Alaskan airpark is being railroaded

JANUARY 27, 2021 BY GENERAL AVIATION NEWS STAFF 6 COMMENTS

By Bob Gastrock

AK12, Alaska's oldest residential air park, is in serious danger. The survival of Flying Crown Airpark in Anchorage, which has been in operation since the early 1950s, depends upon a healthy relationship with the Alaska Railroad and a 200-foot right-of-way (ROW).

But the Alaska Railroad Corporation (ARRC) has sued Flying Crown in a quiet title action. The airpark is now defending itself in court against a land grab by the Alaska Railroad Corporation. If it loses, it could set an unsettling precedent for all property owners along the railroad line, as well as hunters, hikers, and others who enjoy Alaska's recreational bounty.

In the balance is not only Flying Crown's future, but also public access for fishermen, hunters, hikers, and property owners throughout the state.

What is a Quiet Title Action?

An action to quiet title is a lawsuit brought in a court having jurisdiction over property disputes, in order to establish a party's title to property. If successful, the action "quiets" any challenges or claims to the title.

A Legal Precedent

If ARRC prevails in its lawsuit against Flying Crown Airpark, Alaska will be forever divided by an ARRC-controlled 200-foot swath of land. Even worse, its proposal for the “A2A” (Alaska to Alberta) rail extension includes a 500-foot-wide private ROW, further dividing Alaska’s open spaces. The negative consequences for many thousands of traditional recreational users of the Alaska outdoors will be profound.

When the federal government divested itself of rail belt lands via Homestead patent conveyances in the 1940s and 1950s, the new Homesteads underlying the ROW were simply burdened with an easement for the operation of railroad, telegraph, and telephone. The new Homesteaders and their heirs and successors, including the Flying Crown Airpark, owned the dirt under the tracks, and used their land without impeding or interfering with railroad operations.

In 1983, Congress passed the Alaska Railroad Transfer Act (ARTA) to transfer “All Right, Title, and Interest” held by the federal government to the State of Alaska. That should have included the simple surface easement as reserved for the federal government in homestead patents.

Inexplicably, ARTA provisions were improperly applied, ostensibly transferring (by new patents) an “exclusive use” ROW easement, which is tantamount to fee simple ownership.

Fee simple ownership entitles a property owner to full enjoyment of the property, including the land and any structures that may be erected on the land. It’s limited only by zoning laws, deed or subdivision restrictions, covenants, and easements. The law recognizes fee simple ownership as the highest form of ownership in real estate.

The problem is the railroad doesn’t own the land the ROW sits on.

The attempted land grab would strip rightful property owners of their vested rights. As reserved in the Homestead patents, the railroad simply has a surface easement. Success in the lawsuit would change all that, awarding the railroad “exclusive use,” which would be tantamount to virtual ownership of the land.

Adding insult to injury, property owners were never notified of any changes in their ownership interest, depriving them of due process under the law.

The railroad consummated the new exclusive use easement when it was issued 43 federal patents in 2005 and 2006. These patents were accepted by ARRC without legislative approval, as required by law. They were superimposed over vested existing Homestead patents, creating two federal patents over the same parcel of land. This created clouds on many fee simple titles. Those clouds were not discovered until recently due to a different indexing system used to record them.

Making Money off Right of Way

The Alaska Railroad has always been a money loser, requiring regular infusions of cash from state and federal governments. To supplement main line operational revenue, ARRC devised a plan to monetize its real estate holdings.

As part of that strategy, railroad officials proposed a Residential ROW Use Policy (RRUP) in 2012, aimed at requiring permits and charging fees to property owners along the ROW.

Some of those folks recognized that the program relied on the “exclusive use” claim and challenged ARRC to prove the federal government was authorized to convey such interest at the time of transfer. Legislation was passed in Juneau requiring ARRC to make such a showing. The RRUP program was withdrawn, but ARRC has ignored legislative guidance and continues to seek validation of its “exclusive use” claim.

The lawsuit against Flying Crown Airpark would provide such validation, and open the door to roughshod treatment of property owners everywhere along the ROW. It would also embolden ARRC to begin charging the public for any use of the ROW, including simple access for hiking, hunting, fishing, snowmobiling, and other outdoor activities.

ARRC’s lawsuit is intended to obliterate ROW ownership established by earlier homestead patents and grant ARRC the right to unilaterally prohibit access and fence off the entire

200-foot ROW. This would inhibit Flying Crown's use of its land, adversely affect all property values along the rail line, and enable ARRC to completely control public access over significant portions of Alaska's backcountry.

If successful, this action will have been accomplished behind closed doors with no regard to state statutes, the Fifth Amendment to the Constitution, or due process of law.

While "pleading the Fifth" is well-known as part of criminal proceedings, the Fifth Amendment also requires that due process of law be part of any proceeding that denies a citizen life, liberty or property and requires the government to compensate citizens when it takes private property for public use.

How Could This Happen?

ARRC is a quasi-state agency, a separate public corporation with minimal oversight, accountability, or transparency. Hence, there was no public notice regarding the transfer of railroad assets.

ARRC has been free to implement self-serving policies and has successfully convinced Alaska's political, residential, and business communities that it owns the ROW, allowing them to deny access or charge adjacent business and residential property owners exorbitant fees for ROW use.

When it was discovered that 43 new federal land patents had been secretly recorded and now cloud title to many business and residential properties along the entire rail belt, Flying Crown and other South Anchorage residents attempted to identify the problem and "right the wrong" by offering a relatively simple corrective solution. But ARRC has refused to cooperate, and the situation has morphed into a David vs Goliath scenario.

Paralyzed by politics at the state level, Flying Crown is now up against a legacy corporation with deep pockets and political advantage. Flying Crown is faced with task of carrying the water for the entire rail belt, trying to defend itself from a ruling that would establish precedent and set the stage for many additional lawsuits.

ARRC is subsidized by Congress and state coffers. It can easily afford to hire a big gun law firm to go after Flying Crown, which it has done.

It's up to us to defend ourselves. While we have the law and all of the moral and ethical high ground firmly in our camp, ARRC has all the money and political power.

How Can You Help?

Please help spread the word to fellow aviators and others, and support Flying Crown and many other Alaskans as you can. You can also donate to the cause at Flying Crown's GoFundMe page.

If you would like to reach out to us with questions or ideas, please contact us at aaspr@yahoo.com

Editor's Note: *While General Aviation News has a long-standing policy of not including links to GoFundMe pages, we decided in this case that the issue is of enough importance to include the link.*

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Comments

Shaun says
FEBRUARY 1, 2021 AT 3:42 AM

When comon law courts are in session this will be settled and if the railroad does not comply by stopping this land grab all property will be seized and liquidated and no officers of the company will ever be allowed to hold office in any corporation ever again. Once this starts to happen corporations will follow public law and not infringe on the peoples rights given to them by the creator and the bill of rights or the same will apply.

Reply

Miami Mike says
JANUARY 28, 2021 AT 9:17 AM

In Florida, if you have used an easement for 20 years without objection from the underlying land owner, it is considered a valid easement and can't be extinguished.

Further, a change of ownership of either the easement holder (dominant estate) OR the land owner (servient estate) *specifically does NOT* invalidate existing easements. Easements survive bankruptcy, repossessions and foreclosures.

About the only thing that extinguishes an easement is if you buy (take title to) the land your easement is across. That's called merger of title, and the easiest comparison is that you can't owe yourself money. You don't need (and can't have) an easement on your own property.

A landowner can't arbitrarily "revoke" an easement.

I'm not a lawyer, nor do I play one on TV, but I have bought entirely too many fancy cars for lawyers who have successfully fought for easement rights on my behalf.

Reply

John Pletcher says
JANUARY 28, 2021 AT 4:15 PM

Miami Mike,

I am a retired attorney, a neighbor of those being sued, live along the railroad, and have been involved in this matter for close to 9 years.

More details of the situation are found at www.railroadedalaska.com. See Congressman Young's letter on home page. On the page "Deep Subjects" see "History and Overview" which in a few pages outlines how the Dept of the Interior and BLM made a big mistake, just as the Congressman stated.He was there in 1982 and participated in the transfer

To clarify: The right -of -way for the railroad is set out in 43 USC 975d, part of the railroad's creation in federal ownership beginning in 1914. This "original" 200 foot wide right of way is "reserved" in federal land patents in Alaska, and is of course found in the patent covering the area involved in the air park. All of these reservations were supposed to be transferred without change to the state-owned railroad by 45 USC 1201 and following sections. This is ARTA a federal law passed in 1982.

The "original" reserved easement or right of way is specifically not revoked in ARTA and was to be conveyed without change to the state. Unfortunately, as our Congressman makes clear in his letter, the Interior Department/BLM did not follow the clear ARTA instructions.

One obvious point: One cannot transfer assets that one does not own. How this simple concept escaped the notice of the Solicitor at the Department of the Interior is unknown.

And now, what the DOI/ BLM did without participation of others…
The US transferred to the state not the existing easement but clear ownership of the area of the easement. This is called "exclusive use" and is defined in ARTA Sec. 1202(6) to include the right to exclude all others and fence off the easement. This is the same as ownership, by another name.

Senator Stevens in 1982 described the ARTA exclusive use as a "new concept". It is a creation of ARTA and a device to settle unresolved Alaska native claims that were pending in 1982 and which stood in the way of the transfer. The railroad's attorney appeared in 1996 before the Alaska Legislature and said much the same thing…adding that ARTA "exclusive use" is a "concoction" not found in the common law of property.

The lawsuit filed by the railroad attempts to confirm this concoction.

The article points out that no notice was given of the ARTA process. Congressman has confirmed the obvious: there was no notice of the transfer activities for the very good reason that the transfer was not to change existing rights of anyone. They did not need to know.

More persons and entities than Flying Crown are adversely affected by the railroad claims. Some of these are mentioned in the article. Essentially all in the 600 mile long “rail belt” are involved even though few are aware yet as to the problem that was created.

Reply

Bob Gastrock says
JANUARY 29, 2021 AT 12:41 AM

Mike, you are absolutely correct. But the issue here is not about the validity of the easment. No one contests that the Railroad has a valid easement (as the dominant estate), which the property owners (the servient estate) must (and do) honor. That was established when Homesteaders received their Patents, which included a reservation for the surface easement. The Homesteaders still enjoy the right to use their land as long as the use does not impede Railroad operations. The problem now is that the Railroad is seeking to have the court validate it’s claim to a different type (“exclusive use”) easement which includes the right to fence off the entire easement and bar all others from entering (unless perhaps they agree to pay an exorbitant fee), denying the property owner any use of their land.

Reply

scott says
JANUARY 30, 2021 AT 9:58 AM

New Mexico is 7 years and you can’t block it.

Reply

Francois says
JANUARY 28, 2021 AT 4:46 AM

This is exactly what is going to happen to the whole of South Africa. The difference here is the political excuse and justification but the end game is the same, to make a very few very ritch at the expense of others

Reply