am withdrawing the Jorjani M-Opinion in its entirety.

⁴ The pre-1871 Acts are railroad grants authorized by Congress between 1850 and 1871, e.g., the Act of July 27, 1866, 14 Stat. 292. Congress offered these grants to specific railroad companies and the grants included provisions authorizing such railroad companies to obtain fee ownership of either even or odd section lands adjacent to the constructed railroad rights-of-way. In contrast to 1875 Act grants, the Supreme Court has interpreted the pre-1871 Act grants as providing the railroad companies a limited fee with a right of reverter. See *Northern Pac. R.R. v. Townsend*, 190 U.S. 267, 271 (1903). The pre-1871 Acts, however, "have little relevance to the question of what interest the 1875 Act conveyed to railroads." *Marvin M. Brandt Revocable Trust v. United States*, 572 U.S. 93, 107 (2014).

⁵ Solicitor's Opinion M-36964 at 450. Relying on *Townsend*, Solicitor's Opinion M-36964 concluded that railroads have limited fee ownership of land granted under the pre-1871 Acts, the scope of which includes the surface, subsurface (except for minerals), and airspace. The duration of such a right-of-way is perpetual with the United States possessing a possibility of reverter if the lands are no longer used for railroad purposes. Because of the nature of the right-of-way grant offered under the pre-1871 Acts, the Opinion explained that "the grantee may authorize third parties to utilize its right-of-way for activities and structures not inconsistent with the grantee's operation of a railroad." *Id.* In other words, as long as the third-party use did not interfere with railroad operations, the railroad could use – or authorize others to use – the land within the right-of-way as it pleased. *Id.*

⁶ *Id.* at 450. This conclusion relied on limited, narrow references to *Great Northern*; *United States v. Union Pac. R.R. Co.*, 353 U.S. 112 (1957) (dissenting opinion); and *State of Idaho v. Oregon Short Line R.R. Co.*, 617 F. Supp. 207 (D. Idaho 1985).

Opinion first identified the applicable canon of construction, determining that the Supreme Court’s liberal construction for railroad rights-of-way “in favor of the purposes for which it was enacted” is nonetheless “subject to 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.’”⁷ Next, the Opinion considered the Supreme Court’s decision in *Great Northern*, which concluded, based on the text and legislative history of the 1875 Act, that the Act gave railroads a mere easement as opposed to the “limited fee” offered by the pre-1871 Acts.⁸ Thus, the Tompkins M-Opinion determined that Solicitor’s Opinion M-36964’s interpretation of the 1875 Act was inconsistent with the Act, its legislative history, and caselaw, concluding that the Act granted a right of use only (i.e., an easement), as distinct from the grant of a “limited fee” with a right of reversion as in the pre-1871 Acts. Accordingly, a railroad’s authority to undertake or authorize activities is limited to activities that “derive from or further a railroad purpose.”⁹ The Tompkins M-Opinion also identified several principles for determining whether activities derive from or further a railroad purpose, including that: (1) a railroad may undertake, or authorize third parties to undertake, activities relating to the construction and operation of a railroad without distinguishing between third-party uses or uses that generate income;¹⁰ (2) a railroad could authorize uses providing a benefit to the construction and operation of a railroad and also a non-railroad purpose – known as the “incidental use doctrine”;¹¹ and (3) the 1875 Act easement does not distinguish between surface and subsurface uses and both uses are subject to the same test to determine if they constitute a railroad purpose.¹²

On September 1, 2017, the Jorjani M-Opinion withdrew and replaced the Tompkins M-Opinion.¹³ The Jorjani M-Opinion reconsidered the Tompkins M-Opinion’s legal analysis, re-examining the text of the Act, the legislative history, and caselaw relied on by the Tompkins M-Opinion, including *Home on the Range*. The Jorjani M-Opinion first applied common law principles associated with exclusive easements, concluding that 1875 Act easements are exclusive easements in gross and thus are apportionable by the easement owner limited only by a contrary intent of the parties or where such use unreasonably burdens the servient estate.¹⁴ Next, the Jorjani M-Opinion applied the general rule against reading limitations into the 1875 Act (*casus omissus pro omisso habendus est*), arguing that Section 1 of the Act did not limit the use of the 200-foot right-of-way to only railroad purposes.¹⁵ It also applied the canon of *expressio*

⁷ Tompkins M-Opinion at 1-3 (quoting *Leo Sheep Co. v. United States*, 440 U.S. 668, 683 (1979) and *Great Northern*, 315 U.S. at 272).

⁸ *Id.* at 3-6. The Opinion placed substantial weight on the district court’s analysis of the distinctions between rights offered through the pre-1871 Acts versus the 1875 Act in *Home on the Range v. AT&T Corp.*, 386 F. Supp. 2d 999 (S.D. Ind. 2005). *Id.* at 6-9.

⁹ *Id.* at 8-9.

¹⁰ *Id.* at 9-11.

¹¹ *Id.*

¹² *Id.* at 10-11, 12 n.26. The Department also issued earlier opinions acknowledging and applying the incidental use doctrine as reflected in *Grand Truck R.R. v. Richardson*, 91 U.S. 454 (1875). *See, e.g., Railroad Right of Way-Lease for Warehouse Purposes. Clear Water Short Line Ry. Co.*, 29 Pub. Lands Dec. 569, 1900 WL 1895 (Mar. 3, 1900); Solicitor’s Opinion M-36016, *Lease of Railroad Station Grounds of the Colorado River Indian Reservation* (Oct. 17, 1949). The Opinions accept the *Grand Truck R.R.* Court’s view of expanded uses within a railroad right-of-way easement as being within the scope of a railroad’s rights.

¹³ Jorjani M-Opinion at 1.

¹⁴ *Id.* at 9-10. As noted below, the Tenth Circuit recently rejected this conclusion, finding that while 1875 Act easements are exclusive, a railroad’s use of the right-of-way easement is still limited to uses serving a railroad purpose. *L.K.L. Assocs., Inc.*, 17 F.4th at 1297-98.

¹⁵ Jorjani M-Opinion at 10-11.

unius est exclusion alterius to support an interpretation that the 1875 Act provided limitations in other sections of the statute, but not in Section 1 regarding the grant of the right-of-way.¹⁶ Further, the Jorjani M-Opinion applied the canon of construction to liberally construe railroad grants, rejecting the Tompkins M-Opinion's interpretation that the liberal construction is constrained by the general rule that land grants are construed favorably to the Government and any ambiguity is resolved for and not against the Government.¹⁷ Based on this statutory construction, the Jorjani M-Opinion concluded that leasing portions of the right-of-way to third parties for uses that do not interfere with railroad operations was consistent with the purpose of the Act, including a broad interpretation of encouraging Western expansion and economic development, and did not place an unreasonable burden on the servient estate, suggesting this reading was supported by the Supreme Court's decision in *Great Northern*.¹⁸ This interpretation recognized a railroad company's authority over 1875 Act activities and uses within the rights-of-way limited only by those activities or uses that interfered with railroad operations. As noted above, the Jorjani M-Opinion also offered a secondary, alternative interpretation to reinforce a broad application of the incidental use doctrine to allow a railroad company to authorize uses within the right-of-way, assuming uses within the railroad right-of-way must further a railroad purpose.¹⁹

In 2017 and 2018, several environmental organizations filed lawsuits challenging a BLM determination regarding proposed activities within an 1875 Act railroad right-of-way that relied on the legal interpretation in the Jorjani M-Opinion. One of the lawsuits directly challenged the Jorjani M-Opinion. The district court conducted a thorough review of the legal analysis and reasoning in the Jorjani M-Opinion, rejecting, as contrary to the 1875 Act, the Jorjani M-Opinion's primary legal interpretation that a holder of an 1875 Act right-of-way has a right to lease to third parties for any uses not interfering with continued railroad operations.²⁰ The district court, however, did not vacate the Jorjani M-Opinion. Instead, the district court concluded that the secondary interpretation in the Jorjani M-Opinion came to the same, correct interpretation in the Tompkins M-Opinion – the scope of an 1875 Act right-of-way is limited to activities that serve a railroad purpose, including activities that are incidental to uses that serve railroad purposes.²¹

¹⁶ *Id.*

¹⁷ *Id.* at 14-15. The Jorjani M-Opinion rejects the Tompkins M-Opinion's reliance on *Home on the Range* regarding the general rule that land grants are construed favorably to the Government and the legal interpretation of the Act as limited to those uses serving a railroad purpose. The Jorjani M-Opinion argues that the holding in *Home on the Range* misread or disregarded the Supreme Court's decisions in *United States v. Denver & Rio Grande Railway Co.*, 150 U.S. 1 (1893), *United States v. Union Pac. R.R. Co.*, 353 U.S. 112 (1957), and *Leo Sheep Co.*

¹⁸ The Jorjani M-Opinion also argues that railroad companies and entities leasing lands from railroad companies up until the Tompkins M-Opinion believed such uses of the right-of-way were permissible and thus their settled expectations support broadly interpreting the purpose of the Act. *Id.* at 16-17.

¹⁹ *Id.* at 17-19.

²⁰ *CBD*, 2019 WL 2635587 at 25.

²¹ *Id.* at 26-28. The district court ultimately remanded the BLM's determination back to the BLM for failing to adequately explain why an application of the same facts, or a disregard of certain facts, supported a different conclusion. *Id.* at 31. The Department did not appeal the district court's decision. On February 7, 2020, the BLM reexamined the remanded determination based on the district court's decision and issued a revised determination. The revised determination provided an explanation in support of a finding that the proposed uses of the railroad right-of-way "derived from or furthered a railroad purpose." This Opinion does not take a position on the BLM's revised determination's application of the incidental use doctrine.

Analysis

Based on my review of past and current Solicitor's Opinions, the 1875 Act, the legislative history, and relevant court decisions, I conclude that the Tompkins M-Opinion correctly analyzes and interprets the 1875 Act. I reach this conclusion for several reasons.

First, contrary to the view taken by the Jorjani M-Opinion, common law principles of easements do not support a broad interpretation of the 1875 Act as offering railroads an exclusive easement for any use not interfering with railroad operations. While the Tompkins M-Opinion referred to 1875 Act grants as easements having some exclusive rights to use, it still concluded that the nature of the easement is constrained by the purpose for which the easement was offered – a “railroad purpose.”²² In contrast, the Jorjani M-Opinion interpreted 1875 Act grants as exclusive easements in gross, allowing the easement holder to use the easement for any purpose not interfering with railroad operations or placing an unreasonable burden on the servient estate.²³ On this point, the Jorjani M-Opinion suggested that the Supreme Court's decision in *Brandt* warranted a review of the Tompkins M-Opinion, but then ignored the Court's findings regarding the nature of the easement offered through the 1875 Act, namely that what the Act offered “was a simple easement.”²⁴ The Jorjani M-Opinion represented an overly expansive and unsupported interpretation of easements, especially when considered against the context in which Congress enacted the 1875 Act. **Even if the easement is exclusive, it cannot be understood to offer anything more than a right of use for railroad purposes**, which is precisely what is reflected in the Tompkins M-Opinion.

Second, an interpretation of the 1875 Act, even if liberally construed as it applies to the purposes of a railroad right-of-way, is still “subject to 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.’”²⁵ Contrary to the position expressed in the Jorjani M-Opinion, the 1875 Act does not provide a railroad company in “clear and explicit language” a right to authorize any use that does not interfere with railroad operations, nor does it support a broad interpretation of purpose that includes “westward expansion” and “economic development.”²⁶ And while the text does not clearly limit the scope to railroad purposes, Section 1 of the 1875 Act only offered a 200-foot right-of-way with a right to materials for construction of the railroad.²⁷ Thus, any ambiguity in the text should favor the Government.

²² Tompkins M-Opinion at 9. The Tenth Circuit's recent decision in *L.K.L. Assocs., Inc.* supports this conclusion. See *L.K.L. Assocs., Inc.*, 17 F.4th at 1297-99 (finding that although an 1875 Act right-of-way is an exclusive easement, it nevertheless may only be used for a railroad purpose). To be clear, the incidental use doctrine is applicable to 1875 Act easements, which allows a railroad to authorize uses of a right-of-way that offer “a variety of uses incidental to railroad operations.” *Barahona*, 881 F.3d at 1134. Notably, however, “the incidental use doctrine does not automatically consider any purpose employed by a railroad to be a railroad purpose.” *L.K.L. Assocs., Inc.*, 17 F.4th at 1299. In *L.K.L. Assocs., Inc.*, for example, the court specifically rejected an interpretation that any activity generating revenue for the railroad through a third-party lease of a right-of-way could constitute a railroad purpose. *Id.* at 1300 (“That interpretation would turn the railroad purpose requirement into something else entirely.”).

²³ Jorjani M-Opinion at 14.

²⁴ *Brandt*, 572 U.S. at 110.

²⁵ *Great Northern*, 315 U.S. at 272 (quoting *Caldwell v. United States*, 250 U.S. 14, 20-21 (1919)).

²⁶ *CBD*, 2019 WL 2635587 at 16-17.

²⁷ 43 U.S.C. § 934.

Third, the Supreme Court decisions examining the 1875 Act are persuasive in support of an interpretation of the Act as requiring a railroad's use of the right-of-way to relate to a railroad purpose. *Great Northern*, *Union Pacific*, and *Brandt* conclude that the 1875 Act offered easements, acknowledging the context in which Congress enacted the 1875 Act and making clear Congress' intention to distinguish these rights from the pre-1871 Act grants.²⁸ While these cases do not delineate the scope of permissible uses, they do conclude that "the 1875 Act granted an easement and nothing more."²⁹ Lower federal courts have considered the scope of the 1875 Act and consistently decided that uses must serve some railroad purpose.³⁰ The Tompkins M-Opinion gave appropriate weight to those decisions before it to support an interpretation that the 1875 Act offered an easement for the purpose of constructing and operating a railroad, which was reaffirmed by the Tenth Circuit's recent decision in *L.K.L. Assocs., Inc.* By contrast, the Jorjani M-Opinion ignored or misinterpreted the decisions before it (and is contrary to the subsequent *Barahona* and *L.K.L. Assocs., Inc.* decisions), including their examination of the legislative history of the Act in favor of an unsupported interpretation that broadly expands the rights offered by the 1875 Act, which is something more akin to a fee.³¹

Finally, the Tompkins M-Opinion and the secondary, alternative interpretation in the Jorjani M-Opinion are consistent in acknowledging and characterizing the application of the incidental use doctrine to determine whether uses are within the scope of an 1875 Act grant.³² As both opinions note, a railroad company may authorize a third party to use its right-of-way in those circumstances where such uses offer an incidental benefit to railroad operations. As a result, reinstating the Tompkins M-Opinion relating to the incidental use doctrine leaves in place the secondary, alternative legal interpretation in the Jorjani M-Opinion.

Based on the foregoing analysis, the Jorjani M-Opinion's interpretation of the scope of rights offered through the 1875 Act is inconsistent with the text, legislative history, and applicable caselaw, and thus I withdraw that Opinion. Because the Tompkins M-Opinion is an accurate representation of the 1875 Act, which granted railroad company's a right to use or authorize others to use the right-of-way for uses that "derive from or further a railroad purpose," I hereby reinstate that Opinion. As the Tompkins M-Opinion explains, BLM should exercise its discretion in reviewing past and future uses of 1875 Act railroad rights-of-way to determine on a case-by-case basis what actions, if any, should be taken with respect to such uses.³³ This

²⁸ See, e.g., *Great Northern*, 315 U.S. at 272-73; *Brandt*, 572 U.S. at 96-98. Notably, the Supreme Court issued its decision in *Brandt* after the Tompkins M-Opinion issued. However, *Brandt* is consistent with the Tompkins M-Opinion as it relates to the nature of the easement offered by the 1875 Act and in particular the distinctions between the pre-1871 Acts and the 1875 Act. The Jorjani M-Opinion's strained reading of the *Brandt* decision lacks merit.

²⁹ *Brandt*, 572 U.S. at 103; see also *id.* at 105 n.4 (noting that "granting an easement merely gives the grantee the right to enter and use the grantor's land for a certain purpose"); *Great Northern*, 315 U.S. at 271 ("[T]he right granted is one of use and occupancy only, rather than the land itself."). Moreover, the Supreme Court decided in *Brandt* that the underlying landowner acquires the area encumbered by the right-of-way provided by the 1875 Act if the railroad right-of-way is abandoned. *Brandt*, 572 U.S. at 105. Accordingly, any derivative right to use the right-of-way for a railroad purpose might lapse as well.

³⁰ See, e.g., *Home on the Range*, 368 F. Supp. 2d at 1024; see also *Barahona*, 881 F.3d at 1133; *L.K.L. Assocs., Inc.*, 17 F.4th at 1298-99.

³¹ See Jorjani M-Opinion at 5-7.

³² Compare Tompkins M-Opinion at 9-11 with Jorjani M-Opinion at 17-19.

³³ Tompkins M-Opinion at 12-13.

decision is consistent with the holding in *CBD*, which determined that the primary interpretation in the Jorjani M-Opinion was unlawful.

This Opinion was prepared with the substantial assistance of Michael Smith in the Solicitor's Office.

A handwritten signature in blue ink, reading "Robert T. Anderson", written over a horizontal line.

Robert T. Anderson