

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672  
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the date of enactment of this Act, 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 604(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 604(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 the date of enactment of this Act, the Secretary of the Interior, through the Attorney General, shall appear in and defend such action.

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

(2) No administrative or judicial action under this title shall enjoin or otherwise delay the transfer of the Alaska Railroad pursuant to this title, 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 title. If transfer to the State does not occur pursuant to section 604 of this title, the State shall not thereafter have standing to participate in any such determination or review.

(d)(1) Section 12(b)(7)(i) of the Act of January 2, 1976 (Public Law 94-204) is amended—

(A) by striking "subsection 12(b)(6)" and inserting in lieu thereof "section 12(b) (5) and (6)";

(B) by striking "12(b)(7)(ii)" and inserting in lieu thereof "12(b)(7)(iv)";

(C) by striking "crediting" and inserting in lieu thereof "using";

(D) by striking "this subsection 12(b)(7)(i)(b)" and inserting in lieu thereof "these subsections 12(b)(7) (i)(b) or (ii)";

(E) by striking "State" in the last sentence and inserting in lieu thereof "state"; and

(F) by striking the penultimate sentence.

(2) Section 12(b)(7) of such Act is amended—

(A) by redesignating subsections (ii) through (iv) as subsections (iv) through (vi), respectively; and

(B) by inserting immediately after subsection (i) the following:

"(ii) Subject to the exceptions stated in section 12(b)(9), and notwithstanding the foregoing subsection 12(b)(7)(i) and any provision of any other law or any implementing regulation inconsistent with this subsection, until the obligations of the Secretary and the Administrator of General Services under section 12(b) (5) and (6) are otherwise fulfilled:

"(A) concurrently with the commencement of screening of any excess real property, wherever located, for utilization by Federal agencies, the Administrator of General Services shall

notify the Region that such property may be available for conveyance to the Region upon negotiated sale. Within fifteen days of the date of receipt of such notice, the Region may advise the Administrator that there is a tentative need for the property to fulfill the obligations established under section 12(b) (5) and (6). If the Administrator determines the property should be disposed of by transfer to the Region, the Administrator or other appropriate Federal official shall promptly transfer such property.

43 USC 1611  
note.

(B) no disposition or conveyance of property under this subsection to the Region shall be made until the Administrator, after notice to affected State and local governments, has provided to them such opportunity to obtain the property as is recognized in title 40, United States Code and the regulations thereunder for the disposition or conveyance of surplus property; and

(C) as used in this subsection, 'real property' means any land or interests in land owned or held by the United States or any Federal agency, any improvements on such land or rights to their use or exploitation, and any personal property related to the land.

"Real  
property"

(iii) If the Region accepts any conveyance under section 12(b)(7) (i) or (ii), it shall be in exchange for acres or acre-equivalents as provided in subparagraph I(CX2Xe) of the document referred to in this section, except that, after the obligation of the Secretary and the Administrator under subparagraph I(CX2Xg) of that document has been fulfilled, the acre-equivalents under subparagraph I(CX2XeXiiiXA) shall be one-half the valued increment therein stated. The entitlement of the Region under section 12(b) of this Act shall be reduced by the number of acres or acre-equivalents attributed to the Region under this subsection. The Secretary and the Administrator are directed to execute an agreement with the Region which shall conform substantially to the 'Memorandum of Understanding Regarding the Implementation of Section 12(b)(7)', dated September 10, 1982, and submitted to the Senate Committee on Commerce, Science, and Transportation. The Secretary, the Administrator and the Region may thereafter otherwise agree to procedures to implement responsibilities under this section 12(b)(7), including establishment of accounting procedures and the delegation or reassignment of duties under this statute."

(3) Section 12(b)(7)(iv) of such Act, as so redesignated by paragraph (2) of this subsection, is amended—

43 USC 1611  
note.

(A) by striking "surplus" the first place it appears therein;

(B) by inserting immediately before the period at the end of the first sentence the following: "or paying for the conveyance of property pursuant to subsections (i) or (ii)";

(C) by inserting immediately after "account shall be" the following: "the sum of (1)";

(D) by striking "I(CX2Xe)" and inserting in lieu thereof "I(CX2XeXiiiXA)";

(E) by striking "the effective date of this subsection", and inserting in lieu thereof "December 2, 1980";

(F) by striking "and shall be adjusted" and inserting in lieu thereof "and (2) one-half the acre or acre-equivalent exchange value under subparagraph I(CX2XeXiiiXA) of ten townships fewer than the unfulfilled entitlement of the Region on the same date to acres or acre-equivalents under paragraph I(CX1)

of the document referred to in this section. The balance of the property account shall be adjusted in accordance with subsection 12(b)(7)(iii); and

(G) by striking "subsection 12(b)(6)" and inserting in lieu thereof "section 12(b)(5) and (6)".

49 USC 1611  
note.

(4) Section 12(b)(7)(v) of such Act, as so redesignated by paragraph (2) of this subsection, is amended by striking "subsection (ii)" and inserting in lieu thereof "subsection (iv)".

49 USC 1611  
note.

(5) Section 12(b)(8) of such Act is amended to read as follows: "12(b)(8). Subject to the exceptions stated in section 12(b)(9), and notwithstanding any provisions of law or implementing regulation inconsistent with this section:

"(i) The deadlines in subparagraphs I(CX2) (a) and (g) of the document referred to in this section shall be extended until the Secretary's obligations under section 12(b)(5) and (6) are fulfilled: *Provided, That:*

"(A) the obligation of the Secretary under subparagraph I(CX2)(a) of such document shall terminate on such date, after July 15, 1984, that the Secretary has fulfilled his obligation under subparagraph I(CX2)(g) of that document: *Provided, That* the obligation of the Secretary under subparagraph I(CX2)(g) of such document shall be fulfilled at such date, after July 15, 1984, that the sum of the acres or acre-equivalents identified for and placed in the pool and the acres or acre-equivalents used by the Region in purchasing property under section 12(b)(7) equals or exceeds 138,240 acres or acre-equivalents;

"(B) the authority of the Secretary under subparagraphs I(CX2)(b) and I(CX2)(g)(ii) of such document to contribute to the pool created under subparagraph I(CX2)(a) of such document shall terminate (a) on July 15, 1984, if, by that date, the Secretary has fulfilled his obligation under subparagraph I(CX2) (g), or (b) if not, on such date after July 15, 1984 as such obligation is fulfilled, or (c) if such obligation remains unfulfilled, on July 15, 1987;

"(C) the concurrence by the State as described in subparagraphs I(CX2)(a)(vi) and I(CX2)(c) of the document referred to in this section shall be deemed not required after the Secretary has fulfilled his obligation under subparagraph I(CX2)(g) of that document, but in no event after July 15, 1987. In lieu of such concurrence, after 1984 as to military property, and after the Secretary has fulfilled his obligation under subparagraph I(CX2)(g) of that document or July 15, 1987, whichever is earlier, as to any other property, except property of the Alaska Railroad which is governed by subsection 12(b)(6)(i)(D) of this Act, the Secretary shall not place any lands in the selection pool referred to in subparagraphs I(CX2) (a) and (g) of the document referred to in this section without the prior written concurrence of the State. Such concurrence shall be deemed obtained unless the State advises the Secretary within ninety days of receipt of a formal notice from the Secretary that he is considering placing property in the selection pool, that the State, or a municipality of the State which includes all or part of the property in question, requires the property for a public purpose of the State or municipality; and

"(D) notwithstanding section 806(a)(2) of the Alaska Railroad Transfer Act of 1982, the Secretary may include property of the Alaska Railroad in the pool of lands to be made available for selection to the extent that he is authorized to do so under a provision of section 12(b) of this Act if the State consents to its inclusion, which consent is not subject to any limitation under subsection 12(b)(8)(i)(C) herein: *Provided*, That, while the Alaska Railroad is the property of the United States, the Secretary shall obtain the consent of the Secretary of Transportation prior to including such property. *And provided further*, That, if the transfer of the Alaska Railroad to the State does not occur pursuant to the terms of the Alaska Railroad Transfer Act of 1982 or any amendments thereto, the State's consent shall be deemed obtained unless the State advises the Secretary in writing, within ninety days of receipt of a formal notice from the Secretary that he is considering placing such property in the selection pool, that the State, or a municipality of the State which includes all or part of the property in question, requires the property for a public purpose of the State or the municipality.

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Ann. p. 2564.

Ann. p. 2568.

Ann. p. 2556.

"(ii) In addition to the review required to identify public lands under section 3(e) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(e)), the Secretary shall identify for inclusion in the pool all public lands (as such term is used under section 3(e) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(e)), as described in subparagraph 1(C)(2)(a)(v) of the document referred to in this section, and shall, in so doing, review all Federal installations within the boundaries of the Cook Inlet Region whether within or without the areas withdrawn pursuant to section 11 of the Alaska Native Claims Settlement Act (43 U.S.C. 1610) or by the Secretary acting under authority contained in that section: *Provided*, That no such additional review under such subparagraph shall be required of military installations or of such other installations as may be mutually excluded from review by the Region and the Secretary. *And provided further*, That the Secretary shall not review any property of the Alaska Railroad unless such property becomes available for selection pursuant to subsection 12(b)(8)(i)(D).

"(iii) The concurrence required of the State as to the inclusion of any property in the pool under subparagraph 1(C)(2)(b) of the document referred to in this section shall be deemed obtained unless the State advises the Secretary in writing, within ninety days of receipt of a formal notice from the Secretary that the Secretary is considering placing property in the selection pool, that the State, or a municipality of the State which includes all or part of the property in question requires the property for a public purpose of the State or the municipality.

"(iv) The deadlines in subparagraph 1(C)(1)(b) of the document referred to in this section shall be extended for an additional twenty-four months beyond the dates established in the Act of July 17, 1980 (Public Law 96-311; 94 Stat. 947).

"(v) On or before January 15, 1985, the Secretary shall report to the Congress with respect to:

Report to Congress.

"(A) such studies and inquiries as shall have been initiated by the Secretary and the Administrator of General Services, or have been prepared by other holding agencies,

to determine what lands, except for lands held by the Alaska Railroad or the State-owned railroad, within the boundaries of the Cook Inlet Region or elsewhere can be made available to the Region, to the extent of its entitlement;

"(B) the feasibility and appropriate nature of reimbursement of the Region for its unfulfilled entitlement as valued in subsection 12(b)(7)(iv) of this Act;

"(C) the extent to which implementation of the mechanisms established in section 12(b)(7) promise to meet such unfulfilled entitlement;

"(D) such other remedial legislation or administrative action as may be needed; and

"(E) the need to terminate any mechanism established by law through which the entitlement of the Region may be completed."

48 USC 1611  
note.

Ann. p. 2558.

48 USC note  
prec. 21.  
48 USC 1635.  
48 USC 1611.  
1615, 1621.  
48 USC 1611  
note.  
84 Stat. 2499,  
2501-2515,  
2518-2544, 2546.  
48 USC 1611  
note.

(6) Section 12(b) of such Act is amended by adding at the end thereof the following:

"12(b)(9). No disposition or conveyance of property located within the State to the Region under section 12(b)(6), 12(b)(7) and 12(b)(8), as amended, shall be made if the property is subject to an express waiver of rights under the provisions of subparagraph I(C)(2)(f) of the document referred to in this section, or if such disposition or conveyance violates valid rights, including valid selections or valid authorized agreements, of Native Corporations (as such term is used in section 102(6) of the Alaska National Interest Lands Conservation Act (16 U.S.C. 8102(6)) or the State existing at the time of such disposition or conveyance under section 6 of Public Law 85-508, as amended (excepting section 906(e) of the Alaska National Interest Lands Conservation Act), sections 12(a), 12(b), 16(b) or 22(f) of the Alaska Native Claims Settlement Act, section 12(b) of the Act of January 2, 1976 (Public Law 94-204; 89 Stat. 1154), or sections 1416, 1418 through 1425 (inclusive), 1427 through 1434 (inclusive), or 1436 of the Alaska National Interest Lands Conservation Act: *Provided, However,* That nothing within this subsection 12(b)(9) shall diminish such rights and priorities as the Region has under section 12(b) of the Act of January 2, 1976 (Public Law 94-204; 89 Stat. 1151), as amended by section 4 of the Act of October 4, 1976 (Public Law 94-456; 90 Stat. 1935), section 3 of the Act of November 15, 1977 (Public Law 95-178; 91 Stat. 1369), section 2 of the Act of August 14, 1979 (Public Law 96-55; 93 Stat. 386), the Act of July 17, 1980 (Public Law 96-311; 94 Stat. 947), and section 1435 of the Alaska National Interest Lands Conservation Act.

"12(b)(10). For the purpose of its incorporation into this section, paragraph I(C)(1) of the document referred to in this section is amended as follows: (1) by striking 'withdrawn' and inserting in lieu thereof 'withdrawn or formerly withdrawn'; (2) by striking '17(dx1)' and inserting in lieu thereof '17(dx1) and (2)'; and (3) by striking the last sentence of subparagraph I(C)(1)(a) and inserting in lieu thereof the following: 'Cook Inlet Region, Incorporated shall not nominate any lands within the boundaries of any conservation system unit, national conservation area, national recreation area, national forest, defense withdrawal, or any lands that were made available to the State for selection pursuant to sections 2 and 5 of the State-Federal Agreement of September 1, 1972.'

"12(b)(11). Notwithstanding the provisions of section 906 of the Alaska National Interest Lands Conservation Act and section 6(i) of the Alaska Statehood Act (72 Stat. 839):

43 USC 1625.  
48 USC note  
prev. 21.

"(i) The State is hereby authorized to convey to the United States for reconveyance to the Region, and the Secretary is directed to accept and so reconvey, lands tentatively approved for patent or patented to the State, if the State and the Region enter into an agreement that such lands shall be reconveyed to the Region to fulfill all or part of its entitlement under paragraph 1(C)(1) of the document referred to in this section: *Provided*, That the acreage of lands conveyed to the United States under this provision shall be added to the State's unfulfilled entitlement pursuant to section 6 of the Alaska Statehood Act, and the number of townships to be nominated, pooled, struck, selected and conveyed pursuant to paragraph 1(C)(1) of the document referred to in this section shall be reduced accordingly.

"(ii) The Secretary is directed to convey to the Region lands selected by the State prior to July 18, 1973 or pursuant to sections 2 and 5 of the State-Federal Agreement of September 1, 1972, if the State relinquishes such selections and enters into an agreement with the Region that such lands shall be reconveyed to the Region to fulfill all or part of its entitlement under paragraph 1(C)(1) of the document referred to in this section, and the number of townships to be nominated, pooled, struck, selected and conveyed pursuant to paragraph 1(C)(1) of the document referred to in this section shall be reduced accordingly.

"(iii) The Secretary, in the Secretary's discretion, is authorized to enter into an agreement with the State and the Region to implement the authority contained in this section 12(b)(11), which agreement may provide for conveyances directly from the State to the Region. Conveyances directly conveyed shall be deemed conveyances from the Secretary pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.)."

(e) 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 604(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.

45 USC 1205.

#### EMPLOYEES OF THE ALASKA RAILROAD

Sec. 607. (e)(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, United States Code) 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, United States Code. The State-owned railroad shall be the employing agency for purposes of section 8334(a) of title 5, United States Code, and shall contribute to the Civil Service Retirement and Disability

45 USC 1306.

5 USC 8331.

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, United States Code) 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, United States Code. 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, United States Code, 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, United States Code, 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, United States Code, 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, United States Code.

(b) 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) 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 604(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) Any employee who transfers to the State-owned railroad under this title shall not be entitled to lump-sum payment for unused annual leave under section 5551 of title 5, United States Code, but shall be credited by the State with the unused annual leave balance at the time of transfer.

#### STATE OPERATION

Sec. 608. (a)(1) After the date of transfer to the State pursuant to section 604 of this title, the State-owned railroad shall be a rail carrier engaged in interstate and foreign commerce subject to the jurisdiction of the Interstate Commerce Commission under chapter 105 of subtitle IV of title 49, United States Code, and all other Acts applicable to rail carriers subject to that chapter, 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 title shall preclude the State from explicitly invoking by law any exemption from the antitrust laws as may otherwise be available.

45 USC 1207.

(2) The transfer to the State authorized by section 604 of this title and the conferral of jurisdiction to the Interstate Commerce Commission pursuant to paragraph (1) of this subsection are intended to confer upon the State-owned railroad all business opportunities available to comparable railroads, including contract rate agreements meeting the requirements of section 10713 of title 49, United States Code, 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 202(c) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 431(c))).

(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 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 the Internal Revenue Code of 1954 (26 U.S.C. 115(a)(1)). Obligations issued by such entity shall also be deemed obligations of the State for the purposes of section 103(a)(1) of the Internal Revenue Code of 1954 (26 U.S.C. 103(a)(1)), but not obligations within the meaning of section 103(b)(2) of the Internal Revenue Code of 1954 (26 U.S.C. 103(b)(2)).

(B) Nothing in this title 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) As soon as practicable after the date of enactment of this Act, the Interstate Commerce Commission shall promulgate an expedited, modified procedure for providing on the date of transfer a certificate of public convenience and necessity to the State-owned railroad. No inventory, valuation, or classification of property owned or used by the State-owned railroad pursuant to subchapter V of chapter 107 of title 49, United States Code (49 U.S.C. 10781 et seq.) 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) 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 the jurisdiction of the Interstate Commerce Commission under chapter 105 of subtitle IV of title 49, United States Code.

(d) After the date of transfer to the State pursuant to section 604 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 title.

#### FUTURE RIGHTS-OF-WAY

45 USC 1208.

Sec. 609. (a) After the date of enactment of this Act, 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) 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 603(6) of this title. Such conformance shall not be affected by the repeal of such Act under section 615 of this title.

(c) 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 610 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".

#### REVERSION

Sec. 610. (a) If, within ten years after the date of transfer to the State authorized by section 604 of this title, the Secretary finds that all or part of the real property transferred to the State under this title, except that portion of real property which lies within the boundaries of the Denali National Park and Preserve, is converted to a use that would prevent the State-owned railroad from continuing to operate, that real property (including permanent improvements to the property) shall revert to the United States Government, or (at the option of the State) the State shall pay to the United States Government an amount determined to be the fair market value of that property at the time its conversion prevents continued operation of the railroad.

45 USC 1209.

(b) If, after the date of transfer pursuant to section 604 of this title, the State discontinues use of any land within the right-of-way, the State's interest in such land shall revert to the United States. The State shall be considered to have discontinued use within the meaning of this subsection and subsection (d) of this section when:

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

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

Publication in  
Federal  
Register.

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

subsection shall extend the property of each abutting owner to the centerline of the right-of-way.

(d) If use is discontinued (as that term is used in subsection (b) of this section) of all or part of those properties of the Alaska Railroad transferred to the State pursuant to this title which lie within the boundaries of the Denali National Park and Preserve or the Chugach National Forest, such properties or part thereof (including permanent improvements to the property) shall revert to the United States and shall not be subject to subsection (c) of this section. Upon such reversion, jurisdiction over that property shall be transferred to the Secretary of the Interior or the Secretary of Agriculture, as appropriate, for administration as part of the Denali National Park and Preserve or the Chugach National Forest.

(e) Except as provided in subsections (a) through (d) of this section, if, within five years after the date of transfer to the State pursuant to section 604 of this title, the State sells or transfers all or substantially all of the State-owned railroad to an entity other than an instrumentality of the State, the proceeds from the sale or transfer that exceed the cost of any rehabilitation and improvement made by the State for the State-owned railroad and any net liabilities incurred by the State for the State-owned railroad shall be paid into the general fund of the Treasury of the United States.

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

#### OTHER DISPOSITION

45 USC 1210

**Sec. 611.** If the Secretary has not certified that the State has satisfied the conditions under section 604 within one year after the date of delivery of the report referred to in section 605(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; and

Ante p. 2564.

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

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

#### DENALI NATIONAL PARK AND PRESERVE LANDS

45 USC 1211.

**Sec. 612.** On the date of transfer to the State (pursuant to section 604 of this title) or other disposition (pursuant to section 611 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 604(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 611 of this title shall receive the same interest as the State under section 604(b)(1)(D) of this title.

#### APPLICABILITY OF OTHER LAWS

Sec. 613. (a) The provisions of chapter 5 of title 5, United States Code (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.), the National Historic Preservation Act (16 U.S.C. 470 et seq.), section 4(f) of the Department of Transportation Act (49 U.S.C. 1653(f)), and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) shall not apply to actions taken pursuant to this title, except to the extent that such laws may be applicable to granting of rights-of-way under section 609 of this title.

45 USC 1312  
5 USC 500 et seq.

(b) The enactment of this title, actions taken during the transition period as provided in section 605 of this title, and transfer of the rail properties of the Alaska Railroad under authority of this title shall be deemed not to be the disposal of Federal surplus property under the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484) or the Act of October 3, 1944, popularly referred to as the "Surplus Property Act of 1944" (50 U.S.C. App. 1622). 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) Beginning on the date of enactment of this Act, the ceiling on Government contributions for Federal employees health benefits insurance premiums under section 8906(b)(2) of title 5, United States Code, shall not apply to the Alaska Railroad.

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

(e) 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 title, nothing contained in this title 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.

#### CONFLICT WITH OTHER LAWS

Sec. 614. The provisions of this title shall govern if there is any conflict between this title and any other law.

45 USC 1313.

#### REPEAL AND AMENDMENT OF EXISTING STATUTES

Sec. 615. (a) On the date of transfer to the State (pursuant to section 604 of this title) or other disposition (pursuant to section 611 of this title), whichever first occurs, the following provisions are repealed:

- (1) The Act of March 12, 1914 (43 U.S.C. 975 et seq.).

16 USC 231a.

46 USC 201a.

(2) The Act of June 24, 1946, to authorize certain expenditures by the Alaska Railroad (60 Stat. 304).

(3) The Act of July 19, 1932, concerning mining of coal adjacent to the Alaska Railroad (30 U.S.C. 208a).

(4) Section 6(i) of the Department of Transportation Act (49 U.S.C. 1655(i)).

(b) On the date of transfer to the State (pursuant to section 604 of this title) or other disposition (pursuant to section 611 of this title), whichever first occurs, the following provisions are amended as follows:

(1) Title 5, United States Code, is amended—

(A) in section 305(a), by striking paragraph (3), and by redesignating paragraphs (4)–(8) as paragraphs (3)–(7), respectively;

(B) in section 3401(1), by striking clause (iii), and by redesignating clauses (iv)–(viii) as clauses (iii)–(vii), respectively;

(C) in section 5102(a)(1), by striking clause (iii), and by redesignating clauses (iv)–(ix) as clauses (iii)–(viii), respectively;

(D) in section 5342(a)(1), by striking subparagraph (C), and by redesignating subparagraphs (D)–(J) as subparagraphs (C)–(I), respectively; and

(E) in section 7327, by striking subsection (a), and by striking the subsection designation “(b)”.

(2) Section 102(7) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 802(7)) is amended by striking “and the Alaska Railroad”.

(3) Section 10749(b) of title 49, United States Code, is amended—

(A) by inserting “or” at the end of paragraph (1)(B);

(B) by striking “; or” at the end of paragraph (2) and inserting in lieu thereof a period; and

(C) by striking paragraph (3).

(4) Section 324(a)(1) of the Public Health Service Act (42 U.S.C. 251(a)(1)) is amended by striking “employees of the Alaska Railroad and”.

(5) Section 202(3)(a) of the Alaska National Interest Lands Conservation Act (16 U.S.C. 410hh-1(3)(a)) is amended by striking the third sentence.

(6) Section 1(o) of the Railroad Retirement Act of 1974 (45 U.S.C. 231(o)) is amended by inserting immediately after “National Transportation Safety Board,” the following: “the State-owned railroad (as defined in the Alaska Railroad Transfer Act of 1982), so long as it is an instrumentality of the State of Alaska.”

## SEPARABILITY

46 USC 1214.

Sec. 616. If any provision of this title or the application thereof to any person or circumstance is held invalid, the remainder of this title and the application of such provision to other persons or circumstances shall not be affected thereby.

## TRANSFER OVERVIEW

This overview summarizes the basic statutory scheme for the proposed transfer of the Alaska Railroad to the State of Alaska, describes the anticipated timetable for the transfer and discusses a series of major issues that were considered in the development of ARTA.

The Act was signed into law by President Reagan on January 14, 1983. It authorizes transfer of the Alaska Railroad to the State of Alaska subject to several specified conditions, including the requirement that the State compensate the United States for the value, if any, of all rail properties transferred. Other important conditions include State commitments to continue railroad operations, to assume existing obligations, to provide employee protection for at least two years, and to protect retirement benefits.

Two key provisions, each tied to the date of enactment, establish an orderly process for State consideration of the transfer offer. Within six months from the date of enactment, this Report is required to be prepared by the Governor of Alaska and the Secretary of Transportation and submitted to the Alaska State Legislature and the Congress. Within nine months from the date of enactment, the railroad's fair market value must be determined by USRA.

Following delivery of this Report, the Secretary of Transportation has 12 months within which to certify that the

State has agreed to all conditions for transfer specified by ARTA. Actual transfer of the railroad is to take place "as soon as practicable" after these certifications are made. Within three months of certification, the Secretary and the State will agree on the actual date of transfer, which the parties hope will be no later than six months following certification. Although both parties are committed to proceeding expeditiously, a longer period may be needed to ensure an orderly process. If the State has been unable to satisfy the transfer conditions within the 12-month time period, ARTA permits the Secretary to dispose of the railroad and to give preference to a buyer or transferee who will continue to operate rail services.

Certification Process.

As noted, ARTA sets out a series of conditions that the State must meet to allow transfer certification by the Secretary. The legislation does not, however, attempt to specify how the State is to satisfy the conditions. Much will depend upon the State's decision concerning the nature of the entity it will designate or create to operate the railroad under State ownership. The working assumption of the State during development of ARTA was that State enabling legislation would be enacted to resolve this fundamental issue, and that such legislation would either satisfy the outstanding certification requirements or empower the operating entity to do so.

As a precondition to transfer, the Secretary is required to certify that the State has agreed:

- (1) to operate the railroad as a rail carrier in intrastate and interstate commerce;
- (2) to assume all rights, liabilities, and obligations of the Alaska Railroad on the date of transfer, with some limited exceptions regarding claims and causes of action;
- (3) to protect retirement benefits and to establish acceptable arrangements for continued employment during a two-year period following date of transfer;
- (4) to allow representatives of the Secretary of Transportation adequate access to railroad employees and records when needed in relation to the period of Federal ownership; and
- (5) to compensate the United States at the value, if any, determined by the valuation exercise being performed by the USRA.

Reversion.

If transferred to the State under Section 604, the railroad may revert, in whole or in part, to the United States under three separate reversion provisions in ARTA:

- (1) Under Section 610(e), any proceeds in excess of the cost of any rehabilitation and improvement and any

net liabilities from the State's sale or transfer of "all or substantially all" of the railroad within five years of transfer to an entity other than a State instrumentality are to be paid to the United States Treasury.

- (2) Section 610(a) requires the reversion to the United States, or the payment by the State of the fair market value, of all or part of the railroad's real property "converted to a use that would prevent the State-owned railroad from continuing to operate" within ten years after transfer.
- (3) Section 610(b) requires reversion to the United States generally for conveyance to the abutting owners of any land within the right-of-way if its use for transportation, communication or transmission purposes is discontinued by the State for an uninterrupted period of 18 years.

Claims Against Railroad Lands.

Approximately 4,000 acres of the railroad's non-right-of-way lands are subject to claims by Native Village Corporations under the Alaska Native Claims Settlement Act. Article II and Appendix D of this Report provide more detail regarding the lands involved. During the ten month period following the date of enactment of ARTA, the State, the Department of the Interior, and all affected Native Village Corporations are

directed to undertake a good faith effort to negotiate settlements for as many outstanding claims as possible.

If any of these claims cannot be settled within the ten-month period, they must be adjudicated by the Secretary of the Interior within two years of the date of enactment of ARTA, or 14 months after completion of the review and settlement process. All other unresolved claims against railroad lands on record in the Department of the Interior, as of the day before the date of enactment must be adjudicated within three years from the date of enactment. Resolution of claims to railroad land is not a precondition to transfer.

#### Survey Requirement.

ARTA requires the Secretary of the Interior to survey within a five-year period all lands among the rail properties conveyed to the State. The parties emphasize the importance of meeting the deadline and will continue to work with the Department of the Interior to do so. Article II, Appendices B-E and Exhibit I of this Report provide more detail about the lands involved.

#### Railroad Right-of-Way.

ARTA requires the transfer to the State of all right, title, and interest of the United States to all rail properties of the Alaska Railroad, including all railroad rights-of-way. ARTA also provides that where lands or any interests within the right-of-way have been conveyed out of Federal

ownership prior to enactment, the State shall receive, at minimum, an exclusive-use easement. These two provisions are intended to ensure that the State will receive all of the interest necessary to maintain viable railroad operations.

Future Rights-of-Way.

ARTA provides for expeditious review of any future right-of-way requests by the State across Federal lands. The Act requires that such rights-of-way conform, to the extent possible, to the standards provided by the Alaska Railroad Enabling Act of 1914 and the exclusive-use easement definition contained in ARTA. Responsibility for reviewing and granting such future rights-of-way is vested by existing law in the Secretary of the Interior or the Secretary of Agriculture, with the participation of the Secretary of Transportation as appropriate, particularly with respect to the interest to be granted for operation and economic growth of the railroad.

Denali National Park and Preserve Lands.

On the date of transfer, the Secretary will deliver to the State a deed that conveys to the State (a) an exclusive-use easement for that portion of the rights-of-way within Denali National Park and (b) title to the railroad-related improvements within such right-of-way. All other railroad holdings and improvements within the Park are to be transferred to the Secretary of the Interior for administration as part of the Park. Rail properties within the boundaries of the Chugach

National Forest and the Denali National Park and Preserve will be subject to laws and regulations for the protection of forest and park values. Implementation of those regulations will be subject to prior consultation with the Governor and may not unreasonably interfere with continued or expanded operation of the State-owned railroad.

Real Property Conveyance.

Articles II and III, related to real and personal property and supported by lengthy appendices and exhibits, are the most detailed parts of this Report. The transfer from the Federal Government of its only commercial operating railroad present property questions of first impression. This transfer is further complicated by the peculiar status of many Federal lands located in Alaska. The impact of competing claims to such lands on the transfer process accounts for the complex statutory scheme provided in ARTA and for the detailed treatment of the railroad lands in Article II.

The Act provides for four different types of conveyance documents to be issued to the State on the date of transfer. Each document will convey interests in land based on the status of the affected parcel on that date.

First, the State will receive an "interim conveyance" of lands that, like the patented lands, are free of claims by others but, unlike the patented lands, are not yet surveyed. When these lands have been surveyed after the date of

transfer, the interim conveyances will be converted into patents.

Second, the State will receive a patent for railroad lands that are surveyed and are not subject to unresolved claims made by third parties under a variety of Federal laws.

Third, the State will receive an exclusive-use easement, as defined in ARTA, for right-of-way lands within Denali National Park and Preserve.

Fourth, the State will receive a license allowing it the exclusive right to use the railroad lands that are subject to claims of third parties (such as Native Corporations) on the date of enactment but which have not been resolved by the date of transfer. As these claims are settled or decided, the lands in the license category will either be placed in the interim conveyance category (if the third party's claim is denied) or conveyed to the claimant (if the claim is approved). The real property conveyance provisions of ARTA thereby require that certain railroad lands be held in escrow (i.e., under license) until their ultimate ownership is determined through settlement or by adjudication.

#### Employee Protection.

The work force of the Alaska Railroad (described in the "Profile" section) remains one of its most valuable assets. The employee protection provisions of ARTA, more fully discussed in Article VI, testify to the continuing interest

of the State and the United States in protecting the employees' well-being in the face of the proposed transfer to the State. The provisions also are intended to facilitate and indeed encourage the transfer of the Alaska Railroad work force to the State-owned railroad, in recognition of its critical importance to the ongoing viability of the railroad. Although care has been taken to preserve employee options to elect not to transfer and to protect their rights in the event they decide to separate from the railroad upon transfer, the Secretary and the Governor hope that the vast majority of employees will remain with the State-owned railroad.

## ARTA REQUIREMENTS

### Transfer Terms and Conditions

ARTA establishes a series of conditions the State must meet to obtain certification from the Secretary of Transportation. The legislation does not, however, specify how the State is to satisfy these conditions. Much depends on our decision about the mechanism we select to operate the railroad.

Prior to transfer, the Secretary is required to certify that the State has agreed:

- (1) to operate the railroad as a rail carrier in intrastate and interstate commerce;
- (2) to assume all rights, liabilities and obligations of the ARR on the date of transfer, except for some claims and causes of action;
- (3) to protect retirement benefits and to establish acceptable arrangements for continued employment for all employees during a two-year period following the date of transfer;
- (4) to allow representatives of the Secretary of Transportation adequate access to railroad employees and records; and
- (5) to compensate the United States at the fair market value, if any, as determined by the United States Railway Association.

Other chapters of this report explain some of these conditions in greater detail, particularly those relating to employee protection and retirement benefits.\*

\* Additionally, the first section of the Transfer Report, entitled "Transfer Overview," provides information about other key aspects of the federal transfer legislation. This includes those provisions dealing with reversion requirements, native claims against railroad lands, and the type of interest to be obtained in the railroad's right-of-way.

### Provisions Affecting Continued Operations

The following discussion analyzes the effect of ARTA's requirements (other than employee protection obligations which are addressed elsewhere), on continued operation of the railroad following acquisition. Several observations should help eliminate confusion regarding ARTA's continued rail service requirements.

First, it is important to remember that most of the federal transfer statute was structured on a premise of the so-called "no-cost transfer." The compensation requirement was a last minute compromise to obtain Congressional passage, and was merely added to the already established conditions. Consequently, certain provisions are not consistent with the purchase provision of ARTA; particularly the reversion clauses which remain in effect for a certain period of time after acquisition.

Another important consideration is the requirement that the State agree to operate the railroad as a common carrier engaged in intrastate and interstate commerce. Some interpretations suggest that when read in context with the reversion clauses under Section 610 of ARTA, there is a prescribed ten-year period for ensuring continued rail operations. However, this is not the case. The State is not required to continue rail services for any specific period.

Some also suggest that ARTA requires all existing services be continued, including passenger service. This also is not the case. The reversion requirement under Section 610 merely states that if, within the first 10 years after transfer, the State converts all or part of the real property to "a use that would prevent the State-owned railroad from continuing to operate," then the State shall be subject to a requirement to repay the United States for these holdings, or revert such property at our option.

However, under full regulation by the Interstate Commerce Commission (ICC), the State will be subject to some ICC oversight in any abandonment proceedings. Generally, these proceedings are strictly based on economic considerations related to operating history. Assuming a history of highly marginal performance, it is doubtful that ICC oversight would prevent discontinuance of service at some point in the future.\*

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\* The Transfer Team, however, is not suggesting that service be discontinued.

Other key ARTA provisions that have a bearing on continued rail operations are primarily located in Section 608, including the following:

- (1) full and formal regulation by the Interstate Commerce Commission as a rail carrier engaged in intrastate and foreign commerce;
- (2) full jurisdiction under federal antitrust laws, although the State may invoke by law any exemptions otherwise available;
- (3) exemption from the following laws so long as the State-owned railroad remains an instrumentality of the State of Alaska: the Railroad Retirement Act of 1974, the Railroad Tax Act, the Railroad Labor Act, the Federal Employers' Liability Act, and the Railroad Unemployment Insurance Act;
- (4) a clarification that ICC regulation is intended to confer on the State-owned railroad "all business opportunities available to comparable railroads, including contract rate agreements";
- (5) clarification that train operations by the State-owned railroad shall not be subject to any state or local laws specifying minimum crew size;
- (6) a specific requirement that all revenues generated by the State-owned railroad are to be retained and managed by the State-owned railroad for railroad and related purposes;
- (7) a statement by Congress that continued operation of the ARR by "a public corporation, authority or other agency of the State" is an exercise of an essential governmental function and qualifies under the Internal Revenue Code for tax-exempt status, which also would apply to obligations issued by this entity;
- (8) a requirement that rail operations within the boundaries of Chugach National Forest and Denali National Park will be subject to laws and regulations for the protection of forest and park values so long as such regulation does not "unreasonably interfere with continued or expanded operations and support functions";

- (9) guarantees that the State will receive the full federal interest in the right-of-way, but nothing less than an exclusive-use easement for transportation, communication and utility purposes in all areas, except within the Denali National Park, where the railroad is to receive an exclusive-use easement for rail purposes only; and
- (10) no guarantees for future rights-of-way across federal lands, but language which encourages the Secretary of the Interior to expeditiously review applications for that purpose.

# CERTIFICATE OF APPRAISAL

CHARLES F. SEYMOUR, RUSSELL E SNYDER, AND ARNOLD S. TESH  
DO HEREBY CERTIFY THAT UPON REQUEST FOR VALUATION BY:

THE UNITED STATES RAILWAY ASSOCIATION  
955 L'ENFANT PLAZA NORTH, S.W.  
WASHINGTON, DC 20595

THEY HAVE PERSONALLY EXAMINED THE FOLLOWING DESCRIBED PROPERTY:

ALASKA RAILROAD REAL ESTATE TO BE TRANSFERRED  
UNDER THE ALASKA RAILROAD TRANSFER ACT

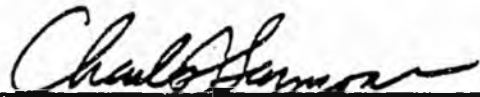
AND THAT THEY ARE OF THE OPINION THAT AS OF OCTOBER 1, 1983

THE MARKET VALUE OF THE PROPERTY  
MORE FULLY DESCRIBED HEREIN, WILL BE AS FOLLOWS:

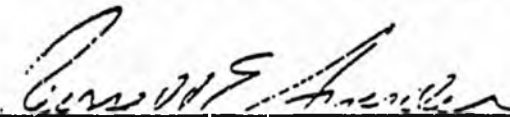
\$58,000,000

THIS MAY BE ALLOCATED AS FOLLOWS:

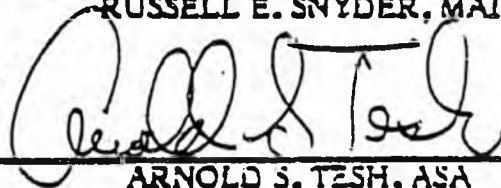
OPERATING PROPERTY:	\$ 7,000,000
NON-OPERATING PROPERTY:	\$51,000,000



CHARLES F. SEYMOUR, MAI, CRE



RUSSELL E. SNYDER, MAI



ARNOLD S. TESH, ASA

N-1

CERTIFICATION, ASSUMPTIONS,  
LIMITING CONDITIONS, AND CONTINGENCIES

Your appraiser, whose signature appears on the Certificate of Appraisal, does hereby certify that, except as otherwise noted in this appraisal report:

1. He has no present or contemplated future interest in the real estate that is the subject of this appraisal report.
2. He has no personal interest or bias with respect to the subject matter of this appraisal report or the parties involved.
3. To the best of his knowledge and belief, the statements of fact contained in this appraisal report, upon which the analyses, opinions, and conclusions expressed herein are based, are true and correct.
4. This appraisal report sets forth all of the limiting conditions imposed by the terms of the assignment or by the appraiser affecting the analyses, opinions and conclusions contained in this appraisal.
5. This appraisal report has been made in conformity with and is subject to the requirement of the Code of Professional Ethics and Standards of Professional Conduct of the American Institute of Real Appraisers of the National Association of Realtors.
6. No one other than the appraiser prepared the analyses, conclusions and opinions concerning real estate that are set forth in this appraisal report.
7. The American Institute of Real Estate Appraisers conducts a voluntary program of continuing education for its designated members. MAI's and RM's who meet the minimum standards of this program are awarded periodic educational certification. I am certified under this program through December 31, 1983.

This appraisal is to be used in whole and not in part. No part of it shall be used in conjunction with any other appraisal.

No responsibility is assumed by the appraiser for matters which are of legal nature, nor is any opinion on the title rendered herewith. Good title is assumed. Management is assumed to be competent and the ownership to be in responsible hands.

This property has been appraised as though free of liens and encumbrances, except as herein described.

The appraiser herein, by reason of this report is not required to give testimony in court with reference to the property appraised, unless arrangements have been previously made therefore.

Disclosure of the contents of this appraisal report is governed by the By-Laws and Regulations of the American Institute of Real Estate Appraisers of the National Association of Realtors.

Neither all nor any of the contents of this report (especially any conclusions as to value, the identity of the appraiser or the firm with which he is connected, or any reference to the American Institute of Real Estate Appraisers or to the M.A.I. or R.M. designation) shall be disseminated to the public through advertising media, public relations media, news media, sales media or any other public means of communication without the prior written consent and approval of the appraiser(s)

**SPECIAL ASSUMPTIONS AND INSTRUCTIONS  
UNDER THE ALASKA RAILROAD TRANSFER  
ACT (ARTA)**

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In accordance with the advice and counsel of the United States Railway Association, Jackson-Cross has assumed the following in its appraisal of the Alaska Railroad:

1. Fair market value of the railroad to the State of Alaska is the price the State, as a prudent purchaser, would pay for the rights transferred under ARTA. The State is constrained by all existing state law that would affect it or any other purchaser of the railroad's property. Accordingly, we do not consider potential actions which the State might take which would affect fair market value.
2. The purchaser will operate the railroad for ten years, at a level of service that approximates current projections and in its present configuration.
3. All real estate classified as operating property would be available for transfer for non-rail use in 10 years after the date of the appraisal on October 1, 1993.
4. Upon transfer, the State will acquire full title to only those portions of the property identified by USRA as owned in fee simple by the Alaska Railroad.
5. The purchaser will be permitted to make any use of the operating property immediately after transfer of the properties to the State as long as such uses do not interfere with rail operations.
6. All non-operating property would be available for disposition immediately after transfer of the properties to the State.
7. All revenues from real estate transactions during the first ten (10) years must be used for railroad or other related purposes. Other related purposes can include transportation budget items relating in some way to the Alaska Railroad.
8. There would be no added costs to a purchaser for environmental, subdivision or zoning actions beyond that which is reflected in comparable sales.
9. The purchaser is required to assume all existing leases on the property, but will renegotiate them at fair market value upon their expiration or at the earliest date permissible under the terms of such leases.
10. USRA has provided the appraiser with the inventory of Alaska Railroad property and with its allocation between operating and non-operating real estate.

11. The analysis of real estate taxes has been performed in accordance with the normal real estate market practices, i.e. the purchaser is responsible for normal real estate taxes during the holding period and for disposition taxes normally paid by the seller when sales are consummated.
12. The purchaser is entitled to utilize all financing instruments normally available, including mortgages.
13. The discount rate reflects the cost of money attributable to a typical acquisition in the private sector.
14. Theoretical social costs and benefits associated with the transferred property are not considered within the purview of fair market value.
15. The railroad is considered a single property to be owned and controlled by a single entity.
16. The date of the appraisal is October 1, 1983.
17. No special allocation is made in this report for parcels subject to Native claims. At USRA's request, Jackson-Cross supplied a total value for such parcels. That value is \$3,200,000.
18. Corridor value for the right-of-way is not considered.
19. The Section 605(a) Closing Report is considered to the extent that information contained therein affects the real estate value.
20. No specific studies are performed to determine the existence of semi-precious and precious minerals located within the subject. Mineral rights and their potential value are only considered to the extent as reported and reflected in the real estate market transactions in the private sector.
21. Income from leases located on property designated by USRA as operating property, pipeline permits, and trackage charges, are excluded from the real estate valuation. USRA advises that this income has been considered in its projections of railroad operating income.

## PURPOSE AND FUNCTION OF THE APPRAISAL

The purpose of this appraisal is to estimate the market value of the subject property, more fully described herein, as of October 1, 1983.

As used herein, market value may be defined as:

The price which a well-informed buyer acting intelligently, voluntarily, and without necessity would be warranted in paying, and a well-informed seller acting intelligently, voluntarily, and without necessity would be warranted in accepting for the property as of a certain date.

The function of this appraisal is to provide USRA with an estimate of market value of the real estate for incorporation in its report on the market value of the Alaska Railroad properties to be conveyed under the Alaska Railroad Transfer Act (A.R.T.A.).

The subject property is valued in fee simple, subject to A.R.T.A. restrictions as interpreted by USRA.

## ACKNOWLEDGEMENT

All of the judgements and conclusions contained within this report are those of the appraisers for which they assume full professional responsibility. However, the appraisers wish to acknowledge the assistance of David W. Anderson, Douglas S. Butcher, Joseph R. Dugan, Alf Moody, and Frederick J. Williams of Jackson-Cross Company in the preparation of various facets of this report.

SUMMARY OF VALUATIONS BY MARKET AREA

<u>Market Area</u>	<u>Operating Property</u>			<u>Non-Operating Property</u>			<u>Total Property</u>
	<u>Land</u>	<u>Improvements</u>	<u>Subtotal</u>	<u>Land</u>	<u>Improvements</u>	<u>Subtotal</u>	
Anchorage	\$0,883,223	\$ 766,618	\$1,649,841	\$19,282,728	--	\$19,282,728	\$40,932,639
Palmdale	327,041	132,132	659,173	6,184,760	--	6,184,760	6,843,937
Seward	188,610	83,666	272,276	1,393,082	--	1,393,082	1,667,356
Whittier	102,661	136,113	238,774	922,717	--	922,717	1,161,491
Vaduz	--	--	--	363,431	--	363,431	363,431
Other	<u>68,374</u>	<u>23,616</u>	<u>91,990</u>	<u>2,782,183</u>	<u>116,000</u>	<u>2,898,183</u>	<u>2,990,173</u>
Totals	\$3,770,109	\$1,146,215	\$4,916,324	\$20,933,923	\$116,000	\$21,049,923	\$27,936,249
Revised	\$3,770,000	\$1,140,000	\$4,910,000	\$20,930,000	\$120,000	\$21,050,000	\$28,000,000

## SUMMARY OF SALIENT FACTS AND CONCLUSIONS

PROPERTY APPRAISED:

All Alaska Railroad real estate holdings held in fee simple by the Alaska Railroad.

OWNER:

The Alaska Railroad (United States Department of Transportation).

LAND:

The total land area valued is 28,416.31 acres, based on maps and other documents provided to the appraisers by USRA and the Alaska Railroad. USRA has allocated 3,913.61 acres to Operating property and 24,502.7 acres to Non-operating property.

IMPROVEMENTS:

Numerous structures located throughout the Alaska Railroad land holdings are more fully described herein. Improvements containing a total of 512,000+ square feet of building area owned by the Alaska Railroad have value consistent with the highest and best uses of the properties under the assumptions provided by USRA.

PRESENT USE:

Operating property is devoted to rail operations. The uses of Non-Operating properties range from undeveloped wilderness to land leases for industrial, commercial, residential, agricultural, institutional, and recreational.

HIGHEST AND BEST USE:

A separate highest and best use conclusion was made for each of the Valuation Units described herein. With respect to Operating property, highest and best use conclusions are based on the assumption, provided by USRA, that rail operations will cease on October 1, 1993.

MARKET VALUE OF OPERATING PROPERTY:

Land	\$ 5,770,000
Improvements	<u>1,140,000</u>
Total	\$ 6,910,000

MARKET VALUE OF NON-OPERATING PROPERTY:

Land	\$ 50,930,000
Improvements	<u>120,000</u>
Total	\$ 51,050,000

TOTAL MARKET VALUE:

Land	\$ 56,700,000
Improvements	<u>1,260,000</u>
Total	\$ 57,960,000
Rounded to	\$ 58,000,000

VALUATION

After considering all the facts and circumstances in connection with the subject property, it is our opinion that the market value of the land and improvements, as of October 1, 1983, will be:

--- FIFTY EIGHT MILLION DOLLARS ---  
(\$58,000,000)

This may be allocated as follows:

Land	\$56,740,000	This is equivalent to 28,416.31 acres at \$1,997 per acre.
Improvements	\$1,260,000	This is equivalent to 512,002 square feet of building area at \$2.46 per square foot.

## OBJECTIVE AND VALUATION METHODOLOGY

The final adoption of a methodology for appraising the non-rail use fair market value of the Alaska Railroad (ARR) real estate results from comprehensive consideration of the Alaska Railroad Transfer Act of 1982 (ARTA) which defines assumptions and limiting conditions. Market factors were also considered in formulating the process.

It has been the practice of the ARR to lease its real estate, rather than sell it. Jackson-Cross assumes a continuation of this practice regardless of ownership. Valuation theory assures that proper capitalization of an income stream results in a value conclusion synonymous with an appraisal assuming sale of the leased fee interests.

To arrive at a fair market value to the State of Alaska, the basic methodology comports with conventional real estate approaches and techniques.

Two major steps are required to estimate the fair market value of the Alaska Railroad.

First, the base values are determined. Each base value represents the estimated price for a single parcel as of October 1, 1983, assuming that it is sold on that date, that it is the only piece of Alaska Railroad property on the market in that area at the time, and that there are no restrictions or encumbrances preventing the sale.

Second, the net revenues, if any, likely to be received from non-rail use leasing of the subject property are estimated; the period of time it is likely to take to realize those net revenues are estimated; and, the present value is appraised as of October 1, 1983, of the expectation of those future net revenues, considering the cost of money over time and the risk of uncertainty that the projected net revenues will, in fact, be realized.

## BASE VALUE

The first of two major valuation phases involves a determination of base value, or the total of all gross proceeds to be received for the real property if it were sold in marketable parcels on October 1, 1983. Base value assumes that each parcel is the only parcel being marketed at the subject property on October 1, 1983.

## Property Categories

The Alaska Railroad property is comprised of both operating and non-operating property. The United States Railway Association supplies Jackson-Cross with the configuration between these categories. They are distinguished by the following assumptions:

1. Operating property is not marketable for non-rail use for a period of ten years.
2. Non-operating property is immediately marketable for non-rail use.

Both categories of property are appraised by Jackson-Cross under the aforementioned conditions, except where the railroad lacks title. Jackson-Cross relies upon USRA for instructions regarding the extent to which properties should be included or excluded due to title problems.

## Market Areas

All Alaska Railroad real estate is examined by market area. Those parcels sharing economic, social, and geographic characteristics tend to have their values influenced by the same local phenomena. For instance, changes in population, real estate supply, industrial growth, property taxes and transportation, among other possibilities, may influence the property within a market area and have no direct measurable effect upon neighboring communities or jurisdictions. Most importantly, from a valuation standpoint, is that within a market area properties of similar utility compete for existing demand. Obviously, no market is totally immune to what occurs outside its borders, but whatever macro-economic impact may occur it is best to measure it with local market data if it exists.

### Valuation Unit

For all of the Alaska Railroad real property assigned for valuation, Jackson-Cross analyzes each of the permissible uses and determines which uses are most profitable and likely as of the date the property can be marketed for non-rail use.

All property in each market area is divided into valuation units. Property within a unit is of consistent highest and best use and value level. The valuation unit is different from a marketable parcel. It is a method of reporting value results only. The valuation unit may consist of one or more marketable parcels.

A review of the subject property along with sales and leases identified in the market enables the appraiser to assign preliminary parcelization. During the base valuation phase it is often necessary to modify the valuation units.

### Valuation Analysis

For each valuation unit a detailed study of market data is utilized to determine unit values. This analysis includes consideration for marketable parcel location, highest and best use, size, shape, topography, soil conditions, access, and any other variables which may have an impact on value.

The resulting base unit value for each valuation unit is multiplied by the size of the valuation unit to equal the total base value. For example, a 10,000 square foot valuation unit with a square foot value of \$2.00 results in a total Base Value of \$20,000.00. The unit value applied reflects the gross unit price likely to be received for the optimum sized marketable parcels within the valuation unit. To properly reflect market data, a 10,000 square foot valuation unit is not valued as a 10,000 square foot parcel if the standard marketable lot is 5,000 square feet. Instead, it is valued as two 5,000 square foot lots, each of which are assumed not to compete with the other.

### Base Value Limitations

As mentioned earlier, Base Value for the Alaska Railroad real estate is the sum of all of the individual marketable parcel gross selling prices on October 1, 1983. It assumes that none of these parcels are encumbered by the requirement to operate a railroad, or by the existence of leases which are not in conformity with the market. It also assumes that no other property within the subject portfolio is available for sale or lease on that date.

## PORTFOLIO MARKET VALUE

The second major phase of this valuation involves the discounting of future proceeds to a present worth. This discounted cash flow process arrives at a value for the entire Alaska Railroad real estate portfolio as a single property. The discounting technique's applicability to the subject assignment is explained below.

### Applicability of Discounted Cash Flow Technique

The discounted cash flow technique is a standard valuation tool for determining the present value of cash flows to be realized over a period of time from the disposition or use of assets. In the subject case where it is likely a purchaser would continue the practice of the Railroad to lease the property, discounted cash flow analysis is an appropriate valuation practice. As a practical matter, the same present value should be realized from leasing property at market rates or from selling the assets free of encumbrances.

The discounted cash flow technique is necessary because the amount of the Alaska Railroad's real estate holdings, the different geographic markets where that property is located and the diversity of highest and best uses cannot be directly compared to a single "comparable" sale in the market.

The subject property is especially conducive to discounted cash flow due to the:

1. Long term nature of the existing leases.
2. Diversity of the real estate inventory.
3. Heterogenous nature of the business entity which includes operating a railroad and managing a real estate portfolio.
4. Lack of a stabilized income stream or level annuity.

The procedure of performing a discounted cash flow analysis involves a projection of:

1. Periodic actual gross income likely to be received.
2. The periodic management, marketing and holding costs likely to be incurred.
3. The relative risk and time-cost of money in realizing the projections.

### Pace of Absorption

An important element of the discounted cash flow analysis is the time when the potential benefits (i.e., proceeds of sale or lease) are likely to be realized. A timetable for realizing lease income from the Alaska Railroad properties results from a detailed analysis in each of the major market areas.

Within each market area property is categorized by highest and best use. Each highest and best use category is then analyzed for quality characteristics which may affect the pace at which the property is likely to be leased. For major markets a study of existing market activity along with socio-economic factors supplies the appraiser with the basic data necessary to project the likely rate of absorption that would be predicted by an investor as of October 1, 1983.

With regard to non-operating property in Anchorage, approximately 80% of the dollar value is currently under lease; similarly, in Fairbanks approximately 60% of the dollar value of the non-operating railroad property is currently leased. Jackson-Cross considers these properties, and those under lease in other markets, to have been already absorbed into the market, and to remain under lease for the term of the existing contracts. The appraiser, using real estate market and other economic data, then estimates the rate at which the unleased property would be leased, including the effect of re-leasing property after the termination of existing contracts. While he considered that any terminating leases could be renewed immediately, because start-up time would be necessary for a new owner, Jackson-Cross assumed that no other new leases would be entered into for at least one year. The appraiser also estimates the rate at which the operating property could have been leased for alternative uses under the hypothetical assumption that railroad operations terminate after ten years.

### Rents

A review of real estate practices in both Anchorage and Fairbanks reveals that land leases generally provide for the escalation (or reduction) of rents every five years. This five-year cycle, which is contained in most of the existing leases of Alaska Railroad property, is assumed to continue for new leases. Accordingly, rents would be set at new market rents only when:

1. The escalation is due;
2. The lease expires and a renewal at market rental value is anticipated;
3. A vacant property is leased.

### Capitalization Factor

To determine market rent, a capitalization or rental factor is derived from rentals of parcels similar to subject marketable parcels. A study of property sold and leased indicates a range of 9% to 11%. An overall factor of 9.75% is considered appropriate for the individual subject properties. Both overall quality and diversity of the inventory constitute the prime consideration for the proposed factor.

### Management and Leasing Expense

A study of the major market areas indicates management fees for income producing properties ranging between 4% to 6½% of gross income. This range does not include separate brokerage commissions paid when a lease is arranged. In light of the amount of property involved here, and the extent of management and leasing activity available to a competent firm, an overall figure of 5% of the effective gross income is considered adequate. This, of course, includes any reasonable combination of in-house costs and outside commissions.

### Holding Expense

The ownership of the Alaska Railroad real estate carries certain expense obligations regardless of whether it is totally or only partially leased. The expenses include real estate taxes, administration, insurance, special legal and accounting functions, maintenance, security and supplies. The total estimated annual allowance for holding is 1½% of base value.

### Terminal Value

Both Non-operating and Operating properties have ten year earnings projections. To take into account the perpetual nature of lease income, during the tenth year of each projection, values are stabilized and discounted to October, 1983. This is known as valuing the final reversion. The procedure takes into account that proceeds will be generated beyond the lease income projection period.

### Discount Rate

Since the sum of all projected net income is not to be received on October 1, 1983 a rate for discounting the proceeds to that date is required.

A prudent investor demands a return for his investment including a real rate of interest, compensation for inflation factors and for risk associated with a proposed

investment. Also required in a real estate transaction is compensation for the relative non-liquidity of the investment. The discount rate represents the rate at which the market would take all of these factors into consideration with respect to future earnings and pay a fair price for the right to receive such future earnings.

There are no projects which can be compared directly with the valuation of approximately 28,416 acres of Alaska real estate. On individual transactions for parcels in the region, Jackson-Cross has determined that the market is currently demanding rates of return on equity before taxes of 15% to 20%. The size and complexity of the subject transaction lead to a conclusion that a higher rate of return would be necessary to attract equity capital. A prudent investor would likely structure the acquisition on the assumption of 75% debt and 25% equity mix and would require a 25% return for the equity component.

The cost of debt capital is a barometer of minimum requirements for discount. Major Alaska projects with tangible development plans are attracting mortgage capital at 1.5% to 2.5% above prime on a floating basis. Fixed rates require 13% to 14% and are subject to a typical 20 to 25 year term. Fixed rate mortgages are currently subject to call every five to six years. Mortgage constants range between 14% and 14.5%. Since the Alaska Railroad has a significant portion of undeveloped property, the portfolio as a whole would not meet prevailing standards for institutional investors. Since other lenders in such circumstances demand higher returns, it is concluded a debt cost of 16% would be appropriate.

Overall, therefore, a capitalization consisting of 75% debt at 16% cost and 25% equity at cost of 25% leads to an 18% total property return to acquire the portfolio.

Each major market area in the Alaska Railroad region has different investment characteristics. In this analysis the overall portfolio discount rate adequately considers these differences.

### Special Considerations

How the market reacts today is the best indicator of its perception of the future. Current prices, rents and absorption reflect investors' anticipations of profit and use. Current financing practices are an excellent indication of that market's anticipation of future real and inflationary trends. For these reasons much weight was placed on market data. However, due to the twenty years required for realizing optimum proceeds, Jackson-Cross also takes into account:

1. Trends in government sponsored economic programs which are likely to affect the real estate market in Alaska. These include, but are not limited to, public land sales, public financing, permanent fund projections, and legislation restricting expenditures.
2. Projections for production and revenues and their impact upon employment, price changes, and ultimately real estate supply and demand.
3. Demographics, including where in Alaska growth has occurred, and where it is expected in the future. How such growth may affect prices and absorption varies by ages, occupations, and income levels.
4. New or expanding industries, such as the recent influx of service and professional businesses. This is likely to contribute towards the continuing economic growth of the state.
5. Defense spending, which is likely to continue as a major contribution to the Alaska economy.

## SUMMARY OF VALUATION PROCEDURE

Within the body of the report are computerized summaries of the valuation process. The steps taken in the appraisal calculation are as follows:

1. Total Base Value is determined for October 1, 1983.
2. For each period Total Base Value is escalated at a rate of 3% to 5% depending on the market area.
3. A rental factor of 9.75% is applied to each total periodic Base Value to arrive at a maximum potential gross income.
4. The maximum potential gross income is then modified to reflect
  - a. Current leases which are not at market levels; and
  - b. Property which is not yet projected as leased.
5. Management and leasing expense is subtracted at a rate of 5% of effective gross income each period.
6. Holding expense is subtracted at a rate of  $1\frac{1}{2}$ % of base value each period.
7. The period net income is calculated.
8. The net income is discounted at an annual rate of 18% each period.
9. During the tenth year for non-operating property and the twentieth year for the operating property a single reversion is calculated against the total of the capitalized value for each of those years' net incomes, plus the base value of property remaining unleased. The reversion factor applied is 18%.

United States Railway Association

**VALUATION**

**OF THE**

**ALASKA RAILROAD**

**September 1983**

**United States Railway Association**

955 L'Enfant Plaza North, S.W.  
Washington, D.C. 20595  
(202) 488-8777

Stephen Berger  
Chairman of the Board

September 23, 1983

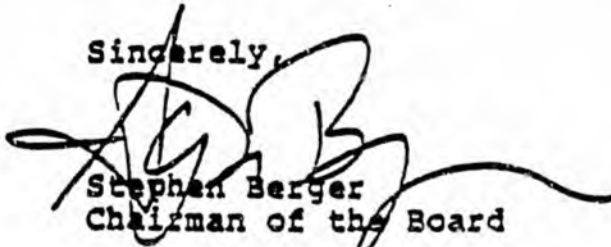
The Honorable George Bush  
President  
United States Senate  
Washington, D.C. 20510

The Honorable Thomas P. O'Neill, Jr.  
Speaker  
United States House of Representatives  
Washington, D.C. 20515

Dear Mr. President and Mr. Speaker:

Pursuant to Section 605(d)(1) of the Alaska Railroad Transfer Act of 1982, P.L. 97-468, enclosed is the United States Railway Association's determination of the fair market value of the Alaska Railroad. Copies of the reports of consultants who assisted USRA in this analysis will be transmitted separately at a later date.

Sincerely,

  
Stephen Berger  
Chairman of the Board

# UNITED STATES RAILWAY ASSOCIATION

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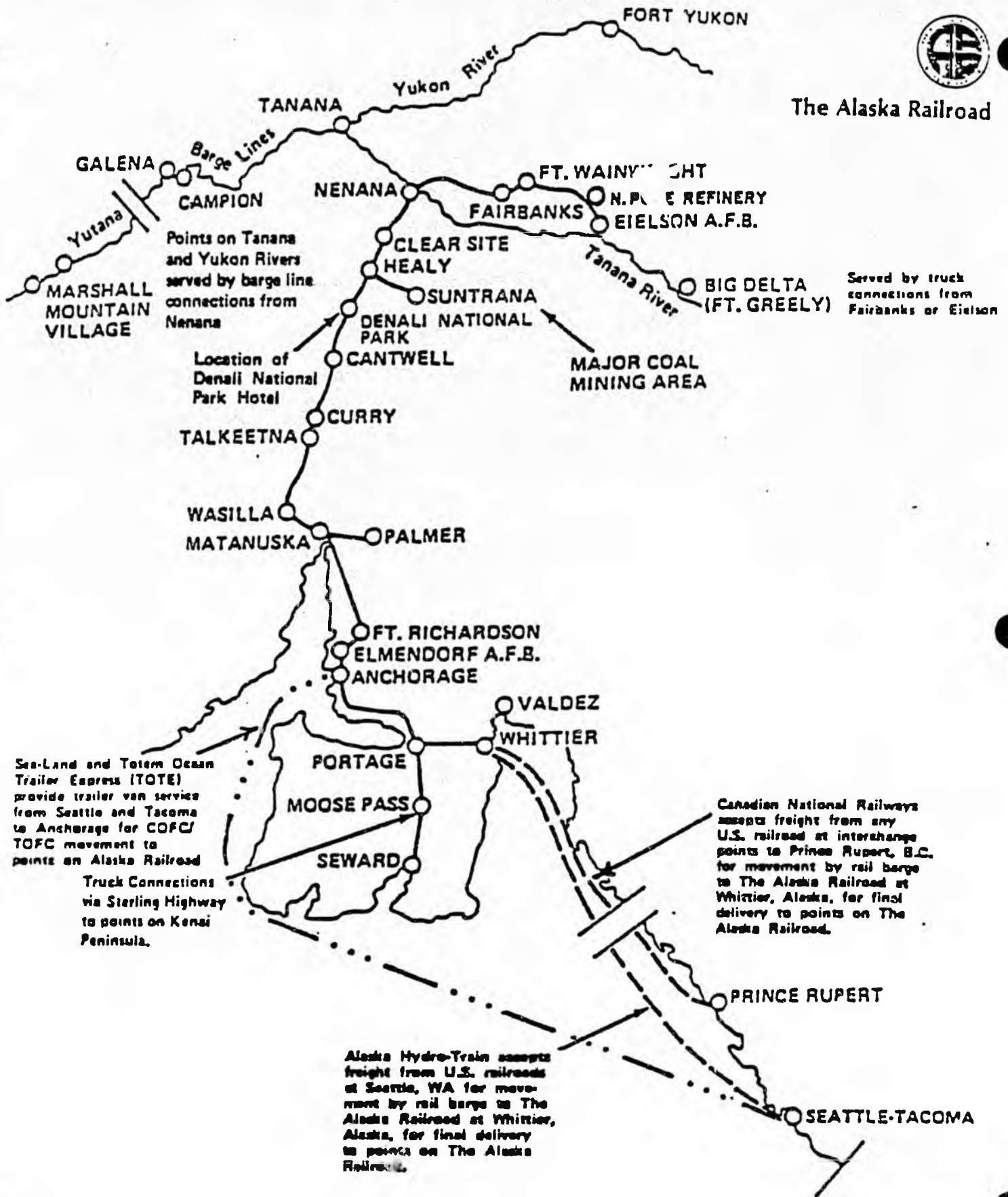
The approval and release of this report is an act of the Board of Directors of the Association. Not every member of the Board necessarily concurs in every statement or determination made in the report.

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# The Alaska Railroad



## ALASKA RAILROAD ROUTE MAP

Showing connecting carriers

FOREWORD

Description of the Alaska Railroad

In 1914, Congress authorized construction of the Alaska Railroad to open up Alaska's interior and to facilitate commerce through Alaska's ports. After the arduous job of building a railroad through the wilderness was completed in 1923, President Harding dedicated the railroad and a new era began in Alaska's history. The railroad went on to play a significant role in the development of Alaska's interior and as an armed forces supply link during World War II.

It has been operated by the Federal government since its inception, and today it is administered by the Federal Railroad Administration as part of the Department of Transportation. It currently operates over 525 route miles serving the principal Alaska cities of Anchorage and Fairbanks, the ports of Whittier and Seward, and natural attractions such as Denali National Park. Both freight and passenger service is offered year round. Interline rail freight traffic is interchanged at Whittier with barge lines linking the railroad with Seattle and Prince Rupert, B.C. Principal freight commodities carried include gravel, coal, aviation fuel, pipe, building materials and piggyback.

While the Alaska Railroad performs an important function within the State of Alaska, its operations and patronage are modest when compared with railroads in the lower 48 where it would be classified as a medium-sized "short-line" carrier with below average freight traffic density. Historically, the

railroad has been subsidized by Congressional appropriations. Since 1939, the appropriations have been used almost exclusively for capital and maintenance projects. Since 1975, appropriations have ranged from a low of \$3.0 million in 1978 to a high of \$12.6 million in 1981.

In fiscal year 1983, which ends September 30, it is estimated that the railroad will have carried 82,000 carloads and 204,000 passengers. Projected fiscal year 1983 revenues are \$55.5 million with operating expenses estimated at \$50.8 million. As shown in Table 1, this continues a trend begun in fiscal year 1981, the first time since the Alaska pipeline construction years that the railroad's operating revenues exceeded expenses.

Table 1

THE ALASKA RAILROAD  
Financial Results

<u>Fiscal Year (1)</u>	<u>Revenue Millions</u>	<u>Expenses (Inc. Dep.) \$ Millions</u>	<u>Surplus (Shortfall) \$ Millions</u>	<u>Expense/ Revenue Ratio</u>	<u>Feder Appro priati \$ Mill</u>
1973	17.7	20.7	(3.0)	117	-
1974	21.5	22.6	(1.1)	105	-
1975	42.3	36.5	5.8	86	6.0
1976 (1)	53.7	49.6	4.1	92	9.0
1977	35.0	36.0	(1.0)	103	6.0
1978	29.1	33.6	(4.5)	115	3.0
1979	25.2	31.8	(6.6)	126	9.3
1980	28.9	34.7	(5.8)	120	6.5
1981	43.9	40.6	3.3	92	12.6
1982	58.8	49.2	9.6	84	6
1983	55.5	50.8 (2)	4.7	92	

1) Year end changed from June to September in 1976. Transition quarter ignored.

2) For comparison with previous years, excludes \$2.3 million of engineering expense previously treated as capital.

3) \$7.6 million was appropriated in the continuing resolution, Public Law 97-377 in December 1982. The DOT appropriations bill for fiscal year 1983 contained no funding for the Alaska Railroad.

INTRODUCTION AND SUMMARY

The Alaska Railroad Transfer Act of 1982, P.L. 97-468 (ARTA) was signed into law on January 14, 1983. In that Act, Congress found that while continuation of the Alaska Railroad is necessary to achieve Federal, State and private objectives, continued Federal control and financial support are no longer required to accomplish those objectives. Congress further found that the Alaska Railroad was primarily benefitting Alaska residents and businesses and concluded that the Federal government should offer to transfer the Railroad to the State of Alaska.

ARTA establishes the terms and conditions for transferring the Railroad, sets forth the timetable and procedures for accomplishing the transfer, and authorizes the Secretary of Transportation to effect the transfer upon certification that the State has complied with the Act's terms and conditions. As part of the transfer process, ARTA Section 605(d)(1) directs the United States Railway Association (USRA) to determine the Railroad's fair market value. This report fulfills that requirement.

On July 15, 1983, pursuant to ARTA Section 605(a), the United States Department of Transportation and the State of Alaska submitted a Joint Report (605(a) Report) describing the assets and liabilities to be transferred. As directed by ARTA, USRA has used information contained in that report to the extent relevant to determining the Railroad's fair market value.

In directing USRA to value the Alaska Railroad, ARTA provides three specific instructions concerning that valuation. First, Section 605(d)(1) states that USRA

"shall determine the fair market value of the Alaska Railroad under the terms and conditions of this title, applying such procedures, methods and standards as are generally accepted as normal and common practice."

Second, the Act provides that:

"[s]uch determination shall include an appraisal of the real and personal property to be transferred to the State pursuant to this title. 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."

Finally, the Act requires that

"[t]he Association shall take into account all obligations imposed by this title and other applicable law upon operation and ownership of the State-owned railroad."

In reaching its determination of value, USRA used the normally accepted definition that fair market value is "what a willing buyer would pay . . . to a willing seller."\* In the appraisal field, the valuation of property at fair market value "means merely an attempt to estimate the price for which the

---

\*United States v. Miller, 317 U.S. 369, 374 (1943); United States v. 564.54 Acres of Land, 441 U.S. 506, 511 (1979). While the willing buyer/willing seller definition of fair market value ordinarily focuses on the loss to the seller (i.e., the loss to the United States in disposition of the railroad), ARTA Section 605(d)(1) mandates a focus on the obligations imposed by the buyer under ARTA (i.e., "obligations imposed by this title . . . upon operation and ownership of the State-owned railroad"). Consequently, to be consistent with ARTA's direction, the valuation concentrates on the present value of the property rights to be received by the purchaser under ARTA.

property could be sold by some stipulated seller to anyone else,  
... ."

Thus, fair market value is based on economic value in the marketplace. It assumes that both buyers and sellers act rationally. It ignores the special desire of any particular buyer for the property and any unique value which the property may have to that particular buyer.

This means that the fair market value of the Alaska Railroad properties is not the subjective or special value of those assets to the State of Alaska. The price which the State would have to pay to acquire the rail properties should be based upon how much it would have to pay to outbid any other potential purchaser, subject to ARTA's terms and conditions.

Consistent with ARTA's direction that USRA apply "standards as are generally accepted as normal and common practice", USRA has determined the amount which a rational buyer might pay in the marketplace for the properties to be transferred to the State of Alaska considering both (1) the "terms and conditions" of ARTA that will apply to the State's acquisition of the Alaska Railroad, and (2) all obligations imposed by ARTA and other applicable law upon operation and ownership of the State-owned railroad.

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\*1 Bonbright, Valuation of Property, p. 65 (1937); accord, American Institute of Real Estate Appraisers, The Appraisal of Real Estate, pp. 23-24 (7th ed. 1978); 1 Orgel, Valuation Under Eminent Domain, Section 20, pp. 90-96 (2nd ed., 1953).

Since ARTA's terms and conditions require the State to operate the Railroad for at least ten years (or railroad properties would revert to the United States under ARTA Section 610(a)), determining the Railroad's fair market value begins with estimating the present value of continuing railroad operations for ten years, including the present value of the Railroad's non-operating real estate.\* The next step is to estimate and compare

- (1) the present value of continuing rail operations beyond ten years in perpetuity, with
- (2) the present value of putting the Railroad's assets in whole or in part to other uses after ten years.

These alternative estimates of fair market value require analyses of the Railroad's operations, its physical plant and equipment, its real estate assets, the costs which the buyer will incur incident to the transfer, and the proceeds and costs that would be incurred if the Railroad's assets were converted to other uses.\*\*

These analyses are described in the sections which follow. They were assembled to determine the Railroad's present fair market value under two alternative hypotheses -- (1) continued rail operations in perpetuity, and (2) rail operations for ten

---

\*Any losses from continued operations could be offset by rents from the non-operating real estate, since ARTA Section 608(a)(5) requires that all railroad revenue "be retained and managed . . . for railroad and related purposes." The term "related purposes" is considered broad enough that this condition would not so restrict the State's use of railroad revenues as to materially affect fair market value.

\*\*USRA was assisted in determining the scope and nature of its analysis under ARTA by the law firm of Nossaman, Guthner, Knox & Elliott.

years followed by putting the Railroad's assets to their highest and best alternative uses. Results of these two scenarios are summarized in Table 2.

Table 2

ARR VALUATION  
as of 10/1/83

(in 000)

	<u>Continued Rail Operations Scenario</u>	<u>Alternative Use Scenario</u>
Real Estate	\$ 47,800*1	\$ 54,800*2
Rail Operations	<u>(25,529)*3</u>	<u>(35,430)*4</u>
	\$ <u>22,271</u>	\$ <u>19,370</u>

\*1) Present value of the Railroad's non-operating real estate.

\*2) Present value of the Railroad's non-operating real estate plus present value from alternate use of Railroad's operating real estate after 10 years.

\*3) Includes all start-up costs.

\*4) Includes all costs associated with rail operations during the first 10 years including start-up costs, plus labor protection costs associated with discontinuing rail operations. Also includes net proceeds from assumed liquidation of facilities and equipment.

The fair market value of both the continued rail operations scenario and the alternative use scenario consists of two components: a real estate component and a rail operations component. The fair market value of the Alaska Railroad under these two valuation scenarios was determined by reducing the cash flows from each of these two components to a present value as of October 1, 1983.

Continued Rail Operations Scenario

The real estate component of value was derived by projecting future lease income from the non-operating real property. The Alaska Railroad's historical practice has been to lease to others the property not required for rail operations, and an investor would likely continue this practice. Accordingly, it was assumed that the property presently under lease would continue to be leased and that other property would be leased to the extent possible. The net cash flows were discounted to produce a present value of \$47,800,000. This amount does not include the real estate which has been selected by Native corporations. However, for the reasons discussed in Appendix A, Native Claim Selection Analysis, USRA concluded that a prudent buyer would pay nothing for the possibility that significant portions of the lands subject to Native claims might eventually be conveyed.

The value of the rail operations was derived from a forecast provided by the Alaska Railroad and adjusted by USRA. The 605(a) Report was used as a beginning point for the derivation of start-up costs, and estimates of capital requirements were made by

consultants to USRA. These constant dollar cash flows were then discounted to produce a negative value of \$25,529,000,\* which was then subtracted from the \$47,800,000 value of the non-operating real estate to yield an October 1, 1983 fair market value of \$22,271,000.

#### Alternative Use Scenario

In the alternative use scenario, the Railroad is assumed to cease operations at the end of the tenth year, the facilities and equipment removed and sold, and the operating real estate made available for leasing and development in the same fashion as the non-operating real estate. The cash flows generated by this additional real estate were valued in the same manner as the non-operating real estate and increased the 1983 present value of the real estate by \$7,000,000 to \$54,800,000.\*\*

The value of the rail operations in this scenario is (1) the present value of the cash flow from rail operations for ten years (2) plus the present value of the net proceeds that would be received from dismantling and selling the Railroad's facilities

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\*It was necessary to estimate the value of the cash flows after the tenth year (the last year of the USRA projection). This was done by calculating a normal year cash flow that could be expected after the tenth year and capitalizing that amount by 16 percent and then discounting the capitalized flows back to present value.

\*\*While the \$7 million value may seem small in relation to the real estate involved, it must be kept in mind that the cash flows from alternative use of the operating real estate do not begin until the eleventh year (1994) which causes the present value to be relatively small.

and equipment starting in the eleventh year, (3) less the present value of labor protection payments attendant to discontinuing rail operations. These cash flows, which were all stated in constant dollars, were discounted at the same rate as was used to discount the cash flows in the continued rail scenario. The present value of these flows was a negative \$35,430,000 and was deducted from the \$54,800,000 real estate value to yield an October 1, 1983 fair market value of \$19,370,000 for the alternative use scenario.

Based on these valuation studies, USRA concluded that there was no persuasive evidence that a buyer would be willing to pay more than the present value of continued railroad operations for the speculative possibility that an eventual conversion of some or all of the Railroad's assets to alternative uses would produce greater value. Therefore, USRA determined that the fair market value of the Alaska Railroad pursuant to Section 605(d)(1) of ARTA is \$22,271,000.

CONTINUED EARNINGS VALUATION

The purpose of this analysis was to examine the earnings which could reasonably be expected to flow from a continuation of rail service. It was based on revenue and expense forecasts developed by the Alaska Railroad along with a projection of capital requirements to support that level of operations.

These forecasts were reviewed and validated by USRA staff, and adjustments were made as necessary. The validation process included an examination of historic performance levels and trends, field inspections, interviews with railroad and other knowledgeable personnel, and a review of proposed capital projects.

In general, the forecasts made by the Railroad were accepted as presented. As discussed later in this section, adjustments were made to projected operating expenses for some additional maintenance of way expenses. Adjustments were also made to forecasted productivity improvements, since it was USRA's judgment that a potential investor would be unwilling to pay for as yet undemonstrated cost reductions. The projected capital program was modified as well.

Other cost increases resulting from the transfer of the Railroad, identified in detail in the 605(a) report, were also reviewed and adjusted. These items include legal and administrative expenses, tort claims, working capital and employee retirement obligations. Additionally, the cost of compliance with Federal OSHA requirements and State or local

building codes not now applicable to the Railroad were estimated and included, as well as one-time transfer costs.

The resulting modified revenue, expenses, and capital requirements from operations were reduced to a single present value as of October 1, 1983.

### Revenue

Revenue is based on an Alaska Railroad passenger and freight traffic forecast for the fiscal years 1984 through 1989 (see Table 3). Passenger revenue is projected to increase 59 percent from fiscal 1984 to 1989, with freight revenue rising 34 percent. Most commodities show a gain over the period with only petroleum products declining. Gravel traffic, which has been increasing over the past several years, is expected to remain at 1983 levels as is coal moving to local Alaska destinations. The commodity showing the largest increase is pipe because of renewed activity on the North Slope and a greater need for replacement pipe.

Of particular importance is the projection of an export coal movement beginning with a test shipment in 1984. This coal would be moved in unit trains from Healy to the port of Seward for shipment to Korea. It would be handled in shipper-owned equipment and would represent a significant addition to the Railroad's traffic base. Planning for this movement has been going on for some time. However, recognizing that the necessary port facilities have not yet been built, the uncertainty of current world coal markets and the possibility of increased costs, USRA modified the Railroad's forecast by delaying the

estimated start-up date by one year. We believe that a prospective purchaser would view the uncertainties associated with the projected export coal movement as being significantly higher than the uncertainty inherent in other elements of the Railroad's forecast.

Neither the Railroad nor USRA has forecast any traffic improvements that are purely speculative. For example, there are major mineral reserves in the area which are a source of potential new traffic. However, additional facilities would be required, probably including substantial extensions of the Railroad's lines.

All elements of revenue are stated in constant 1983 dollars. This means that the average revenue per carload changes only as traffic (commodity) mix or length of haul changes. It was assumed that rate increases will be made in a timely fashion in response to cost increases. To the extent that the Railroad should prove unable to do this, operating margins would be reduced from forecasted levels.

#### Expenses

USRA adopted most of the Railroad's forecast of operating expenses. The most important modifications were additional maintenance of way expenses, the previously discussed adjustment to projected productivity improvements, and additional legal and administrative expenses attributable to the transfer itself.

Asset Condition and Maintenance Expenses

Since the condition of the Railroad's plant and equipment has been of major concern in the past and could be responsible for major shifts in expense levels, USRA physically inspected facilities and equipment as necessary to make a careful assessment of future requirements.\*

Maintenance of Way. The Railroad consists of approximately 650 active track miles in main and branch lines, yards and sidings. The main lines from Seward to Fairbanks and from Portage to Whittier consist of 115 pound rail on wood ties. The branch line and yard rail generally varies from 70 to 90 pounds. New rail was installed on the main line from 1948 to 1952 to overcome deterioration from heavy traffic during the war. Although precise numbers are not known, major tie renewals were also done at that time. The extremely large rebuilding effort during that five-year period and the relatively low traffic levels since have reduced the subsequent need for large program expenditures for tie and rail renewal.

In order to evaluate the Railroad's condition and estimated future needs, the property was inspected by observing the track structure and ride qualities from trains, hi-rail vehicles and selected walking inspections. Some tie renewal and surfacing work was observed in progress, and records for defective rails, derailments, slow orders and other engineering data were

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\*USRA was assisted in this analysis by Frank S. King and Jackson R. Bell, experts in railway engineering and equipment.

reviewed. This review clearly showed that the Railroad is currently in satisfactory condition to handle present and projected traffic levels. In 1982, the Railroad's highest traffic density was 8 million gross tons (MGT) on the 40-mile segment between Anchorage and Matanuska. The balance of the main line handled less than 4 MGT for the year. These statistics reflect a low-density railroad as compared with other railroads where density may often be over 40 MGT per year for single track lines.

Over the past three years 1981-83, the Railroad will have replaced an average of about 21,000 ties and renewed about 2.75 track miles of rail per year. The Railroad has projected some increases in program levels predicated on increased traffic, but future expense increases are partly offset by projected cost reductions due to greater efficiency.

In its analysis, USRA determined that the maintenance of way costs projected by the Railroad should be increased to assure a track structure adequate for the expected traffic. The magnitude of this adjustment varies from about \$800,000 annually to nearly \$1.5 million annually, or a total \$10.8 million for the ten years, 1984-93. This funding will provide for tie replacements of 35,000 in 1984 rising to 50,000 by 1990. Rail renewal will similarly increase from about 4.5 track miles in 1984 to 10 track miles in 1993. These program increases reflect not only traffic growth but also the age of many ties and much of the rail. Ties and rail installed in the post-war period, 1948-52, will have provided forty years of service within the next ten years.

this should require increased replacement rates from current levels.

Maintenance of Equipment. The Railroad currently owns 62 locomotives, 46 passenger cars and 1,642 freight cars. In addition, various vehicles, maintenance and shop equipment are also maintained. The demand for equipment is high throughout the summer due to tourism and the construction season. During the winter, demand is low, providing time for programmed equipment repair. Total expenses in this category were about \$9.5 million last year, and they are projected to remain at about that level through 1984. After that, consistent with traffic growth, expenses are projected to increase each year, reaching \$11.5 million in 1989.

This projected spending should be adequate to provide the necessary level of locomotive overhauls and heavy repairs as well as running and heavy repair to freight cars. Maintenance of passenger equipment has also been provided for, premised on the current scheduled level of trains.

A part of the locomotive fleet is old and expensive to maintain, and much of the freight car fleet is or soon will be over 40 years old. However, the overall condition of the fleet should improve over the ten-year period due to the projected acquisition of new or good used locomotives and freight equipment as provided for in the capital plan.

The need for additional or replacement freight cars will have to be continually re-evaluated as traffic develops. The Railroad

has had some success in getting shippers of bulk commodities to obtain and finance needed equipment. Currently one of the major gravel shippers provides hopper cars for regular unit train moves, and the potential coal exporter has agreed to provide not only the necessary cars, but also the locomotives.

The opportunity for additional shipper equipment agreements will depend on future traffic developments. Surplus freight equipment in the lower forty-eight states may provide an economical source for some of the Railroad's future needs. In summary, based on the projected traffic and expected equipment acquisitions, the expense levels projected should be adequate not only to maintain the current fleet condition but to permit some improvement.

#### Forecasted Capital Requirements

Historically, capital spending has varied widely, and government appropriations have been required to permit any reasonable capital program. According to data provided by the Railroad, since 1975, capital spending has ranged from a low of \$2.8 million to a high of \$11.8 million.\* Uncertain funding and resulting wide swings from year to year made effective capital planning difficult, often leading to last-minute decisions on project approvals.

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\*Alaska Railroad annual reports have reported capital expenditure totals that included the cost of major track work such as tie replacement, rail renewal, track surfacing, bridge repairs, etc. Under ICC accounting, these costs properly belong in operating expenses. The spending totals shown reflect this adjustment.

The Railroad provided USRA with a capital plan averaging \$14 million annually from 1984 to 1988 funded by the Railroad's cash flow. After reviewing that plan and a proposed project list, discussions with management and on-site inspections, a yearly allocation of \$12 million was considered adequate to continue operations and to handle forecasted traffic growth.

Approximately half of this amount is allocated for acquiring and upgrading locomotives, cars and other equipment. The remaining amounts provide for rehabilitation of bridges and tunnels, track construction to serve new and existing customers, stabilization of the roadbed in the Healy Canyon and elsewhere, realignment work to reduce curvature, and other plant requirements.

#### Start-up Costs

In Appendix L of the 605(a) Report, the State of Alaska and the Department of Transportation identified 15 items which they considered to be potential start-up obligations under the Act. The Report characterized these as "'start-up' responsibilities, because they are new undertakings by the railroad, not previously imposed on the railroad because of its Federal status." For the most part, these responsibilities are not "one-time"; rather, they affect ongoing expenses and result from various changes in access to Federal government resources. USRA treated these issues as follows.

(1) Vehicle Leasing. Under Federal ownership, the General Services Administration assigns vehicles to the Railroad for a

monthly lease payment which includes maintenance. The State, the Department of Transportation, and the General Services Administration have not yet resolved whether the existing leased vehicles will be transferred. In the event the Railroad acquires the existing fleet of older leased vehicles, it will be required to make other arrangements for maintenance. USRA determined that the Railroad could most likely continue to lease vehicles at terms and conditions equivalent to those currently in effect. Regardless of the final outcome, there would be no significant change in net costs to the Railroad for vehicles, and USRA's analysis includes no adjustment to the Railroad's projected expenses for this item.

(2) Supplies and Materials. After transfer, the Alaska Railroad can no longer acquire supplies through Federal government supply depots. However, USRA's valuation assumes that the purchasing power of the State-owned railroad will offset the loss of the ability to purchase through the Federal government. USRA did include increased administrative costs associated with an additional purchasing agent.

(3) Legal Fees. Currently, much of the Railroad's legal work is performed by United States government attorneys. After transfer, this will no longer be the case, and the Railroad will have to do more of its own legal work as well as retain outside counsel. After consultation with the Alaska Railroad and with others, USRA concluded that an additional \$600,000 per year is an appropriate additional cost to factor into the valuation.

(4) Additional Administrative Expense. USRA has assumed that, as a result of the loss of certain administrative support currently provided by various Federal agencies, the Railroad will incur an additional annual expense of \$108,000 representing three person years to handle this work.

(5) Tort Claims. Currently, all tort settlements or awards in excess of \$2,500 are paid by the Federal treasury. After transfer, these will all be the responsibility of the Railroad. Over the four-year period 1980-83, the Federal treasury paid a total of \$288,000, an average of \$72,000 a year. From this experience, USRA assumed an additional average cost of \$75,000 per year.

(6) Working Capital. As with all businesses, the Railroad will require working capital. USRA assumed that none of the revolving fund will be transferred to the State because pre-conveyance claims and contingent liabilities that must be paid are likely to consume the entire fund. After reviewing the working capital requirements of other railroads, it was USRA's judgment that one month's worth of operating expenses would be adequate working capital for the Alaska Railroad. This amounts to approximately \$4.4 million in the first year, varying over the forecast period as operating expenses vary.

(7) Lack of Access to Federal Surplus Equipment. After transfer, the Railroad's access to excess Federal equipment will be greatly diminished. In our judgment, this should not increase the Railroad's costs.

(8) ARTA Section 604(d)(3) Employee Protection Obligations.

Section 604(d)(3) requires the Secretary of Transportation to certify that the State-owned railroad has established arrangements to protect the employees of the railroad for the two years immediately following the transfer. This provision requires continuation of current labor agreements, retention for two years of all employees (other than certain officers) who elect to transfer to the Railroad, continuation of compensation at current levels, re-employment priority, and maintenance of benefit programs, as well as other items. The essence of these provisions is to continue the employees' current status. Since the forecast calls for maintaining rail operations at current levels, USRA assumed that all present employees would be offered jobs by and would transfer to the State-owned railroad. Since USRA's forecast of cash flows also assumes the continuation of current compensation levels, no protection payments would be required under these assumptions.\*

(9) Section 607 Retirement Obligations. ARTA Section 607 requires that, after transfer to the State, the Railroad must provide retirement benefits substantially equivalent to current levels for all employees who elect to transfer. As stated in the 605(A) Report, the Department of Transportation asked the Office of Personnel Management (OPM) "to calculate retirement costs and

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\*If, in fact, there are large numbers of employees who elect not to transfer, then this could cause significant disruptions to the smooth operation of the railroad which could prove to be costly. USRA has no way of directly quantifying either the likelihood of this occurring or its cost.

benefits for existing employees who participate in the Federal retirement system and to prepare an estimate of the financial consequences if all of those employees transferred to the State-owned railroad at this time" (605(a) Report, pp. 69-70). The 605(a) Report further states (at page 70) that:

"[i]n preparing its calculations, OPM assumed that if transferred employees remain in the Federal retirement system pursuant to Section 607(a)(1), the language of that provision governing the amount of the State-owned railroad's employer contributions . . . would require the State-owned railroad to pay, as the employer contribution, 29.06 percent of basic payroll for those transferred employees into the Federal retirement fund to fully fund retirement benefits that accrue for those employees after transfer. OPM's calculation assumes the current seven percent employee contribution would remain unchanged.

This is an increase of 22.06 percent over the amount the Alaska Railroad has contributed as a Federal agency and reflects the manner in which the Federal retirement system is normally funded, which for Federal agencies includes other payments from the U.S. Treasury."

The ultimate resolution of this issue will not occur until after the date of this report. Indeed, in the 605(a) Report, the Department of Transportation and the State of Alaska acknowledge that an "accurate estimate of the retirement obligations that would be imposed on the State-owned railroad pursuant to Section 607(a) cannot be calculated at this time." However, for purposes of completing this valuation in a timely manner, USRA has been required to make assumptions as to the cost of this provision to the Railroad.

USRA's analysis assumes that all permanent employees would transfer to the State-owned railroad and would be included in a plan that will have an annual cost to the Railroad equivalent to the cost that OPM has suggested -- that is, a 22.06 percent

additional contribution over and above the 7 percent contribution which the Railroad is currently paying. USRA assumed all new employees hired after the date of the transfer would be covered under a new pension plan that would require the Railroad to contribute 12 percent of the new employees' base salary.

USRA's analysis of the additional pension costs used the actuarial base developed by OPM which listed current employees, by sex, for each year until the last Railroad employee currently in the Federal retirement system has left the payroll. These data were costed using the 1983 average wage levels to yield the total wage base for each year. This wage base was multiplied by an additional 22.06 percent to arrive at the additional pension costs.

As each current employee leaves the payroll, USRA assumed a replacement would be added, but that the replacement's pension expense would be only 5 percent in addition to the current 7 percent contribution. This approximates the contribution now required for employees of the State. These cash flows were then included with all other expenses, and the first 10 years of additional pension expense is shown on Table 3.

The Department of Transportation and the State acknowledge that "the exact number of employees who will transfer and the value of their retirement benefits will not be known until the date of Transfer". Thus, the assumptions which USRA has made could be significantly different from the actual outcome. However, we believe the estimates provided by our assumptions are

reasonable and fair to both the Federal government and the State, as well as to any other buyer.

(10) Section 607 Severance Obligations. The severance obligations imposed upon the Railroad by Section 607 of the Act require the Railroad to pay certain compensation to employees whose employment is terminated without cause during the first two years after transfer. Because of the activity levels forecasted, we have assumed that no employees will fall into this category and, therefore, no upward adjustment to the Railroad's projected operating expenses is necessary.

(11) Non-Availability of Statutory Exemptions if the Railroad Ceases to be a State Instrumentality. If, after transfer, the Railroad ceases to be an instrumentality of the State, then the Railroad would lose its exemption from Federal income taxes, the Railroad Retirement Act, the Railway Labor Act, and the Federal Employer's Liability Act. Because of the nature of the projected cash flows, no tax liability would accrue even if a private purchaser, and not the State, acquired the Railroad. USRA also assumed that there would be no significant changes in cash flow if the labor related statutes were applied. Therefore, we have made no adjustments for these provisions.

(12) Section 608(a)(1) Antitrust Applicability. After transfer, the exemption which the Railroad enjoys from certain antitrust laws will be lost. While this may become an issue in the future that could adversely affect the Railroad's revenues, USRA has no way of quantifying what the long-range effect might be.

(13) ICC Regulation. Currently the Railroad is subject only to partial regulation by the ICC under Executive Order 12434. After transfer, ARTA Section 608(a) provides that the Railroad will be fully regulated by the ICC in a manner similar to other railroads of the same class (most likely Class II). While there will be some additional costs, they are not significant enough to quantify separately. However, as previously stated, upward adjustments were made to both legal and other administrative costs to cover these as well as other contingencies.

(14) Compliance With Various Safety Statutes and Regulations. USRA considered three separate categories of potential expenses -- OSHA, State and local building codes, and facility condition.

- \* OSHA. Based on an updated study provided by the Alaska Railroad, which indicates approximately \$2.5 million additional funding will be required to eliminate the remaining deficiencies, we have included \$500,000 per year for five years. These funds will be utilized to correct problems associated with buildings, facilities and equipment beyond expenditures budgeted elsewhere.
- \* State and Local Building Codes and Existing Condition of Facilities. A recent report prepared for the State estimated the total cost to correct building deficiencies to be about \$85 million. Condition problems accounted for about 62 percent or \$53 million with the balance of \$32 million being related to code violations. Repairs, additions or replacement costs

were based on bringing the existing buildings into compliance, regardless of current use.

In the future, the Railroad will have to correct some code violations and improve the condition of some buildings. However, the Railroad will certainly conduct a careful review of current and future railroad operating needs before any large expenditures are made. Some buildings are no longer required, and some consolidations may be possible. If replacement is necessary, a much smaller and more efficient facility might be adequate. The Railroad currently has an on-going program to correct some of these deficiencies. In addition, there is some overlap with the funding required to correct OSHA deficiencies reported earlier. After consideration of these factors, discussions with the Railroad and the State, and on-site inspections, the following future needs were considered reasonable and are reflected in USRA's analysis:

- Building code deficiencies -- an allocation of \$1.5 million per year for ten years for a total of \$15 million. This allows for items such as fire separation, fire resistance in wall coverings, ventilation, lighting, electrical deficiencies, handicapped access, and other code related items.
- Condition discrepancies -- Justified projects in this category would be funded under the Railroad's normal capital budgeting process. As discussed

previously in this section, this total budget is forecast at \$12 million per year for ten years.

(15) Transition Expenses. Upon transfer to the State, there will be certain one-time costs that will have to be incurred. These would include such things as legal costs, filing fees, consulting fees and administrative costs as well as costs to the Railroad ranging from remarking equipment to indicate the new ownership to printing stationery. We estimate these one-time costs to be \$1,750,000.

Table 3

ALASKA RAILROAD ADJUSTED CASH FLOW FORECAST FOR RAIL OPERATIONS  
1984-1993  
(\$ IN 000)  
CONSTANT 1983 \$

ITEM	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993
RR FORECAST REV. *	56746	64106	65446	67806	70186	72656	72656	72656	72656	72656
RR FORECAST EXP.	46590	50130	50790	51390	51990	52610	52610	52610	52610	52610
NET CASH	10156	13976	14656	16416	18196	20046	20046	20046	20046	20046
ADJUST RR FORECAST										
EXPORT COAL	0	-1750	-250	0	0	0	0	0	0	0
PRODUCTIVITY	-580	-624	-632	-639	-647	-654	-654	-654	-654	-654
HOW ADJUSTMENT	-1220	-810	-050	-870	-1010	-1050	-1150	-1110	-1270	-1440
CAPITAL EXPENDED	-12000	-12000	-12000	-12000	-12000	-12000	-12000	-12000	-12000	-12000
ADJ. RR FORECAST	-3644	-1208	924	2907	4539	6342	6242	6282	6122	5952
STARTUP COSTS										
PENSIONS	-4514	-4316	-4145	-3967	-3821	-3675	-3524	-3377	-3225	-3079
CODE CONFORMITY	-1500	-1500	-1500	-1500	-1500	-1500	-1500	-1500	-1500	-1500
ADD'L LEGAL FEES	-600	-600	-600	-600	-600	-600	-600	-600	-600	-600
OSHA	-500	-500	-500	-500	-500	0	0	0	0	0
TORT CLAIMS	-75	-75	-75	-75	-75	-75	-75	-75	-75	-75
OTHER EXPENSES	-100	-108	-108	-108	-100	-108	-108	-100	-100	-100
WORKING CAPITAL	-4377	-95	-160	-57	-49	-42	4	16	-1	-2
ONE TIME STARTUP	-1750	0	0	0	0	0	0	0	0	0
TOTAL STARTUP	-13424	-7194	-7096	-6007	-6653	-6000	-5803	-5644	-5509	-5364
ADJUSTED CASH	-17060	-0402	-6172	-3900	-2114	342	439	630	613	500

\* DOES NOT INCLUDE REAL ESTATE LEASES, DOES INCLUDE MISCELLANEOUS LEASES SUCH AS WIRE AND PIPE EASEMENTS OF \$296. REAL ESTATE LEASES ARE TREATED SEPERATELY.

Present Value of Future Cash Flows

As previously discussed, the fair market value of the Alaska Railroad is the amount which the State would have to pay to outbid (e.g., by one dollar) any competing potential purchaser. To determine the maximum bid of a competing non-government purchaser, the estimated future cash flows must be discounted to present values at a rate equal to the cost of capital that the private purchaser would employ in valuing this railroad.

In arriving at a weighted average cost of capital to use as the discount rate in this valuation, numerous factors were considered. Among these were railroad debt-equity ratios, the cost of debt, the average real return on equities, and risk premiums used in other rail valuations. The resulting constant dollar discount rate was then compared to discount rates used in various other railroad related valuations as well as to the cost of capital for the nation's railroads as found by the ICC in Ex Parte 436. These comparisons served as a check on the reasonableness of the rate used in the Alaska Railroad valuation.

USRA determined that the appropriate constant dollar discount rate to use in this analysis was 16 percent as applied to the projected cash flows expressed in constant dollars.\* The

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\*This discount rate is not comparable to the rate used in the real estate analyses for two reasons: (1) As noted above, the continued earnings valuation was performed in constant dollars. In contrast, the real estate analysis considered the effects of appreciation in value of the real property, and was performed in inflated dollars. (2) Different special considerations were relevant to the real estate analysis than to the continued earnings valuation.

development of this discount rate required weighing the special considerations attendant to the Alaska Railroad. Elements of these special considerations include:

- \* The possibility of not realizing cash flows that, in turn, are based on estimates, not on historical evidence,
- \* The change from Federal ownership,
- \* The onset of full regulation by the ICC upon the change in ownership, and
- \* The uncertainties on the world energy markets.

#### Measuring Potential Alternative Use Value

To measure the possible alternative use value of the Alaska Railroad's assets under the terms and conditions of ARTA, USRA hypothesized that, beginning in the eleventh year, there would be an immediate cessation of all rail operations to permit the Railroad's operating assets to be placed in their highest and best alternative uses.\* To assess the effect of such an option on value, USRA performed the following analyses.

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\*In determining possible alternate uses for the Railroad's real estate, it was USRA's judgment that it would be highly speculative to assume that any operating real estate could be otherwise developed under a continued operations scenario, particularly during the early years following transfer to the State. Not only would such development require relocation of existing yards or other facilities, but it is also uncertain that any major redevelopment plan could easily obtain the required approvals of various disparate interests. Further, any assembling of operating and non-operating real estate would most likely be affected by existing leases. In light of these factors which would affect both the timing and costs of any partial alternative development of the operating real estate, USRA concluded that its consideration of the alternate use value of these parcels in a liquidation scenario after ten years was a fair method of measuring their value for other purposes.

### Rail Operations

If the Alaska Railroad were planning to totally cease operations, it might well cut back dramatically on all its expenses before the eleventh year. It is also true that shippers would begin to find alternative modes of transportation; consequently, the Railroad's revenues would also drop dramatically. For purposes of this analysis, we have assumed that revenues would drop by the same dollar amount per year as expenses. We have used the cash flows generated by the Railroad for the continued operations scenario (as adjusted by USRA) as being representative of the cash flows that the Railroad would generate in the liquidation scenario.

### Labor Protection

As a result of discontinuing rail operations, USRA has assumed that there would be imposed on the owners of the Alaska Railroad labor protection conditions similar to those commonly known as "New York Dock". These conditions essentially require employees (depending on seniority) to be paid their full salary and benefits for six years, unless they find other jobs. In the case where an employee finds another job at a lower rate of pay than the one he had on the railroad, that employee is entitled to the difference in pay between his new job and what he received on his old job. Protected employees also have the option of taking a one-time lump sum payment equivalent to one year's pay.

In order to calculate the cost to the State of these labor protection conditions, USRA assumed that all permanent employees

would be eligible to receive labor protection payments. Of these employees, based on the current age profile of the Railroad's employees, USRA assumed that (1) all those 55 and older would choose to retire, (2) 25 percent of the eligible employees would take the lump sum settlement, and (3) 25 percent of the remaining work force would find new employment each year.

FACILITIES AND EQUIPMENT ASSETS

USRA selected Frank S. King and Jackson R. Bell, experts in railway engineering and equipment, to assist in determining the alternative use value of the Railroad's facilities and equipment; they determined the net value that could be realized from disposition of these assets taking into consideration all of ARTA's terms and conditions. Their analysis is described in greater detail in their report to USRA.

USRA first assembled and validated the Railroad's inventories of track, equipment, and other facilities. These assets include approximately 650 track miles,\* yards and port facilities, shops, buildings, bridges, communications facilities, 1,642 freight cars, 46 passenger cars and 62 locomotives, as well as maintenance and shop machinery. Physical inspections were made as required to determine the condition of the assets,\*\* and a determination was made as to which asset categories would be sold as scrap and which could be sold to others for re-use.

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\*This figure represents the total of all the Railroad's track including not only its 460-mile main line from Seward to Fairbanks, but also its branch lines as well as passing tracks and yard tracks.

\*\*USRA also relied on this condition assessment to determine the Railroad's maintenance and capital requirements for use in determining the Railroad's continued operations value, previously discussed.

USRA estimated the range of market prices for resale and for scrap, dismantling costs, shipping costs from Alaska, and costs to comply with environmental or other regulations.\* In making these estimates, USRA considered various market data such as the demand for scrap and the supply and demand for used railroad equipment and used rail.

Since ARTA requires that the State must continue to operate the railroad for at least ten years or suffer reversion, the state could not realize any alternate value from liquidating these assets until ten years after transfer.\*\* USRA estimated that an orderly dismantling and liquidation program would require 2 1/2 years, beginning in 1994 and finishing in 1996.

USRA determined that the net proceeds from sale of the Railroad's track and facilities plus its equipment would be \$11.6 million in 1983 constant dollars.

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\*USRA was assisted in these areas by Mr. Michael V. Cody.

\*\*Indeed, based on the Railroad's forecast, the positive earnings projected for 1994 and later years, if realized, would prevent the Railroad from obtaining authority to abandon under the applicable provisions of the Interstate Commerce Act. This represents a major uncertainty that any purchaser would weigh heavily before paying a price based in part on asset values to be received many years in the future and only if rail operations could be discontinued.

REAL ESTATE ASSETS

USRA selected Jackson-Cross Company, a nationwide real estate appraisal firm, to assist in valuing the Alaska Railroad's real estate assets. Jackson-Cross determined the present value, as of October 1, 1983, of the Railroad's real estate taking into consideration all of ARTA's terms and conditions. Their analysis is described in greater detail in their appraisal report to USRA.

To consider the ARTA Section 610(a) requirement that the State must continue to operate the railroad for at least ten years or suffer reversion, USRA instructed Jackson-Cross to consider the Alaska Railroad's real estate assets in two categories:

- \* "Non-operating" property -- land which is not necessary for the railroad's operations. This is essentially real estate which is leased to third parties, or which is available for development.
- \* "Operating" property -- all other property, such as the right-of-way, yards and other facilities, including the port facilities at Whittier and Seward.

Because the Railroad's "non-operating" property is not required for rail operations, it is not affected by the continued rail operation requirement. However, because of ARTA's restrictions, USRA assumed that no value could be realized from alternate use of the Railroad's operating real estate until ten years after transfer to the State.\* Jackson-Cross was instructed to determine

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\*In some locations, the Railroad is presently earning income from easements or permits on operating property which do not interfere with rail operations. This income was considered in USRA's

(Continued)

(1) the present value of the cash flow which can reasonably be projected from continued development of the Railroad's non-operating real estate, and (2) the present value of the cash flow which could reasonably be projected from alternate use of the Railroad's operating real estate beginning ten years after transfer.

Most of the Alaska Railroad's real property not required for rail operations is currently leased to others, and there was no reason to assume that a purchaser of the property would change this practice. Jackson-Cross, therefore, based its appraisal upon the assumption that the Railroad's real estate would be leased rather than sold. To the extent that any current rents are below market levels, the lease assumption explicitly considers that fact. USRA assumed that the State will be required to honor the terms and conditions of these leases. They were thoroughly reviewed and analyzed, and USRA has considered their effect in determining the value of the Railroad's real estate.

Jackson-Cross then assumed that, except as prevented by existing leases, rents would be set at market levels. It

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(Continued)

continued operations valuation. As discussed later, the Railroad lacks clear title to much of the right-of-way so that it would no longer be entitled to income from such property upon conversion to alternate uses. As to right-of-way properties where the State will acquire clear title under ARTA, it was not considered feasible to attempt to ascribe any separate value to this potential income, since the highest and best alternate use might well either (1) preclude the continuance of the easement or permit or (2) result in the lessee, rather than the fee owner, collecting such easement or permit income.