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REPORT

April 16, 1998

Phyllis Johnson, Vice President
Alaska Railroad Corporation
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Anchorage, AK 99501

RE: Ft. Wainwright to Eielson Spur Lands and Right-of-way

Dear Phyllis:

This is a more detailed set of background information in connection with my letter/report dated 4/16/98.

FURTHER DETAILS

Early homestead entries/spreadsheets-- In the BLM file, I discovered a very valuable list of the entries and patented tracts along the railroad right-of-way as of the time of construction. There were 20 claims listed on that entry sheet. I reviewed the records on those 20 entries and copied many of them. The vital data from those 20 entries is contained on the enclosed spreadsheets. The first 20 numbered entries on the spreadsheet correspond to the 20 entries listed on the list in the BLM file. The other six items are various other important parcels along the right-of-way and will be discussed later in this letter. By January of 1947, four of the 20 entries had already gone to patent and no letter was sent to those persons. Letters were sent to 15 of the remaining 16 entrymen on the list. The only one of these 16 who is not listed as having been sent a letter was Simon Carlsen. That possible omission is not important at this time, because he relinquished his claim in 1949 anyway.

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Various sorts were run on the spreadsheet to help see the history of the claims. Page 1 sorts by number, with the first 20 corresponding to the "ENTRIES TRAVERSED BY LADD FIELD - MILE 26 - RAILROAD SPUR" list found in the BLM file. Page 2 sorts by last name of the entryman. Page 3 sorts by Entry Number, or Entry Date. Page 4 sorts by Patent Number. Notations of "Rel." or "Canc" or "Closed" indicate that the claim was relinquished, canceled, or otherwise closed without patent because of a failure to meet requirements. Page 5 sorts by Patent or Release date. From page 1, we see that only 11 of the 20 on the BLM/Corps list (i.e., #1-20 on the spreadsheet) ever received patents. Page 4 makes it apparent that 4 of those (plus Mary Jones, #21) had patents before the letters were sent and the spur was constructed in early 1947. Page 5 shows that all of the 20 who had not received a patent by January of 1947 were sent the letter (with the possible exception of Mr. Carlsen, #9, who later relinquished his claim anyway).

The first entryman (of 4/17/1915) later relinquished the site, which is now on Fort Wainwright. But an entry three days later, on 4/20/1915 by William St. Louis did go to patent in 1921 (#8 on the spreadsheet). This is the oldest patent along the spur between Ft. Wainwright and Eielson, but this entry was after the Act of 1914 granted and reserved the right to construct a railroad. That land was later owned by Opal Orr and Ken Murray, both of whom died in recent years. Mr. Murray's son called me once when he heard I was about to meet with Larry Swenson. He did not know much about the land, but did not want to miss out on whatever Mr. Swenson might get. Ken Murray, Jr. agreed to send me copies of whatever paperwork he found about the land as he worked on his dad's estate. I have not heard back from him.

Mary Jones (#21) had entered a homestead straddling the right-of-way in 1938 and received patent on it in 1943. However, the federal government had bought the relevant portion of it back from her in 1944. Therefore, she was not listed on the government's list of 20 entries, but was discovered by me in my research. She is #21 on the spreadsheet. There is ambiguity in the Exclusive License as to the width of the right of way across the Jones tract of land. The Exclusive License seems to indicate on page 3 that the right-of-way through the old Jones property [T1S R1E, Sec. 21, W2 SW4] is 28 feet wide, but on page 2 it seems to indicate that it is 200 feet wide. The MTP map indicates a 200' right-of-way through that property but U.S. Survey 9072 indicates 28 feet of width. This land is either part of Ft. Wainwright or is otherwise owned by the Federal Government

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and is immediately adjacent to, and west of Ft. Wainwright, so that it is not really important for the purposes of this research as it is not privately owned. If you want more details about this discrepancy in width across the Jones property, please let me know. Some of the acreage calculations on Ft. Wainwright in the Exclusive License do not appear to be accurate either.

Claim #22 is Norman Rockney. This claim is significant because it encompasses the land now owned by Larry Swenson, who has been contacting your office and with whom I spoke at length. Although, Mr. Swenson told me the application for a patent on his property was made in 1947, the BLM records show that the entry on this land was first made by Norman Rockney on July 7, 1952, some five years after the railroad spur was constructed. Mr. Rockney eventually got a patent in 1956. He was not sent a letter, because he had not entered until long after the railroad was already in place.

Claim #23 on the spreadsheet is of interest only as the predecessor to the land in which Hector's Welding and T.H.E. Company now have an ownership interest. That entry by Charles Laueremann was relinquished on May 20, 1946 so that Laueremann was not on the mailing list for January of 1947. However, Carl Finell, who is #14 on the spreadsheet, filed an entry the same day Mr. Laueremann relinquished, May 20, 1946. Mr. Finell was on the list and was sent a copy of the letter advising him of the railroad construction. He received a patent in 1949 to the Northwest Quarter of Section 9, Township 2S2E, large portions of which are still owned by T.H.E. Company and Hector's Welding. This property is near (or in) the City of North Pole.

Claim #24 on the spreadsheet reflects an entry by John Homethko in 1952. This claim was found in my research as a claim along the right-of-way, but is insignificant because the entry was after construction of the railroad. In fact, there appear to be numerous other entries which were first filed after the 1947 construction of the railroad spur. I have not done the detailed research on those claims because it would have been obvious to those entrymen that there was a railroad right-of-way through their property at the time they made their entry on the property. If you want further information about those patents, please let me know.

Claim #25 on the spreadsheet shows an entry by Lee Clay on May 12, 1947. From the correspondence in the BLM project file, it appears that construction would have been apparent at the time

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of that entry. Because the entry was after the letters were sent out, Mr. Clay was apparently not sent one. He did receive a patent in 1949. I found one other entry in 1947 which was made after the letters were sent out and which later went to patent.

Claim #26 reflects the re-entry by John Gilmore on a portion of his earlier claim (#3) shortly after he relinquished the earlier claim. As stated above, this was on part of the same land and on some different land. He did receive a patent on that in 1950. However, Mr. Gilmore's entry which ultimately resulted in a patent, came on 3/30/1949, two years after construction of the railroad.

As stated above, there are numerous other patented lands along the railroad construction site. They have not been included in the spreadsheet, nor researched in detail because of a belief in the accuracy of the BLM/Corps list of 20 and an appearance by the patent numbers that the other entries probably came after the construction of the railway line and because, regardless of the dates, the claims would all be subject to the railroad right-of-way anyway. If you want more details or research done on the remaining claims along the right-of-way, please let me know. I did not research the downtown Fairbanks area or any of T1S, R1W because the spur entered Ft. Wainwright before it got downtown and I understand the current controversy is over the portion between Ft. Wainwright and Eielson.

The purchases made by the War Department of lands in T1S, R1W were generally acquisitions of land to enlarge Ft. Wainwright, not just railroad right-of-way (shown on the Tract Register you provided to me). I do not think it was the practice to buy land for the railroad tracks, because it was clearly not necessary. The special memo of understanding with USSR & M Corp. was to adjust the right-of-way off center to avoid destroying some improvements. But those acquisitions were not typical for the construction of the Satellite spur and they preceded that construction.

BLM File F-07678-- The best source of information about the railroad right-of-way is the Bureau of Land Management. I also visited the Corps of Engineers office in Anchorage and got copies of some old maps. The best single source of documents on this matter is BLM file F-07678 (copy attached except Interim Conveyance and Exclusive License not re-copied). That is the right-of-way file for the spur to Eielson. It starts with a memorandum dated January 16, 1947, from the acting manager to the

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BLM director. The memorandum enclosed a copy of a letter (which I did not find) which had been sent from the War Department Corps of Engineers to entryman John I. Gilmore and 14 other entrymen along the right-of-way. The memorandum lists other serial numbers for entrymen to whom the letter was also sent. The memo notes that several homestead entrymen had appeared in the Fairbanks office and complained that work had already begun on the railroad extension and would seriously interfere with access to their homes and improvements. In one case an entryman had been notified that it would be necessary to move his house. The memo went on to say that no application for a railroad right-of-way had been filed in the Fairbanks office and asked for advice.

Next, there is a letter dated January 28, 1947 from the Corps of Engineers in Anchorage to the Regional Director of the BLM in Anchorage stating that the War Department had approved an extension of the existing rail spur line from Ladd Field to the Mile 26 Satellite Field. The letter says that construction will be completed as quickly as possible so that necessary construction material for planned improvements at Mile 26 may be hauled in by rail that spring to be used during the summer construction period. The letter states that all affected entrymen had been advised by the Corps of Engineers office in Anchorage by letter that construction has been approved and right-of-way will traverse their entries. The letter says copies of those letters to entrymen had been provided to the Fairbanks BLM office. I did not find any copies of those letters, although each of the individual files of the entrymen do note, on January 16, 1947, receipt of a copy of a letter to the entrymen from the War Department notifying the entrymen that the spur right-of-way would traverse their homestead. Mr. Gilmore apparently complained about that and there is a June 30, 1947 notation in his file that he received a letter from the director stating that the army was within their rights and that the railroad right-of-way was reserved to the government by the Act of March 12, 1914. Gilmore never did receive patent on that property and relinquished his claim in 1949. Two days later he re-entered and filed a new entry on some of the same land and some different adjoining land. Gilmore did receive a patent to that new land in 1950, but his entry on that new land along the spur was a few years after the railroad had been constructed. Enclosed with the January 28, 1947 letter was the list of 20 homestead entries made prior to construction.

The significance of the letters to the entrymen is that as of January 1947, all known entrymen who had not yet received a

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patent (reserving the right to construct a railroad) were sent a letter advising them that there would be a railroad spur across their property. From the January 16, 1947 memorandum, it is clear that many, if not all, already knew about the spur because work had already begun on the extension and was to be completed that spring.

A memo to the Fairbanks BLM office from the Washington D.C. BLM headquarters dated June 27, 1947 referred to the 1/16/1947 memo regarding the letter sent by the War Department to John Gilmore. The notice from the War Department to Gilmore is quoted as saying:

In connection with the construction of certain additional improvements at Mile 26, Satellite Field, the War Department has approved an extension of the existing railroad spur line from Ladd Field.

This letter will notify you as claimant to Entry 05992 on record in the Bureau of Land Management, Department of the Interior, Fairbanks, Alaska, that spur line right of way will traverse the property on which you have filed following the northerly side of the Richardson Highway. Provision for reservation or creation of railroad right of ways constructed by the Government on public lands is contained in Act of Congress of March 12, 1914 (38 Stat., 305).

Construction will be performed to cause a minimum of interference with your normal use of the land insofar as practicable.

It looks like the letters to Gilmore and the other entrymen went on to quote from the Act of March 12, 1914. The 6/27/1947 Memorandum by the Director of the BLM concludes that in view of the provisions referred to above in the Act of March 12, 1914, "it would appear that the War Department was within its statutory rights in so notifying Gilmore."

On November 19, 1948 the Corps of Engineers wrote to the BLM in Washington asking that appropriate notations be made on the public land records and an excepting clause be inserted in any final certificate issued for public lands affected by the

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railroad spur track and enclosing four pages of maps. Those notations were apparently not made at that time. On June 6, 1949 the Corps of Engineers wrote to the Fairbanks BLM office enclosing a copy of the November 19, 1948 letter and asking whether anything had been done.

By letter dated June 8, 1949, the Fairbanks BLM responded to the June 6, 1949 letter from the Corps of Engineers in Anchorage advising that Fairbanks BLM had not received the four pages of maps and saying: "As no plat is on file in my office, I have not inserted in final certificates any reservation in accordance with 44 L.D. 516. However, this is not actually necessary, for all patents contain a notation that the lands are subject to the provisions of the Act of Congress of March 12, 1914. . ." [emphasis added]. That letter continued by quoting from the 1914 Act which says, in part:

"Terminal and station grounds and rights of way through the lands of the United States in the Territory of Alaska are hereby granted for the construction of railroads, telegraph and telephone lines authorized by this Act, and in all patents for lands hereafter taken up, entered or located in the territory of Alaska there shall be expressed that there is reserved to the United States a right of way for the construction of railroads, telegraph and telephone lines to the extent of one hundred feet on either side of the center line of any such road and twenty-five feet on either side of the center line of any such telegraph or telephone lines. . ." [emphasis added].

By its wording, the Act of 1914 was a self effectuating grant of right of way, regardless of whether any particular patent contained the required language.

The 1914 Act is misquoted in both the June 8, 1949 letter to the Anchorage Corps of Engineers and in the earlier 6/27/1947 memo to the Fairbanks BLM office from the BLM director in Washington, D.C., quoting from the letter sent to Gilmore. In both of them, the words "road and twenty-five feet on either side of the center line of any such" are deleted. The effect of the

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deletion is to leave out the word road (meaning railroad) and to imply that telephone and telegraph-rights-of-way are 100 feet when they are really only 25 feet. I don't think this omission is of any consequence, but it is one more wrinkle in the history. The 6/8/1949 letter concludes with a request for a copy of the map to complete the Fairbanks records.

Also on June 8, 1949, the Fairbanks BLM office wrote to the BLM in Washington D.C. enclosing the two prior letters and stating, "As I have never received copies of these maps I have not inserted any clause in final certificates in accordance with 44 L.D. 513. I have notified the district engineer that this is not actually necessary, for all patents contain the reservation as provided by the Act of Congress of March 12, 1914." The letter goes on to ask whether, if the Corps of Engineers does file a set of the plats in Fairbanks, the final certificates (patents) should contain a clause under the provisions of 44 L.D. 516 in addition to the March 12, 1914 reservation.

On June 11, 1949 the Corps of Engineers in Anchorage wrote to the Fairbanks BLM office saying that a more accurate set of plans for the installation was being prepared and would be provided when done. Those were then sent by letter dated October 7, 1949 to the Fairbanks office as the final project ownership map, drawing number A4-19-4 in eight sheets and drawing number A4-19-4A in two sheets entitled "Eielson Air Force Base Railroad R/W Site."

On February 7, 1950 the BLM in Washington, D.C. wrote to the Fairbanks BLM enclosing a copy of the map (four sheets) filed by the Corps of Engineers and stating that, "in accordance with Departmental Instructions of January 13, 1916 (44 L.D. 516), you should make notations upon the records of your office of the spur line right-of-way and insert in any final certificate which may be issued for the lands affected by the right-of-way, and excepting clause similar to that quoted in the instructions."

On February 15, 1950, the Fairbanks BLM wrote to the Corps of Engineers referring to the 2/7/1950 memorandum from BLM headquarters as having sent map #17-01-01 (four sheets) which was approved on 6/23/1948. The 2/15/1950 letter also acknowledged receipt of the newer maps which were approved on October 5, 1949 (eight sheets and two sheets). The Fairbanks BLM office noted that the new maps and correspondence indicate that the project was fully completed under the authority of the Act of March 12, 1914 and the records in the Fairbanks office had been

appropriately marked so that an excepting clause can be inserted in any patent subsequently issued for lands affected by the right-of-way in accordance with Departmental Instructions of January 13, 1916 (44 L.D. 513). The Fairbanks manager went on to note that the Washington BLM records had already been noted. The Fairbanks BLM serial records do contain notations on 2/14/1950 concerning the F-07678 file number for the railroad right-of-way of 100 feet from the center line. In addition to the other forms of notice previously available, any homesteads entered after that date were on additional notice from the entry in the land records that the railroad right-of-way existed and was 100 feet wide. [However, sections 5, 6, 8 and 9 of T2S, R2E were apparently not specifically listed in the serial record. Also, the notation for T2S, R2E, which included only four small lots, does not say "100' C/L" but does refer to the other township notations, which do list that width].

Most patents issued after 2/15/1950 contain the specific exception, "Also excepting from this conveyance that certain railroad spur line and all appurtenances thereto, constructed by the United States, through, over or upon the lands herein described, and the right of the United States, its officers, agents, or employees to maintain, operate, repair, or improve the same so long as needed or used for or by the United States. This exception was in addition to the reservation to the United States of "a right of way for the construction of railroads, telegraph and telephone lines in accordance with the Act of March 12, 1914 (38 Stat., 305)". Prior patents contained the general reservation but not the more specific exception. The Homethko (#24) patent dated 2/7/1955 appears to have omitted the specific exception by mistake.

On August 20, 1951 the BLM headquarters in Washington, D.C. wrote to the Fairbanks BLM manager referring to the earlier correspondence and directing that Fairbanks records be noted to show the change of ownership of the railroad spur to the Alaska Railroad and requesting that the records be noted to show that the right-of-way extends to a width of 100 feet on each side of the center line. I did not find any separate entry near that date in the separate township records. Most of the affected township records note the 100' width from the center line in the notations dated 2/14/1950.

On January 21, 1952 the Corps of Engineers wrote to the BLM director in Washington, D.C. referring to the 11/19/1948 letter requesting that notations be made on public land records relative

to the railroad spur and noting that the railroad track had been transferred to the Alaska Railroad, Department of Interior. It was recommended that notation on the public land records be amended accordingly. [No such notation was found on the individual township records]. On April 1, 1952 the Corps of Engineers wrote to the BLM in Anchorage referring to earlier correspondence and requesting confirmation that public land records now showed the title to the spur track to be in the Alaska Railroad Department of Interior, rather than with the military any longer. On April 8, 1952, that letter was forwarded to the Fairbanks BLM along with the entire file so that proper notations could be made in the Fairbanks records. On May 7, 1952 the Corps of Engineers wrote to the Fairbanks BLM requesting notification when the public land records had been amended to show title in the railroad. On May 9, 1952 the Fairbanks BLM wrote back to the Corps of Engineers saying that the required action was taken on August 20, 1951 in accordance with the Evidence of Transfer which was furnished to the Department of the Interior office of territories. [It is not known which records were so noted on that date. Presumably the notation was made on the MTP maps at the time, since there is no notation in the individual township serial registers].

Acreage evidence-- The U.S. Surveys, which were done since the Interim Conveyance and pursuant to ARTA, show a continuous 200 foot wide easement from the east edge of the old Jones property (now owned by the federal government and adjacent to or part of Ft. Wainwright) all the way to Eielson Air Force Base. See USS 9072, 9073 and 9074. That land will be patented to the ARRC in the future under the terms of ARTA.

The Interim Conveyance at page 5 shows 3.38 miles or 81.93 acres as conveyed to ARRC in Section 35 of T1S, R1E (Fairbanks Meridian). This is the section containing Larry Swenson's land. Those numbers indicate a 200 foot wide easement. 3.38 miles times 5280 feet/mile times a 200 foot wide easement equals 3,569,280 square feet. Dividing that by 43,560 sq.ft. per acre yields 81.939 acres, confirming the 200 foot width of the easement through section 35 and the Swenson property.

The Fairbanks North Star Borough taxes Mr. Swenson's property but it does not tax the 200' wide strip through his property because it is owned by the State. The assessing record for Lot 6 Railside Industrial Park shows a square footage of 67,082.4; or 1.54 acres. (Copy attached). The platted area for that lot is 1.99 acres but the railroad track's center line is

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the back boundary. So the back 100' of the lot are the Railroad's and comprise the missing .45 acres. [The average length of the trapezoidal easement in the lot is about 200 feet, for an area of 20,000 square feet, or .45 acre]. Mr. Swenson has acceded to this acreage by accepting the assessor's area calculations, which exclude the railroad land.

CONCLUSION

No compensation is due to the private landowners, even for lands patented before construction of the spur. ARRC has a 200' wide strip of land in which it holds at least an exclusive use easement between Ft. Wainwright (the Jones property) and Eielson. The (old) Richardson Highway is within that strip of land in many spots so it's not truly exclusive in those locations. I have not researched the issue of adverse possession against ARRC, except to note that AS 42.40.450 seems to say that ARRC is not subject to having its lands adversely possessed. ARRC clearly has the express right to fence and to exclude others from the spur route under Section 603(6) of ARTA (with a few exceptions such as the highway), and has the right to subsurface uses of land in the 200' strip.

Sincerely,



Roger Brunner
RB:rd