

Getting the Alaska Railroad back on track

By Chuck Kopp | Nov. 19th, 2021

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The Alaska Railroad is an iconic symbol of the Last Frontier that predates statehood by more than three decades. Pictures and artistic renditions of the yellow and gold train cars compete for popularity with other recognized symbols of our state. But for many of our residents, the Alaska Railroad has become a symbol of something that went wrong and requires corrective action.

Since the 1982 Alaska Railroad Transfer Act, or ARTA, conveyed ownership of the Alaska Railroad Corp. from federal to state ownership, we have seen dramatic

efforts by the Alaska Railroad Corp. to assume a greater property interest in the right of way than the easement that was lawfully granted to it by Congress. These efforts are characterized by the Alaska Railroad claiming fee simple ownership of the right of way, rather than an easement across other people's property. And it also claims it has the right to monetize the right of way for non-railroad purposes as it sees fit. To justify this view, the Alaska Railroad maintains that in ARTA, Congress may have given them more property rights than the federal government owned, which, if true, would be an unconstitutional taking of property. Plainly, this is not in the best interest of Alaskans.

At the time Congress passed ARTA, the federal government had long since conveyed ownership to other entities of more than half the land under the entire Alaska Railroad line. This was accomplished through federal land patents to homesteaders, municipalities, Native Village corporations, miners and other entities where the federal government only reserved to itself an easement for the Alaska Railroad to continue to use for railroad, telegraph and telephone purposes.

Pursuing this "all-or-nothing" view, in September of 2020 the Alaska Railroad Corp. sued a small group of financially vulnerable Anchorage homeowners in a quiet title action to their land as part of a high-stakes effort to convince a federal district court judge to side with the Alaska Railroad's premise that they own a land grant for the entire 500-plus miles of rail line, rather than the standard railroad easement in America. It is unlikely this effort will be enough to amend existing law.

In 1875, Congress passed the General Railroad Act, which established that railroads could only be given right-of-way surface easements over other people's property. Congress found land grant railroads were a blight on our nation's history. The unbridled power of railroads to approve or deny access to cross or enter right of ways for necessary public goods ultimately destroyed the viability of communities, businesses, public utilities and private landowners across

America. Congress said, “no more,” and since 1875, U.S. Supreme Court cases have upheld the law that railroads possess only surface easements with respect to rights of way.

Why is this critical to Alaskans? The distinction between the Alaska Railroad right of way being a land grant or a surface easement is the difference between private property owners being dispossessed of access to and use of their own property, or not; Native land sovereignty undermined, or not; outdoor recreation users having access to parks, trails and public lands, or not; significant increases to our natural gas, electric and phone utility rates, or not; economic development of private lands, or not; municipalities being allowed to develop their lands, utility and recreational access points in the public interest, or not; and taxpayers paying costly fees to the Alaska Railroad, or not. That’s why it matters.

Is there reason to believe this situation will improve and, ultimately, be corrected? Thankfully, yes. In a nonpartisan effort reminiscent of the earlier years of our statehood, Gov. Mike Dunleavy, former Gov. Bill Walker, the Alaska Legislature, Anchorage Mayor Dave Bronson, the Anchorage Assembly, the Wasilla Chamber of Commerce, the Alaska Outdoor Council and many other state and local leaders have worked tirelessly through legislation, resolutions, executive direction and public education to restrain the Alaska Railroad from its “land grant claim” and unilaterally monetizing the right of way for non-railroad purposes. Recent Alaska Railroad Corp. communications with government leaders and homeowners indicate they are listening and considering the necessity of having the support of the state they serve.

It takes tremendous effort to get a derailed train back on track, and Alaskans are doing it because we believe this is a matter that, once resolved, will start a new and brighter chapter in the history of the Alaska Railroad Corp. and its service to Alaska.

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