

**UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF LAND APPEALS**

IBLA 2014-27)	AA-55129
)	
PETER SLAIBY AND REJANI SLAIBY,)	Land Conveyance
)	
Appellants.)	
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**INTERVENOR ALASKA RAILROAD CORPORATION'S ANSWER TO
APPELLANTS' STATEMENT OF REASONS**

Intervenor Alaska Railroad Corporation ("ARRC") hereby files its Answer to the Statement of Reasons filed by Appellants.^{1'}

I. INTRODUCTION

The decision by BLM to grant ARRC a patent conveying at least an exclusive use easement in the portion of the ARRC railroad right-of-way ("ROW") adjacent to Appellants' residential property^{2'} is proper as a matter of law. The Alaska Railroad Transfer Act, 45 U.S.C. §§ 1201-1214 ("ARTA") specifically requires BLM to issue such a patent to ARRC. ARTA, which authorized the transfer of the federally-owned Alaska Railroad to the State of Alaska ("State"),^{3'} requires BLM to convey to the State the United States' entire interest in all Alaska Railroad properties. More specifically, ARTA requires BLM to convey at least an exclusive use

^{1'} Appellants' Statement of Reasons ("SOR") was served on ARRC on January 13, 2014. ARRC and appellee Bureau of Land Management ("BLM") received 30-day extensions of their time to respond to the SOR pursuant to 43 C.F.R. § 4.405(f).

^{2'} The portion of the ARRC ROW at issue in this appeal will be referred to herein as "the Property." The Property is more specifically described in Section II, *infra*.

^{3'} ARTA defines "State" as the "State of Alaska or the State-owned railroad, as the context requires." 45 U.S.C. § 1202(13). ARRC is the instrumentality created by the State of Alaska to own and operate the Alaska Railroad upon transfer from the United States. See AS 42.40 (Alaska Railroad Corporation Act).

easement, as defined in ARTA, in the ROW.⁴¹ That requirement is critical. Congress recognized in passing ARTA that transfer of less than an exclusive interest in the ROW would undermine ARRC's ability to operate a railroad safely and economically. The exclusive use easement requirement functions as a safety net to ensure that even where ARRC owns less than fee simple interest in the ROW, it can still safely and economically operate a railroad.

Appellants argue that BLM may not convey an exclusive use easement in the Property to ARRC. They assert that BLM may only convey a non-exclusive easement. They base this argument on three incorrect premises: (i) that ARTA does not require BLM to convey an exclusive use easement in the Property; (ii) that the United States does not own at least an exclusive use easement in the Property; and (iii) that Congress cannot require the United States to convey a greater interest than it owns in the Property. They also argue that a patent is an improper instrument for conveying an easement. All of these assertions are wrong.

Under ARTA, that BLM must convey to ARRC at least an exclusive use easement in all portions of the ARRC ROW. Moreover, the warranty deed by which the United States purchased a perpetual railroad right-of-way and easement in the Property granted the United States exclusive use of the ROW, and that right is available for conveyance to ARRC. Not only is a patent an appropriate vehicle for conveying an exclusive interest in the ROW, ARTA expressly requires BLM to issue patents for the railroad lands to be conveyed. Finally, even if the perpetual railroad right-of-way and easement obtained by the United States is non-exclusive - which it is not - Congress had the authority to require BLM to obtain and transfer to ARRC an exclusive interest in the Property. That Congress intended to exercise that authority is evident from the fact that ARTA requires the U.S. Department of Justice to defend any challenges to ARRC's exclusive title to the ROW.

⁴¹ See Section II.A.2, *infra* (describing ARTA and its exclusive use easement requirement).

II. BACKGROUND

This appeal challenges a decision by BLM approving the issuance of a patent to ARRC for the Property, which is located adjacent to Appellants' home in Anchorage, Alaska. The Property is described in the proposed patent at issue in this appeal:

All those portions of Lots Four (4), Thirteen (13) and Fourteen (14) of Block Three (3) of Sunset Hills West Subdivision, according to the recorded plat thereof, laying southwesterly of the line designated as "Take Line" on that certain map titled Potter Hill Relocation, Alaska Railroad, designated as document 64-105, filed October 9, 1964, in the Office of the District Recorder for the Anchorage Recording Precinct, Third Judicial District, State of Alaska.^{5/}

On September 16, 2013, BLM issued Decision No. AA-55129-20 ("Decision"), which approved the issuance of a patent for the Property pursuant to ARTA and set forth a proposed patent conveying to ARRC all of the United States' interest in the Property, but not less than an "exclusive use easement" as that term is defined in ARTA ("Proposed Patent").^{6/} In order to understand why BLM decided to issue a patent for an exclusive use easement to the Property, and why that decision is required by ARTA, a general understanding of the histories of both the Alaska Railroad and the Property is critical. Those histories are summarized below.

A. The Alaska Railroad

The Alaska Railroad is the only railroad ever constructed, owned and operated by the United States federal government. Accordingly, the history of its establishment, operation and eventual transfer to the State of Alaska is unique.

1. The Federally-Owned Alaska Railroad

During the early 1900s, several privately-owned railroads were built and operated in the Territory of Alaska. Each of these railroads ultimately failed or faced dire financial

^{5/} See Appellants' Exhibit ("App. Ex.") 1, at 4. Appellants assert an interest only in the portions of Lots 13 and 14 contained in the lands to be patented. The owner of the non-ROW portion of Lot 4 has not appealed.

^{6/} See App. Ex. 1. The Decision and the process leading to it are detailed in Section II.C, *infra*.

circumstances.^{7/} Having seen the difficulties faced by private entities constructing and operating railroads in Alaska, and recognizing the importance of rail service to the development of the Territory, Congress took a different approach. It passed legislation authorizing the creation of a federally owned and operated railroad in Alaska.^{8/}

The Act of 1914 authorized and directed the President to take a broad range of actions to construct, own and operate a railroad on a route of up to 1,000 miles in the Territory of Alaska. Among the actions authorized by the Act of 1914 were (i) “to purchase or otherwise acquire all real and personal property necessary to carry out the purposes of this Act”; (ii) “to exercise the power of eminent domain in acquiring property for such use”; and (iii) “to acquire rights of way, terminal grounds, and all other rights”^{9/} The Act went on to provide that:

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^{10/}

The federal government wasted no time in complying with Congress’s directives in the Act of 1914. Rights-of-way were established between the seaport of Seward and the interior mining community of Fairbanks and preliminary construction began on the railroad in 1915.^{11/} The Alaska Railroad’s “golden spike” was driven by President Harding in Nenana in July 1923.^{12/}

^{7/} See ARRC Exhibit (“ARRC Ex.”) A at 27-28.

^{8/} Act of March 12, 1914, 43 U.S.C. 975 *et seq.*; 38 Stat. 305 (“Act of 1914”), repealed by ARTA, Pub.L. 97-468, Title VI, §615(a)(1). A copy of the Act of 1914 is attached as ARRC Ex. B.

^{9/} See ARRC Ex. B at 2 (Act of 1914, Section 1).

^{10/} See *id.* at 3 (Act of 1914, Section 1).

^{11/} See ARRC Ex. A at 35-41

^{12/} See ARRC Ex. A at 49.

For the next several decades, the federal government owned and the U.S. Department of Transportation operated the Alaska Railroad, moving freight and passengers between Seward, Anchorage and Fairbanks. By the early 1980s, however, the federal government began discussing the concept of transferring the Alaska Railroad to another entity.

2. The Alaska Railroad Transfer Act (ARTA)

In 1982, the legislation was introduced in Congress authorizing the transfer of the Alaska Railroad, including all of its real and personal property, to the State of Alaska. As the proposed legislation worked its way through Congress, the issue of the appropriate level of title to the Alaska Railroad ROW and other lands to be transferred to the State of Alaska was prominent among the points under discussion.

There was general agreement that most land of the federally-owned Alaska Railroad, including its ROW, was held in fee simple title by the United States and that most land therefore would be transferred to the State in fee.^{13/} It was recognized, however, that some Alaska Railroad lands were subject to third party claims, including claims by Native groups and individuals under the Alaska Native Claims Settlement Act, 43 U.S.C. § 1601 *et seq.* (“ANCSA”) and claims of other third-parties such as those holding homestead patents.^{14/} Congress

^{13/} See, e.g., ARRC Ex. C, Report No. 97-479, Senate Committee on Commerce, Science and Transportation, 97th Congress, 2d Session, June 22, 1982, at 5 (Under the proposed ARTA, the United States “would convey to the State a fee interest in the 200-foot strip comprising the railroad track right-of-way, amounting to roughly 12,000 acres. This fee estate is recognized by the Committee to be the current interest of the Alaska Railroad derived from common practice and authorized under section 1 of the March 12, 1914 Alaska Railroad Act.”).

^{14/} See ARRC Ex. C, at 4. Federal lands in Alaska could have been subject to a wide variety of both Native and non-Native claims prior to transfer of the Alaska Railroad to the State. Such claims could have arisen under several Native allotment acts, including the Alaska Native Allotment Act, 34 Stat. 197, May 17, 1906; the Alaska Native Townsite Act, 44 Stat. 629, May 25, 1926; the Townsite Act, 26 Stat. 1099, March 3, 1891; Native Regional Corporation selections; the Homestead Act of Alaska, 30 Stat. 409, May 14, 1898; mining claims under the General Mining Act, 17 Stat. 91, May 10, 1872; and acts providing for claims of trade and manufacture sites. Appellants’ focus on just on 1906 Native Allotment Act claims and Native Village Corporation claims in arguing for a narrow construction of the coverage of Section 1205

recognized not only that the proposed transfer legislation must set forth a process for determining any such third-party claims, but also that it was critical that the United States provide the State with exclusive control of the ROW.^{15/} Otherwise, the State's ability to maintain and operate a safe and economical railroad would be undermined.^{16/} Consequently, a minimum interest to be conveyed to the State, called an "exclusive use easement" was developed "to insure that the State-owned railroad will receive exclusive and complete control over land traversed by the right-of-way."^{17/}

ARTA was enacted on January 14, 1983. It provides detailed procedures governing the transfer of the Alaska Railroad from federal to State ownership. Several provisions relate to transfer of real property, the type of conveyances to be used in that transfer and the nature of the title to be conveyed.^{18/} ARTA requires that, upon the date of transfer of the Alaska Railroad to the State, the United States must convey to the State all federal interest in "rail properties of

effectively - and improperly - ignores the many and various third-party claims that might have been necessary to resolve under the process laid out in ARTA.

^{15/} See, e.g., ARRC Ex. D, Congressional Record-Senate, Dec. 21, 1982, at 2 ("On the date of the transfer [under ARTA], the State would be granted fee title to lands not subject to such [unresolved] claims [of valid existing rights] and, with respect to lands so subject, an operating license to insure that operations of the railroad are not affected in any way by the new process."); *id.* ("The concept of an exclusive use easement . . . represents the minimal interest the State is to receive in the Alaska Railroad right-of-way following completion of the expedited adjudication process. . . . It is also the interest the State will receive through the Denali National Park and Preserve. In other areas, where the right-of-way crosses land owned in fee by the Federal Government, the full fee title to the right-of-way will be transferred to the State.")

^{16/} See, e.g., ARRC Ex. C, at 5 ("[T]ransfer of the railroad right-of-way in fee simple is essential to the continued operation of the railroad, and . . . the actual physical characteristics of the railroad (e.g., the right-of-way and reserves) [should] be maintained to the extent required to assure the transfer of an economically viable railroad operation."); *id.* at 9 (in adjudicating third party claims, the Secretary of the Interior "is directed to consider the findings and policies of this legislation, including the importance of transferring the right-of-way in fee to the continued operation of the railroad [T]his determination is critical to the future of the railroad and must be made expeditiously."); ARTA, 45 U.S.C. § 1205(b)(4)(A)(ii) ("Congress finds that exclusive control over the right-of-way by the Alaska Railroad has been and continues to be necessary to afford sufficient protection for safe and economic operation of the railroad.")

^{17/} ARRC Ex. D, at 2.

^{18/} See 45 U.S.C. §§ 1203, 1204, 1205.

the Alaska Railroad.”^{19/} Rail properties of the Alaska Railroad are defined broadly as:

[A]ll right, title, and interest of the United States to lands, buildings, facilities, machinery, equipment, supplies, records, rolling stock, trade names, accounts receivable, goodwill, and other real and personal property, both tangible and intangible, in which there is an interest reserved, withdrawn, appropriated, owned, administered or otherwise held or validly claimed for the Alaska Railroad by the United States or any agency or instrumentality thereof as of January 14, 1983^{20/}

Under ARTA, therefore, the State received the entire federal interest in the ROW. As discussed above, the United States owned fee simple title in most of the ROW when ARTA was enacted.

ARTA mandates several types of conveyance of rail properties to the State depending on the property type and status.^{21/} Two conveyance methods apply to land located outside Denali National Park. With respect to surveyed land that is not subject to unresolved claims of valid existing rights,^{22/} the United States must deliver a patent to the State.^{23/} With respect to unsurveyed land not subject to unresolved claims, the United States must deliver to the State an interim conveyance.^{24/} An interim conveyance “shall . . . convey to and vest in the State exactly the same right, title, and interest in and to the rail properties identified therein as the State would have received had it been issued a patent”^{25/}

With respect to land that is subject to unresolved claims of valid existing rights, the United States must deliver to the State an exclusive license pending the determination of such claims.^{26/} The exclusive license shall be subject only to leases, permits, and other instruments

^{19/} See 45 U.S.C. §1203(a), (b). Section 1203(c) provides for the conveyances to contain certain reservations in favor of the United States which are not relevant here.

^{20/} 45 U.S.C. §1202(10).

^{21/} See 45 U.S.C. §1203 (b)(1)(A)-(D).

^{22/} A “claim of valid existing rights” is “any claim to the rail properties of the Alaska Railroad on record in the Department of the Interior as of January 13, 1983.” 45 U.S.C. §1202(3).

^{23/} See 45 U.S.C. §§1203(b)(1)(B); 1203(2).

^{24/} See 45 U.S.C. §1203(b)(1)(B).

^{25/} See 45 U.S.C. §1203(b)(3).

^{26/} See 45 U.S.C. §1203(b)(1)(C).

issued before the date of transfer and certain easements in favor of the United States.^{27/} Once land subject to an exclusive license becomes available for conveyance due to resolution of claims, an interim conveyance must be issued for that land.^{28/}

Once Alaska Railroad land was transferred to the State using one of the conveyances described above, ARTA required the United States to survey any remaining unsurveyed land and then to issue a patent for that land.^{29/} Surveys were completed for most of the ROW during the 1980s and 1990s, and patents to those lands began to be issued. For example, the patent for the portion of the ROW adjacent to the Property was patented by BLM to ARRC in 2006.^{30/} Only a few portions of the ROW remain to be conveyed by patent, including the Property.

In addition to the above-described conveyance provisions, ARTA contains procedures for the resolution of third party claims to Alaska Railroad lands that existed when ARTA was enacted. Recognizing that the United States did not own some portions of the ROW in unencumbered fee simple, ARTA includes detailed provisions to resolve third-party claims while still ensuring that ARRC can operate a railroad on the entire ROW without interference.

ARTA, at 45 U.S.C. §1205(b), contains procedures requiring the Secretary of the Interior (“DOI”) to resolve any third-party claims to Alaska Railroad lands. Subsection 1205(b)(1) sets up an initial ten-month review and settlement process for claims by Native Village Corporations. Subsection 1205(b)(2) requires DOI to resolve any remaining claims of valid existing rights, including both Native and non-Native claims, by January 14, 1986, except for remaining Village Corporation claims, which were to be resolved by January 14, 1985. Subsection 1205(b)(2) also requires DOI to survey all unsurveyed lands by January 14, 1988. Subsection 1205(b)(3) requires that land subject to Village Corporation claims be managed in accordance with certain

^{27/} See 45 U.S.C. §1203(b)(4).

^{28/} See 45 U.S.C. §1203(b)(2).

^{29/} See 45 U.S.C. §1203(b)(3).

^{30/} See ARRC Ex. E, U.S. Patent No. 50-2006-0363, dated August 9, 2006.

agreements pending the resolution of such claims. Subsection 1205(b)(4) sets up procedures to ensure finality of Village Corporation claims and “to avoid potential impairment of railroad operations resulting from joint or divided ownership in substantial segments of the right-of-way.” To that end, the United States is required to convey to the State at least an exclusive use easement in all portions of the ROW that left federal ownership before January 14, 1983, or as to which a claim of valid existing rights existed as of that date.^{31/}

ARTA also specifically explains why Congress guaranteed at least an exclusive use easement with respect to all portions of the ROW:

The Congress finds that exclusive control over the right-of-way by the Alaska Railroad has been and continues to be necessary to afford sufficient protection for safe and economic operation of the railroad.^{32/}

Further underscoring Congress’s recognition that it was critical to provide the State with exclusive rights in the ROW, ARTA specifically requires the federal government to defend the State’s title in the ROW against claims that it had less than an exclusive use easement.^{33/}

The exclusive use easement that ARTA requires to be conveyed to the State provides broad exclusive rights to the ROW:

“[E]xclusive-use easement” means an easement which affords to the easement holder the following:

(A) the exclusive right to use, possess, and enjoy the surface estate of the land subject to this easement for transportation, communication, and transmission purposes and for support functions associated with such purposes;

(B) the right to use so much of the subsurface estate of the lands subject to this easement as is necessary for the transportation, communication, and transmission purposes and associated support functions for which the surface of such lands is used;

(C) subjacent and lateral support of the lands subject to the easement; and

^{31/} As noted above, “claims of valid existing rights” refers to both Native and non-Native claims.

^{32/} See 45 U.S.C. §1205(b)(4)(A)(ii); see also ARRC Ex. D, at 2.

^{33/} See 45 U.S.C. §1205(b)(4)(B).

(D) the right (in the easement holder's discretion) to fence all or part of the lands subject to this easement and to affix track, fixtures, and structures to such lands and to exclude other persons from all or part of such lands.^{34/}

ARTA therefore required the United States to convey to the State, at a minimum, the exclusive right to use and occupy the ROW for transportation, communication and transmission purposes, including the right to exclude all other persons and entities from all or any of the ROW.

3. Conveyance of Patents to ARRC ROW by BLM

As required by ARTA, BLM initially conveyed Alaska Railroad lands, including ROW, to ARRC by means of an interim conveyance and an exclusive license.^{35/} After BLM surveyed those lands, it issued patents for them. The interim conveyance, exclusive license and patents all transferred to ARRC the entire interest of the United States in the land and specified that said interest was "not less than an exclusive use easement, as defined in [45 U.S.C. § 1202(6)]."^{36/} The Proposed Patent is the latest example of such a conveyance.

B. The Property at Issue in this Appeal

The Property is a portion of the ARRC ROW in the Potter Hill area of Anchorage, Alaska. It lies adjacent to the portion of the ROW conveyed to ARRC in 2006 by means of U.S. Patent No. 50-2006-0363.^{37/} The Property, like several other parcels in the Potter Hill area, was added to the ROW shortly after the devastating earthquake of 1964.

On Good Friday of 1964, an earthquake of magnitude 9.2 on the Richter scale caused extensive damage to Southcentral Alaska. It severely damaged the Alaska Railroad ROW in the Potter Hill area, requiring the tracks in that area to be realigned.^{38/} Consequently, in 1965, the United States purchased portions of a number of lots on Potter Hill in order to provide a

^{34/} 45 U.S.C. § 1202(6) (emphasis supplied).

^{35/} See ARRC Ex. F (example interim conveyance); ARRC Ex. G (example exclusive license).

^{36/} See ARRC Ex. E, at 2.

^{37/} See *id.*

^{38/} See App. Ex. 12, at 2.

stable ROW for rebuilding. Portions of two of those lots constitute the Property. The Property had previously been patented by the United States to Edwin Jarvi in 1950 by means of a homestead patent to a larger tract that included the Property.^{39/} In 1965, Edwin and Yula Jarvi sold and conveyed an interest in the Property to the United States via a warranty deed dated July 2, 1965 (the “Jarvi Deed”).^{40/} With respect to the Property, the Jarvi Deed conveyed:

A perpetual right of way and easement to construct, reconstruct, operate and maintain a railroad line and appurtenances, including telephone and telegraph lines, upon the lands described [as Parcel 4 of the Jarvi Deed].^{41/}

The Jarvi Deed explains that “the above-described premises are being acquired for the Alaska Railroad, Department of the Interior.” The United States paid a total of \$24,115^{42/} to the Jarvis for the purchased interest in the Property and other parcels conveyed by the Jarvi Deed.^{43/}

Property records indicate that between 1965 and today, the portions of Lots 13 and 14 not included in the ARRC ROW were transferred to new owners on several occasions. The last transfer was to Appellants in 2008 via a warranty deed that expressly excluded the Property from the property they purchased:

EXCEPTING THEREFROM that portion thereof lying southwesterly of the “Take Line” shown on the plat of Potter Hill Relocation Alaska Railroad Right-of-Way Acquisition Map, according to Plat No. 64-105.”^{44/}

Indeed, the deeds issued to convey the portion of Lots 13 and 14 lying outside the ROW from

^{39/} See App. Ex. 16, at 17-19.

^{40/} See App. Ex. 12, at 2.

^{41/} The Jarvi Deed included four parcels comprising portions of Lot 21 (Parcel 1); Lots 6, 11 and 12 (Parcel 2); Lot 10 (Parcel 3) and Lots 3, 13 and 14 (Parcel 4) of Block 3 of Sunset Hills West Subdivision. The portions of Lots 13 and 14 contained in Parcel 4 constitute the Property at issue here. See App. Ex. 16, at 27-28.

^{42/} This amount is approximately equivalent to \$180,000 in 2014 dollars. See ARRC Ex. H.

^{43/} App. Ex. 16, at page 27.

^{44/} See App. Ex. 16, at 62. The express exclusion from Appellants’ warranty deed of the portion of Lots 13 and 14 within the ROW raises substantial doubt about whether Appellants hold any interest at all in the Property, much less the servient fee estate they claim. That doubt, in turn, suggests that Appellants may not qualify as an “adversely affected” party eligible to appeal the Decision under 43 CFR § 4.410(a).

1972 and 2008 consistently excluded the portions of those lots within the ROW from the premises being conveyed.^{45/} The forty-year absence of any ownership interest in the ROW by the various residential owners, including Appellants, throws substantial doubt on any claim of ownership of the Property by Appellants.^{46/}

C. The Decision, the Proposed Patent and This Appeal

In 2012, BLM identified the Property and other lots on Potter Hill obtained for the ROW after the 1964 earthquake to be considered for conveyance to ARRC by patent. As BLM prepared to make a patent determination regarding those lots, it obtained a memorandum offering a legal opinion regarding the United States' legal interest in the lots from a Senior Attorney in the U.S. Department of the Interior, Office of the Solicitor, Alaska Region ("Senior Attorney"). In a memorandum dated December 20, 2012, the Senior Attorney noted that "ARTA requires conveyance of all the federal interests in the property and at a minimum conveyance of an exclusive use easement."^{47/} The Senior Attorney then explained that the lots in question should be conveyed to ARRC using BLM's normal process of issuing a decision to convey with copies served on all appropriate parties. Following the decision, requisite notice and the resolution of any appeal, BLM could convey the lots by patent.

With respect to the Property in particular, the Senior Attorney noted that the Jarvi Deed granted the United States a perpetual easement for railroad purposes and that "[t]he wording of that easement . . . contains terms and provisions very similar to the requirements of an

^{45/} See App. Ex. 16 at pages 56-64.

^{46/} In 2012, Appellants obtained a quit claim deed purporting to "correct the legal description" of a 1972 warranty deed that expressly excluded the ROW portion of Lots 13 and 14. See App. Ex. 16 at 64. The effect of that quitclaim deed, an issue beyond the scope of this appeal, is questionable given the forty-year absence of the Property from the adjacent owners' chain of title.

^{47/} App. Ex. 12, at 1.

exclusive-use easement as defined in section 603(6) of ARTA, 45 U.S.C. § 1202(6)^{48/}

Although acknowledging that the Jarvi Deed did not specify that the easement granted was exclusive of all other uses, the Senior Attorney concluded that the granted easement was nevertheless exclusive:

[T]here is no doubt the property is physically and legally subject to an easement for an existing railroad easement. Railroad easements are by their nature both broad and exclusive. Exclusive control is necessary to insure uninterrupted and safe operation of the railroad and to protect members of the public from physical harm. The exclusive-use easement defined in ARTA mirrors the general terms of a standard railroad easement and the terms of the Jarvi deed should be construed to match the specific terms of the exclusive-use easement definition in ARTA.^{49/}

The Senior Attorney observed that ARTA required BLM to convey at least an exclusive use easement “[e]ven if the Jarvi deed were construed to grant less interest than the exclusive-use easement of ARTA.”^{50/} Accordingly, the Senior Attorney found that BLM should issue a decision approving conveyance of an exclusive use easement in the Property and the other lots.^{51/}

On September 13, 2013, BLM issued the Decision, which attached the Proposed Patent.^{52/} The Decision explained that the conveyance of the Property was being made pursuant to the transfer provisions of 45 U.S.C. § 1203(b)(2) and 45 U.S.C. § 1203(b)(3), and that pursuant to 45 U.S.C. § 1205(b)(4)(B), the interest being granted was “not less than an exclusive use easement as defined in [45 U.S.C. § 1202(6)].”^{53/} The Proposed Patent grants and conveys to ARRC “the full and complete right, title, and interest of the United States in and

^{48/} App. Ex. 12, at 4.

^{49/} App. Ex. 12, at 4 (citing 74 C.J.S. Railroads § 225 (2002)).

^{50/} App. Ex. 12, at 4 (citing U.S. 45 U.S.C. § 1205(b)(4)(B)).

^{51/} App. Ex. 12, at 4.

^{52/} App. Ex. 1 (BLM Decision No. AA-55129-20 and attached Proposed Patent).

^{53/} App. Ex. 1 at 1-2.

to the said real property . . . ,” and provides that the interest conveyed in the Property “is not less than an exclusive use easement.”^{54/}

On October 15, 2013, Appellants filed their Notice of Appeal, challenging BLM’s decision to approve the patent to ARRC for the Property. ARRC intervened in this appeal. On January 10, 2014, Appellants filed their Statement of Reasons.

III. STANDARD OF REVIEW

Decisions of BLM regarding the use and disposition of the public lands and their resources are reviewed de novo by the Board to determine whether the record in a case supports the action taken.^{55/}

IV. ARGUMENT

The Decision is correct as a matter of law. ARTA mandates that BLM convey to ARRC the entire federal interest in the Property and that the interest conveyed be at least an exclusive use easement as defined in 45 U.S.C. § 1202(6). BLM complied precisely with that mandate in issuing the Decision and the Proposed Patent, which grants to ARRC an exclusive use easement in the Property. BLM could not have acted otherwise and still complied with ARTA. BLM also employed the correct procedures applicable to the Decision and Proposed Patent. None of Appellants’ arguments, many of which are based on misreadings of ARTA, alter the fact that the Decision and Proposed Patent are proper as a matter of law and should be affirmed.

A. BLM’s Issuance of the Proposed Patent is Mandatory Under ARTA

ARTA requires - the statute is mandatory, not permissive - BLM to convey to the State

^{54/} App. Ex. 1 at 5. The conveyance is made subject to two reservations not relevant here. *Id.*

^{55/} See *Wyoming Outdoor Council*, 160 IBLA 387, 397-98 (2004) (citing *National Wildlife Federation*, 145 IBLA 348, 362 (1998)); see also *Hickory & Tinnell*, 160 IBLA 166, 176 n.14 (2003) (applying de novo review in case affirming rejection of application to correct a patent).

all of the United States' right, title and interest in "rail properties of the Alaska Railroad."^{56/} "Rail properties of the Alaska Railroad" include "lands" in which the United States held an interest as of January 14, 1983.^{57/} The United States purchased a perpetual railroad right of way and easement in the Property on July 2, 1965, and held that interest as of January 14, 1983. BLM was required to convey that entire interest in the Property to ARRC, and to issue a patent to ARRC for the Property.

BLM also was required to ensure that the interest it conveyed in the Property was at least an exclusive use easement. Because most of the ROW was owned solely by the United States prior to transfer of Alaska Railroad lands to the State, the requirement that the State receive the United States' full interest in the land means that ARRC holds fee simple interest in most of the ROW. But even where the United States did not own fee simple interest in a portion of ROW at the time of transfer, ARTA nevertheless requires DOI to convey to ARRC at least an exclusive use easement, as that term is explicitly defined in ARTA:

Where lands within the right-of-way, or any interest in such lands, have been conveyed from Federal ownership prior to January 14, 1983, or is subject to a claim of valid existing rights by a party other than a Village Corporation, the conveyance to the State of the Federal interest in such properties pursuant to section 1203(b)(1)(B) or (2) of this title shall grant not less than an exclusive-use easement in such properties.^{58/}

Underscoring the mandatory nature of DOI's obligation to convey to ARRC at least an exclusive use easement is ARTA's requirement that the federal government defend the State's title against claims that it had less than an exclusive use easement in its ROW.^{59/}

The plain language of ARTA, therefore, compels BLM not only to convey to ARRC the United States' entire interest in the Property, but also to ensure that the interest conveyed is at

^{56/} See 45 U.S.C. §1203(a),(b). Section 1203(c) provides for the conveyances to contain certain reservations in favor of the United States which are not relevant here.

^{57/} 45 U.S.C. §1202(10).

^{58/} 45 U.S.C. §1205(b)(4)(B) (emphasis added).

^{59/} See 45 U.S.C. §1205(b)(4)(B).

least an ARTA exclusive use easement. That is precisely what BLM has done by means of the Decision and the Proposed Patent. For that reason alone, BLM's Decision is correct as a matter of law and should be affirmed.

B. BLM Followed the Appropriate Procedures in Issuing the Decision

BLM not only complied with ARTA's substantive mandate in issuing the Decision and Proposed Patent, it also followed appropriate procedures in doing so. As a preliminary matter, BLM complied with the procedures set forth in ARTA, which expressly provides a detailed process to be employed in transferring Alaska Railroad property from federal to State ownership. ARTA commands DOI to issue an interim conveyance of rail properties to ARRC except where properties have already been surveyed, in which case DOI is to issue a patent.^{60/} Because the Property has been surveyed, BLM issued the Proposed Patent. This precisely tracks with the process required in ARTA.

BLM also followed its own procedures for conveying property under ARTA. As described by the Senior Attorney, the appropriate process to be used to convey the Property was BLM's "normal process." The memorandum specified that process: BLM was to (i) issue a decision approving conveyance of the Property to ARRC; (ii) serve copies of the decision on interested parties, including specifically successors in interest to the Jarvi Deed; and (iii) wait to make the actual conveyance until the appeal period had run or any appeal had been resolved.^{61/} That is exactly how BLM proceeded in issuing the Decision and Proposed Patent. In short, all applicable procedures have been properly followed.

Appellants attempt to throw doubt on BLM's process by arguing that issuance of a patent is an improper procedure for conveying the federal interest in the Property. Invoking BLM regulations, they assert that BLM must convey a railroad easement via an assignment using

^{60/} 45 U.S.C. §1203(b)(2); *see also supra* Section II.A.2.

^{61/} *See* App. Ex. 12, at 4.

BLM Form SF-299.^{62/} This argument fails for several reasons. First, ARTA expressly requires conveyances of Alaska Railroad land to be made by patent. BLM's regulations do not purport to - nor could they - control over ARTA's specific conveyance instructions.^{63/} Second, the cited regulation applies to rights of way under the Federal Land Management Policy Act ("FLMPA"), 43 U.S.C. §§ 1701 *et seq.* The specific provisions of ARTA, not the FLMPA or its implementing regulations, apply to transfers under ARTA. Congress could have provided that ARTA transfers would apply FMPLA procedures; ARTA was passed after the FMPLA. But it did not do so, instead including in ARTA very specific procedural requirements for property transfers. Finally, the cited regulation neither requires nor prefers assignment of easements to patents; it merely states that an easement may be transferred via assignment.

Most fundamentally, a patent is the appropriate method for conveying lands under ARTA because that is the mechanism Congress chose. That approach is also appropriate because of the exclusive nature of the minimum interest Congress directed be conveyed to the State.

C. Appellants' Arguments Misread ARTA and/or are Irrelevant to the Review of the BLM's Decision

Appellants make several arguments challenging the propriety of BLM conveying an exclusive use easement to ARRC for the Property. They assert that BLM (i) impermissibly seeks to convey an interest the United States does not hold; (ii) has mischaracterized the scope of the easement it proposes to convey; and (iii) did not follow the correct procedures in deciding to issue the Proposed Patent. Each of these assertions is incorrect as a matter of law and fact. Appellants also assert that ARRC does not qualify to take ownership of the Property under Alaska law. Besides being an incorrect legal assertion, this argument is irrelevant to the issue

^{62/} See SOR at 14-15 (citing 43 CFR § 2807.21).

^{63/} See *Krier*, 92 IBLA 101, 103-104 (1986) (Burski, AJ, concurring) (BLM substantive regulation contrary to ANCSA would have "no force and effect" and would be a "nullity not binding on anyone.") (citing *Manhattan General Equip. Co. v. Commissioner*, 297 U.S. 129, 134 (1936)).

on appeal here, namely whether BLM's Decision passes legal muster.

1. The United States has the Exclusive Interest in the Property that BLM Proposes to Convey to ARRC

a. The United States Owns an Exclusive Railroad ROW and Easement in the Property

A recurring theme in Appellants' Statement of Reasons is that BLM is attempting to convey an exclusive interest in the Property to ARRC when the United States only holds a non-exclusive interest. Appellants further assert that such a conveyance is improper. They are wrong on both counts.

First, as correctly determined by the Senior Attorney, the United States owns an exclusive interest in the Property. The perpetual railroad right-of-way and easement the United States acquired in the Property from the Jarvis in 1965 meets ARTA's definition of an exclusive use easement. The United States purchased a "perpetual right of way and easement to construct, reconstruct, operate and maintain a railroad line and appurtenances . . ." in the Property. The United States still owned that interest in the Property in 1985, when federal Alaska Railroad properties were transferred to ARRC, and it has never conveyed any portion of that interest to any other party since that transfer. In short, the Property is subject to a perpetual railroad right-of-way and easement held by the United States.^{64/}

The perpetual railroad right-of-way and easement held by the United States in the Property is an exclusive interest. As the Senior Attorney noted, "[t]he wording of that easement . . . contains terms and provisions very similar to the requirements of an exclusive-use easement as defined in section 603(6) of ARTA, 45 U.S.C. § 1202(6) . . ."^{65/} Indeed, railroad

^{64/} Even Appellants do not argue that the United States does not hold a perpetual railroad right-of-way and easement in the Property. Instead, they incorrectly assert that the admitted railroad right-of-way and easement is non-exclusive in nature.

^{65/} App. Ex. 12, at 4.

easements are by their nature broad and exclusive. Settled law and public policy demonstrate that railroad easements provide exclusive possession and use with many hallmarks of fee title:

A railroad under an easement for railroad purposes acquires the right of exclusive possession and most of the qualities of a fee title subject to the limitation that an easement must be used for railroad purposes.

It would seem to be true generally that a railroad right-of-way partakes more of the nature of an estate in fee than an easement. A railroad right-of-way includes the actual possession or the right to the actual possession of the entire surface for every proper use and purpose in construction and operation of the road.^{66/}

As stated by another commentator:

Generally, after a railroad company's right of way has been located and constructed, it has the right to the uninterrupted and exclusive possession, use, and control of the surface of the land constituting its right of way and necessary for conducting its business. . . . As long as the railroad company occupies any portion of its right of way, it has the exclusive use and right of control coextensive with its boundaries.^{67/}

The U.S. Supreme Court and other courts have agreed with this interpretation. In *Western Union Telegraph Company v. Pennsylvania Railroad Company*, the Supreme Court stated:

A railroad right-of-way is a very substantial thing. It is more than a mere right of passage. [A right-of-way] is more than an easement [I]f a railroad's right-of-way was an easement it was 'one having the attributes of the fee, perpetuity and exclusive use and possession'").

A railroad's right of way has, therefore, the substantiality of the fee, and it is private property, even to the public, in all else but an interest and benefit in its uses. It cannot be invaded without guilt of trespass. It cannot be appropriated in whole or part except upon the payment of compensation. In other words, it is entitled to the protection of the Constitution, and in the precise manner in which protection is given.^{68/}

^{66/} G. Thompson, Commentaries on the Modern Law of Real Property (1965), §381, at 503, 512 (emphasis added).

^{67/} 74 C.J.S. Railroads § 225 (2002) (emphasis added; footnotes omitted). See also 65 Am.Jur.2d, Railroads, §104, at 403 (Railroad right-of-way easement is essentially different from any other in that it requires exclusive occupancy).

^{68/} 195 U.S. 540, 570 (1904) (emphasis added); see also *State v. Oregon Shortline Railroad Co.*, 617 F.Supp. 207, 210 (D. Idaho 1985) (Federally-granted railroad rights-of-way entitle railroads to the exclusive use and occupancy of those rights-of-way, which is necessary for

The basis for the exclusivity of a railroad easement, even where a separate underlying fee owner is present, lies in the nature and risk of railroad operations:^{69/}

The inherent risk facing trespassers around the operation of railroad tracks precludes any safe uses of the land available to the landowner holding the underlying fee. The danger to a trespasser from a fast-moving train, lacking the ability to stop suddenly, is the basis for the exclusivity of use. An easement for a railroad right-of-way differs in important respects from other easements, [in] that the right of possession of the right-of-way is exclusive in the railroad.^{70/}

In ARTA, Congress recognized these concerns and specifically explained why it guaranteed the transfer to the State of at least an exclusive use easement with respect to all portions of the Alaska Railroad ROW:

The Congress finds that exclusive control over the right-of-way by the Alaska Railroad has been and continues to be necessary to afford sufficient protection for safe and economic operation of the railroad.^{71/}

Railroad easements provide a railroad with exclusive use and possession of its right-of-way as a matter of law. Such exclusive rights are critical to ensure the safe and economic railroad and utility corridor operations in the ROW.^{72/} The legal and public policy principles described above apply specifically to the interest in the Property BLM proposes to convey to ARRC. As the Senior Attorney concluded:

Exclusive control [of the Property] is necessary to insure uninterrupted and safe operation of the railroad and to protect members of the public from physical harm. The exclusive-use easement defined in ARTA mirrors the general terms of a standard railroad easement and the terms of the Jarvi deed should be

railroads to function); *cf. Vieux v. East Bay Regional Park Dist.*, 906 F.2d 1330, 1333 (1990) (referring to post-1871 federal railroad rights-of-way as “exclusive use easements”).

^{69/} The railroad operating environment is inherently a hazardous one. Trespassing along railroad rights-of-way is the leading cause of rail-related fatalities in America, resulting in approximately 500 deaths each year. See ARRC Ex. I.

^{70/} Jeffery M. Heftman, *Railroad Right-of-Way Easements, Utility Apportionments, and Shifting Technological Realities*, 2002 Univ. of Illinois Law Review, Vol. No. 5 at 1409 (citing cases; emphasis added).

^{71/} See 45 U.S.C. §1205(b)(4)(A)(ii).

^{72/} See App. Ex. 12, at 4 (citing 74 C.J.S. Railroads § 225 (2002)); see also ARTA, 45 U.S.C. § 1205(b)(4)(A)(ii); see also *supra* Section II.A.2 (discussing ARTA legislative history).

construed to match the specific terms of the exclusive-use easement definition in ARTA.^{73f}

As demonstrated both by the plain language of the Jarvi Deed and the settled law applicable to railroad rights-of-way and easements, the property interest that BLM proposes to convey to ARRC provides the holder with an exclusive right to use and occupy the Property. That property interest equates to an exclusive use easement as defined in ARTA, 45 U.S.C. § 1202(6). Contrary to Appellants' assertions, therefore, the United States does have an exclusive interest to convey to ARRC.

b. Neither the 1875 Act nor the 1914 Act Apply Here.

In attempting to evade the obvious conclusion that the perpetual railroad right-of-way and easement applicable to the Property provides exclusive use and occupancy rights, Appellants invoke the 1875 General Railroad Right-of-Way Act^{74f} and the 1914 Act. Appellants' reliance on those statutes is misplaced.

Neither the 1875 Act nor the 1914 Act supports a conclusion that the property interest at issue here is less than an exclusive use easement. The 1875 Act has never applied to any property of the Alaska Railroad, including the ROW. The federal government established the original Alaska Railroad ROW pursuant to the 1914 Act, which does not mention, much less incorporate, the 1875 Act. The very nature of the 1914 Act - authorizing and directing the federal government to designate federal lands for a railroad to be owned and run by the federal government - is completely different from the purposes of the 1875 Act and other acts that granted lands to private railroad companies on which to operate railroads. Simply put, the 1875 Act is irrelevant to any aspect of the Alaska Railroad ROW, including the Property.^{75f}

^{73f} App. Ex. 12, at 4 (citing 74 C.J.S. Railroads § 225 (2002)).

^{74f} General Railroad Right-of-Way Act of March 3, 1875, 18 Stat. 482 (43 U.S.C. §§ 934-39).

^{75f} In any event, railroad rights-of-way granted under the 1875 Act are exclusive in the sense of allowing railroad companies exclusive use and occupancy of the right-of-way lands as long as they operate railroads within those corridors. See *supra* Section IV.C.1.a.

Appellants appear to assert that adding the Property to the Alaska Railroad ROW in 1965 constituted an exercise by the United States of a 1914 Act railroad easement reserved in Mr. Jarvi's 1950 homestead patent. That assertion is incorrect. The 1914 Act, while implicated in the establishment of the original Alaska Railroad ROW, is not at issue with respect to the Property. The Property was not part of the original ROW. The perpetual railroad right-of-way and easement in the Property was purchased by the United States in 1965 - decades after the original ROW was established - to realign the ROW in an area damaged by the 1964 earthquake. Neither the Jarvi Deed nor any other document describes that 1965 purchase as an exercise of an easement under the 1914 Act or even mentions that Act.

Moreover, the fact that the United States paid a significant amount of money - the equivalent of over \$180,000 in 2014 dollars - for the property interests it purchased from the Jarvis in 1965 to realign the ROW belies the idea that the United States was merely exercising an existing easement right. The railroad easement under the 1914 Act was already reserved by the United States when it granted the 1950 Jarvi patent. The United States could have exercised that interest in 1965. If that was the United States' intent, it certainly would have done so expressly and would not have paid such a substantial amount to acquire an interest it already held by virtue of its reservation under the 1950 patent.

Simply put, the United States was not exercising its reservation under the 1914 Act when it purchased its interest in the Property from the Jarvis in 1965. To the contrary, the plain language of the Jarvi Deed, the lack of any reference to the 1914 Act in that deed or other documents and the payment made by the United States for the Property point unmistakably to the conclusion that the United States purchased the perpetual and exclusive railroad right-of-way and easement in the Property, separate and apart from any rights it might have had under the 1914 Act. Appellants' assertions to the contrary simply do not hold water.

Even if Appellants' assertions that the 1914 Act applies here were correct - which they are not as explained above - railroad rights-of-way and easements acquired under that statute are exclusive. As explained in Section IV.C.1.a, *supra*, settled law holds that railroad rights-of-way provide the exclusive use and occupancy rights necessary to safely and economically operate a railroad. The legal and public policy principles and authorities underpinning this approach to railroad rights-of-way apply just as strongly to Alaska Railroad ROW designated by the United States under the 1914 Act as they do to any other railroad right-of-way.

Finally, even if the 1914 Act conflicted with ARTA's requirement to convey an exclusive use easement in the ROW, ARTA's provisions would expressly trump the 1914 Act. ARTA, 45 U.S.C. § 1213, flatly states that "[t]he provisions of [ARTA] shall govern if there is any conflict between [ARTA] and any other law."

c. The Requirement that the United States Convey an Exclusive Use Easement is Not Limited to Denali National Park or Areas Subject to Native Claims

Appellants try to avoid ARTA's requirement that ARRC receive at least an exclusive use easement for all portions of the ROW by arguing that the requirement only applies to portions of the ROW within Denali National Park and areas subject to Native land claims.⁷⁶ⁱ Appellants assert that other than those areas, the ROW was to be transferred as only a non-exclusive easement. This argument flatly misreads ARTA and makes no sense given ARTA's purpose of providing the State with a ROW allowing safe and economical railroad operations.

Congress recognized in passing ARTA that the United States owned most of the ROW in fee simple and would transfer it as such.⁷⁷ⁱ Fee simple title, by its nature, provides exclusive rights to the ROW. Congress also expressly recognized that the State needed exclusive control over the entire ROW in order to operate a safe and economical railroad. Consequently, ARTA

⁷⁶ⁱ See SOR at 11-13 (citing 45 U.S.C. §§ 1203(a)(1)(D); 1205(b)(4)(B)).

⁷⁷ⁱ See Section II.A.2, *supra* (describing legislative history of ARTA).

set the defined exclusive use easement as a safety net for situations where full fee ownership was not possible or not allowed under ARTA.

For example, since the U.S. National Park Service did not want the State to own land in fee within the boundaries of Denali National Park, Congress expressly provided in 45 U.S.C. § 1203(a)(1)(D) that the United States would transfer only an exclusive use easement in the ROW through Denali National Park.^{78/} The fact that Congress chose to limit the ROW to an exclusive use easement in Denali Park has no bearing on the level of title to be conveyed with respect to other portions of the ROW.

Appellants' argument that 45 U.S.C. § 1205(b)(4)(B) only applies to Native claims fails based on the plain language of that subsection and Section 1205 as a whole. Appellants first argue erroneously that 45 U.S.C. § 1205, in its entirety, applies only to Native claims. But Section 1205, entitled "Lands to be Transferred," deals with Alaska Railroad lands subject to claims from parties, both Native and non-Native, other than the federal government and the State that existed as of January 13, 1983.

Subsection 1205(b) nowhere provides that its coverage is limited to Native claims. Indeed, as described in Section II.A.2, *supra*, although some provisions in subsection 1205(b) relate to Native Village Corporation claims under ANCSA,^{79/} its plain language demonstrates that it covers lands subject to any third-party claims, whether Native or non-Native. Subsection 1205(b)(2) requires the Secretary of Interior to adjudicate all claims (not just Native claims) within two years of enactment of ARTA. Subsection 1205(b)(4)(B), asserted by Appellants to be

^{78/} See 45 U.S.C. § 1203(b)(1)(D); ARRC Ex. J, Congressional Record-House, Dec. 21, 1982, at 14 (exclusive use easement in Denali National Park was intended "to allow continued operation of the railroad [in Denali Park] without creating new administrative and management problems arising from the creation of new non-Federal inholdings.") ARTA also provides that the State's use of the ROW in Denali National Park would be limited to uses made of the ROW prior to the effective date of ARTA. 45 U.S.C. § 1203(b)(1).

^{79/} Subsections 1205(b)(1) and 1205(b)(3) deal with Native Village Corporation claims, giving them priority in adjudication and making such adjudications subject to certain prior agreements.

limited to Native claims, sets out specific administrative adjudication procedures for all claims on lands subject to ARTA transfer. It applies “where lands within the right-of-way, or any interest in such lands, have been conveyed from Federal ownership prior to January 14, 1983, or is [*sic*] subject to a claim of valid existing rights by a party other than a Village Corporation”

Subsection 1205(b)(4)(B), rather than being limited to Native claims, expressly applies to all claims to ROW lands that left federal ownership before ARTA was enacted and all claims to the ROW other than Native Village Corporation claims qualifying as “claims of valid existing rights.” Section 1202(3) defines a “claim of valid existing rights” as “any claim to the rail properties of the Alaska Railroad on record in the Department of the Interior as of January 13, 1983.” That provision unambiguously encompasses both Native and non-Native claims. In summary, subsection 1205(b)(4)(B) and its requirement to convey at least an exclusive use easement, apply to all portion of the ROW as to which any third party may have a valid claim.

Appellants’ argument that Congress intended to limit exclusive use easements to ROW located in Denali National Park or subject to Native claims also contradicts Congress’s purpose in transferring the Alaska Railroad to the State. Congress intended to supply the State with legal rights in the ROW that would allow safe and economical operation of a railroad. To achieve that end, it required in ARTA that the State receive the exclusive control of the ROW necessary to allow safe and economical railroad operations. It would undermine this very purpose of ARTA in guaranteeing exclusive control of the ROW if any portion of the ROW was conveyed subject to a non-exclusive easement. The ROW, like a chain, is only as robust as its weakest link. To convey any of the ROW without exclusive use rights would render the entire ROW potentially unsafe and uneconomical, thereby undermining the purpose of ARTA.

The meaning, intent and operation of ARTA are clear. As to all portions of the Alaska Railroad ROW, including areas subject to Native claims or other third-party claims, BLM must convey to the State at least an exclusive use easement so there is a protective floor in place for

the State to operate a railroad. ARTA cannot reasonably be interpreted in a manner that contradicts its plain language and its underlying purpose. Appellants' arguments seeking such an interpretation should be rejected.

d. ARTA's Requirement of an Exclusive Use Easement Clearly Indicates Congress's Intention to Supply the State with an Exclusive Interest.

Despite ARTA's plain language, Appellants argue that BLM cannot convey an exclusive use easement to ARRC because there is no clear indication such a result was intended.^{80/} They rely on the following quote from a California case: "[A]n exclusive easement is an unusual interest in land, amounting almost to a conveyance of the fee; and, therefore, no intention to convey such a complete interest can be imputed . . . in the absence of a clear indication of such an intention."^{81/} Even if that passage states a valid legal principle, it is harder to imagine a clearer indication of an intention to convey an exclusive interest in the ROW than ARTA's mandatory requirement to convey an exclusive use easement that is defined in extreme detail in the statute. Simply put, Congress, in passing ARTA, clearly intended to provide the State with a very specifically defined exclusive easement in the ROW.

2. Alaska Law Pertaining to ARRC's Acquisition and Use of Land are Irrelevant to the Issue of Whether BLM's Decision was Proper

Perhaps recognizing the fatal flaws in their arguments under ARTA, Appellants attempt to derail the Decision by asserting that ARRC is not eligible to receive a patent to the Property

^{80/} See SOR at 13 (citing state law cases).

^{81/} *Id.* (quoting *City of Pasadena v. California-Michigan Land & Water Co.*, 110 P.2d 983,985 (Cal. 1941). *City of Pasadena* actually undermines Appellants' position. That case involved underground water line easements which were clearly non-exclusive by their terms. *Id.* at 984-85. The court distinguished those easements from grants of exclusive surface rights-of-way (such as those at issue here) and noted that the water line easements could have been made exclusive by using clear language to that effect. *Id.* at 986. Similarly unavailing to Appellants is *Myers v. U.S.*, 378 F.3d 696, 702 (Ct.Cl. 1967), which held that absent clear statutory language or legislative intent, a statute repealing an earlier statute did not affect reservations and right-of-way grants under the earlier statute. Here, however, ARTA was clearly intended to grant exclusive use easements in the entire ROW regardless of prior reservations or claims.

because it failed to obtain a State legislative finding that the land is needed for railroad purposes as purportedly required by AS 42.40.285(5).^{82/} This argument fails for several reasons.

Most importantly, ARRC's eligibility to receive the Property is irrelevant to BLM's Decision. ARTA requires BLM to patent to ARRC the entire federal interest in the Property. Nothing in ARTA conditions that obligation on ARRC's eligibility under Alaska law to own the Property. Even if ARRC was ineligible to receive the Property under state law, which is not the case, any remedy presumably would lie under Alaska law following the issuance of the patent. Because ARRC's eligibility under Alaska law to receive the Property is irrelevant to BLM's duty to transfer under ARTA, Appellants' attempt to defeat the Decision on that grounds must fail.

In addition, Appellants' assertion that ARRC must obtain a legislative finding before obtaining transfer of the Property is legally incorrect. Transfers of Alaska Railroad land under ARTA are expressly excepted from the statutory requirement that ARRC obtain a legislative finding before acquiring land in a municipality.^{83/} The proposed transfer of the Property to ARRC is expressly being made under ARTA, meaning that ARRC is eligible for the Proposed Patent.

An assertion made by Appellants' in conjunction with their AS 42.40.285(5)(c) argument should be mentioned to eliminate any potential confusion. Appellants postulate that ARTA provides for conveyance of "two different types of easements"; they assert that 45 U.S.C. § 1202(6) provides for grants of exclusive use easements, while 45 U.S.C. § 1202(10) provides for grants of "1914 easements."^{84/} They go on to argue that BLM mistakenly based its conveyance decision on subsection 1202(6) instead of on subsection 1202(10).^{85/} These

^{82/} See SOR at 6-7.

^{83/} See AS 42.40.285(5)(c).

^{84/} See SOR at 6-7. The latter assertion apparently is intended to mean that subsection 1202(10) provides for easements based on the Act of 1914.

^{85/} See *id.*

assertions are nonsensical. Nothing in Section 1202, which is the definitions section of ARTA, provides for grants of easements. Subsections 1202(6) and 1202(10), respectively, define “exclusive use easement” and “rail properties of the Alaska Railroad.” As definitions, neither subsection is - or could be - authority for creating or conveying easements.^{86/}

In any event, BLM did not cite either subsection of Section 1202 as authority for the conveyance. Instead, BLM properly cited three other provisions of ARTA as bases for its decision to convey the Property: 45 U.S.C. § 1203(b)(2), 45 U.S.C. § 1203(b)(3) and 45 U.S.C. § 1205(b)(4)(B).^{87/} Those subsections set out the process for issuing interim conveyances and patents to Alaska Railroad lands under ARTA, require conveyance of at least an exclusive use easement in the ROW, and guarantee that the federal government will defend the title conveyed.^{88/} Notwithstanding Appellants’ erroneous assertions regarding ARTA’s definitions, the ARTA provisions cited by BLM provide a valid basis for the Decision.

3. Even if the United States Does Not Hold Exclusive Rights to the Property, it Must Nevertheless Convey an Exclusive Use Easement to ARRC

As explained above, the United States holds an exclusive interest in the ROW that BLM is obligated by ARTA to convey to ARRC. But even if the United States’ interest in the Property was less than an ARTA exclusive use easement - which it is not - that would not change DOI’s obligation to convey to ARRC at least an exclusive use easement.

ARTA unambiguously requires BLM to convey to ARRC not less than an exclusive use easement in the Property because it is located in the ROW. That obligation exists regardless of the United States’ legal interest in the Property.^{89/} Congress underscored the guarantee of

^{86/} The only reference to the 1914 Act in subsection 1202(10) is a proviso that unexercised reservations in favor of the U.S. under that Act are excluded from “rail properties.”

^{87/} See App. Ex. 1, at 1, 4, 5.

^{88/} See *supra* Section II.A.2.

^{89/} See App. Ex. 12, at 4.

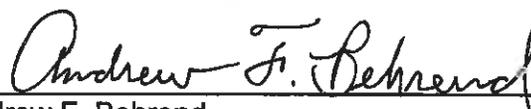
conveyance of at least an ARTA exclusive use easement by requiring the federal government to defend ARRC's title against claims that it owns less than such an interest in the ROW.

If BLM needs to acquire an additional interest in the Property to effectuate ARTA's exclusive use easement requirement, then ARTA would function to effect an inverse condemnation of any additional interest necessary to meet that requirement. Such an inverse combination might require the United States to compensate Appellants for the difference, if any, between the values of an ARTA exclusive use easement in the Property and the interest conveyed to the federal government by the Jarvi Deed. Even if that happened, the ultimate result would be the same: BLM would convey to ARRC via patent at least an exclusive use easement in the Property.

V. CONCLUSION

For the foregoing reasons, BLM's Decision was proper as a matter of law and ARRC respectfully requests that the Board affirm it and allow the Proposed Patent to become final.

DATED this 11th day of March, 2014.



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CERTIFICATE OF FILING AND SERVICE

I certify that on March 11, 2014, I filed and served this Intervenor Alaska Railroad Corporation's Answer to Appellants' Statement of Reasons, as indicated below, on:

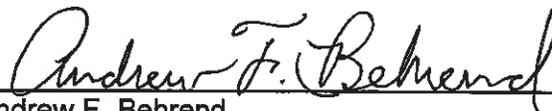
FILED:

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Interior Board of Land Appeals
801 North Quincy Street, Suite 300
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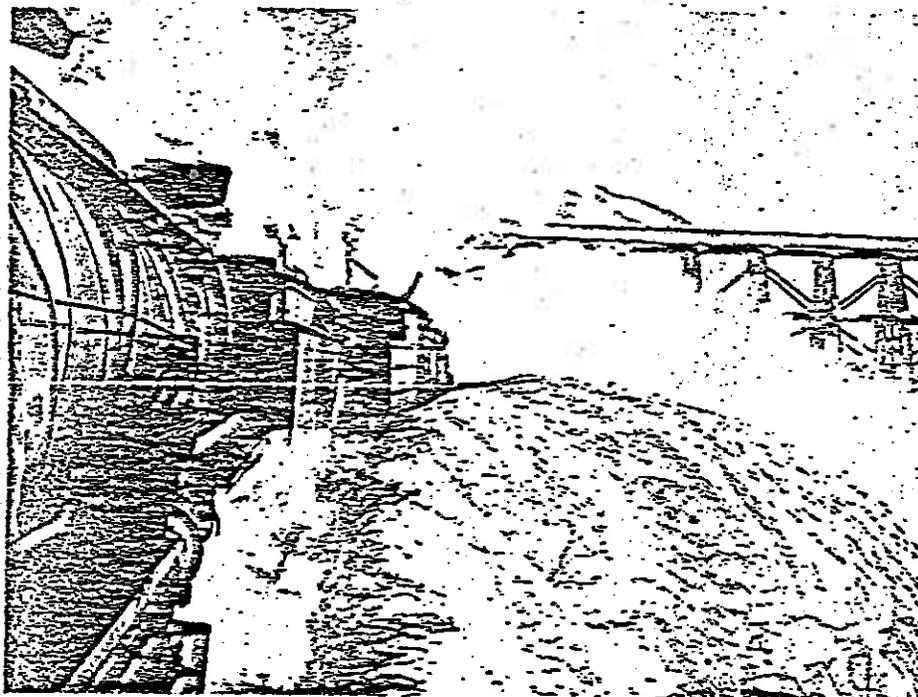
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The Alaska Railroad: Probing The Interior



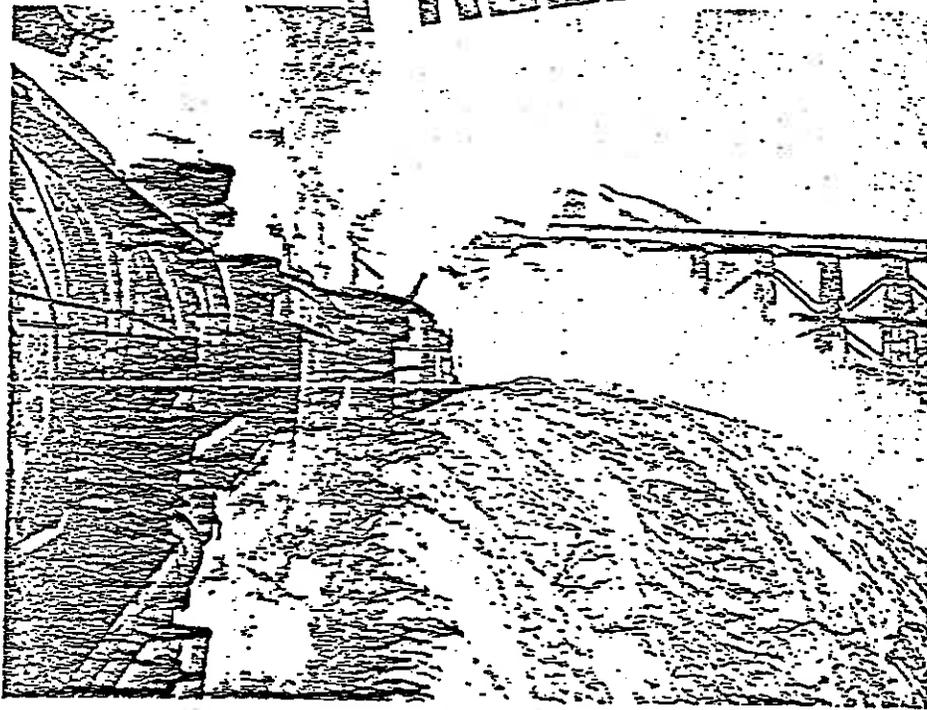
PRELIMINARY

History and Archaeology
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Miscellaneous Publications

Office of Statewide Cultural Programs
Alaska Division of Parks
323 E. Fourth Avenue, Anchorage

October 1975

PRELIMINARY



Winter scene in the Loop District, Alaska Railroad.

Researched and written by Charles Michael Brown
Edited and prepared by Michael S. Kennedy

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October 1975

PREFACE

On January 6, 1975, Walker T. Johnston, General Manager of the Alaska Railroad, formally requested the Office of Statewide Cultural Programs, Alaska Division of Parks, to conduct a survey of historical sites and structures on the property of the Government railroad. In early March, 1975, a staff researcher of the Alaska Division of Parks was assigned to the project. After five months of research and writing, the researcher completed the study, which was then submitted to the Alaska Historic Sites Advisory Committee and the Alaska Railroad for review.

In undertaking this project, the researcher, Charles Michael Brown, proposed to locate, describe, and evaluate historical sites and structures on the property of the Alaska Railroad in accordance with the criteria of the National Register of Historic Places. Unfortunately, the task was only partially completed. Once a list of structures was compiled for public documents, maps, newspapers, and various secondary sources, the researcher arranged a rail tour with Alaska Railroad officials in order to assess and record the present condition and historical integrity of the structures. Such an inspection of the line between Seward and Anchorage was made on May 6, 1975.

In the case of the line between Anchorage and Fairbanks, representatives of the Alaska Railroad were unable to provide transportation services for the researcher. Before any structure on the line north of Anchorage is subjected to alterations or demolition, the structure should be inspected and evaluated by an historian in accordance with the criteria of the National Register of Historic Places. The exceptions, of course, are those sites and structures on the old Eska, Chickaloon, and Chatanika branch lines, which are no longer a part of the Alaska Railroad; as well as those bridges and depots which the researcher inspected and evaluated on July 23-24, 1975 and included in Part III of this study. Sites and structures which should be inspected in the near future are so indicated in the "Inventory of Sites" of this study.

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State Historian

PRELUDE

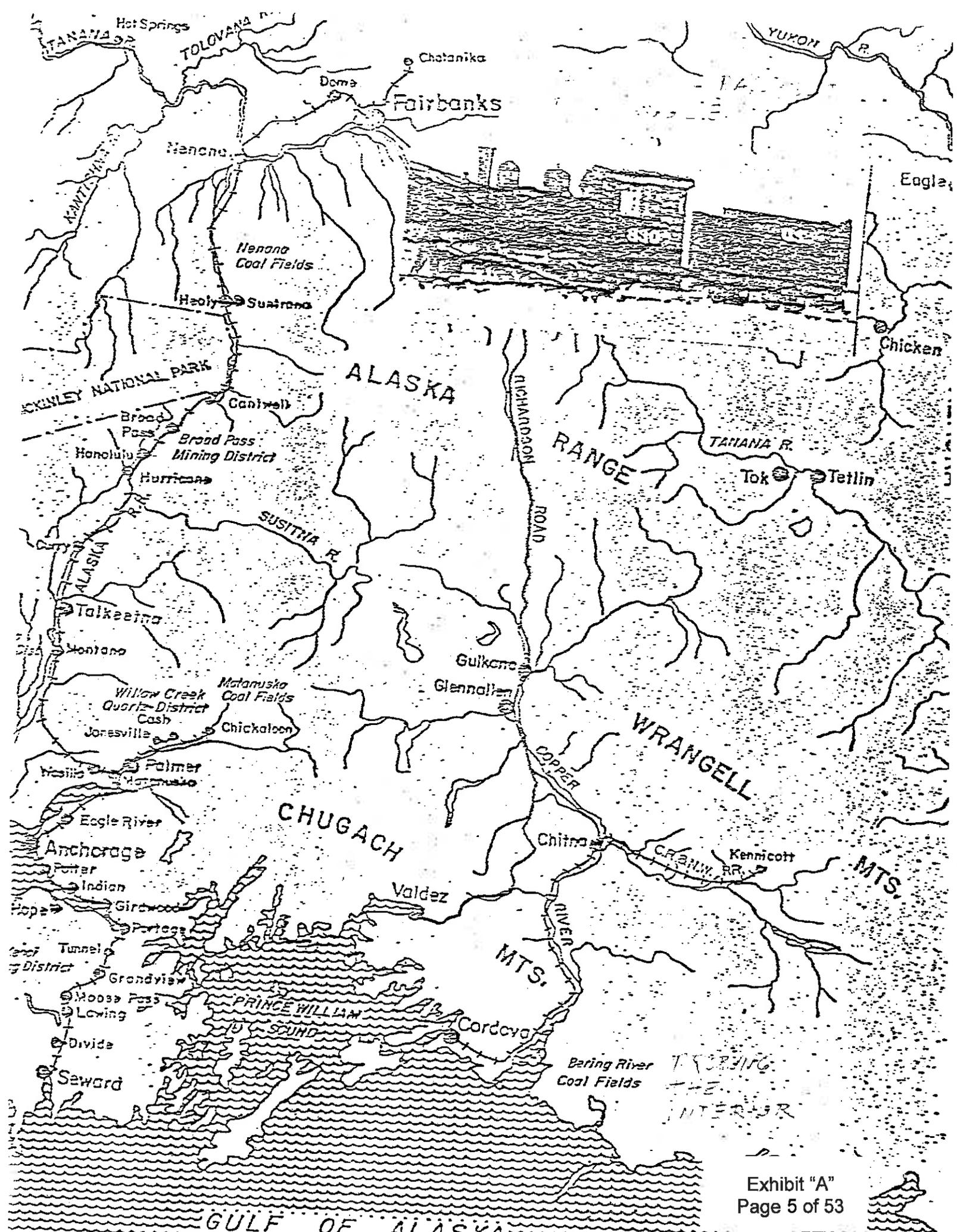
The Railroad Era of Alaska

The long-standing railroading era of the contiguous United States occupied much of the expansionist 19th century and culminated with that period of the westward movement which has been aptly labeled "Manifest Destiny". Asa Whitney, five years before the 1849 gold strike in California, proposed the first transcontinental railroad--from the Great Lakes, via South Pass, Wyoming, to the small port of Seattle, connecting the Atlantic and Pacific Oceans. Even before the Civil War, Congress had pledged land grants of some 28,000,000 acres for 50 railroads in and through the territories west of the Mississippi, whose total trackage was already 8,647 miles. Four of these systems eventually became transcontinentals, and others were vital interstate connections. The nation's manifest destiny witnessed development of one of the world's most complex rail systems--some 260,000 miles of track, tens of thousands of lines, 40,000 stations, interties and an incredible array of rolling stock--(excluding extensive rural, interurban and street railroads); which in turn merged and fed into the several vast Transcontinental Railroads. Land grant railroads eventually received a total of 131,000,000 acres of public lands from Congress, as a subsidy to promote development and financing. Generally all of this--particularly the paralleling of the continent 3,000 miles from ocean to ocean--occurred in the late 40-year westward expansion period between the Civil and the Spanish-American Wars. (Union Pacific, 1864, Santa Fe, 1871; Great Northern, after 1900).

Compared to this, Alaska's "Railway Age"--certainly its dominant era--was feeble and late. But it was just as vital to the last frontier as other rail systems were to the western frontier. As with most Alaskan development, the Frontier (and only) Railroad Era followed, generally, the earlier American pattern. But as in other things it came considerably after the nexus of the railroading surge of the "lower 48"; as well as for Mexico and Canada in a similar time frame.

Alaska railroading dawned with the 20th Century. It speedily reached its apogee in the dramatic, but short span of only 16 years. Despite the fact that almost half a hundred railroad ventures were proposed and promoted--and at least 39 were incorporated--only 9 Alaskan railroads (and a few of these hardly dignifying the term) were actually constructed and operated; albeit for a very brief period in history.

Despite undisputed need, before the end of the first quarter of this century (actually after 1923) railroading in Alaska meant essentially only three lines: Number one, the dominant government-owned and operated Alaska Railroad; 2) twenty miles of the Canadian White Pass and Yukon; and 3) the spectacular and expensive 195 mile Morgan-Guggenheim syndicate monopoly Copper River & Northwestern Railway serving the Kennicott Copper Mining Company interests. The others were:



The rival Alaska Central (1900-1904) and Alaska Northern (1904-1915) Railroads (basically one and the same, like the chicken and the egg) at the southern or seaport terminus; and the colorful Falcon Joslin's great dream for the Interior (1904-1917) the northern or interior terminus, the Tanana Valley narrow-gauge, absorbed in development of the Alaska Railroad. The others: Wild Goose, Council City & Solomon River and Seward Peninsula-Nome gold fields lines--were phasing out; as had, or would happen soon, to Yakutat Southern, Cook Inlet Coal, and the six-mile Katalla & Carbon Mountain Railway Co., fish and coal hauling venture which was abandoned long before it was fully operative.

The first railroad on Alaskan soil was, enigmatically, the White Pass and Yukon, a product of the Klondike Gold Rush. It represented a remarkable engineering feat--accomplished with astonishing speed, financed with British capital and built for Canada's benefit. (Although it more directly benefitted Alaska). The WP & Y provided low cost, heavy goods transport from the U.S. port of Skagway into the rich gold region of the upper Yukon River headwaters. But despite the inexorable advantages to the United State of its torturous 102 miles of rail, only 20.4 were in Alaska. The initial franchise by three Victoria, B.C. business men was purchased by the London bankers, Close Brothers in March 1898. To be on the safe side Close Brothers obtained the Alaska right-of-way by having five Americans incorporate the "Pacific & Arctic Railway & Navigation Co." in West Virginia, the President being their Chicago-based Samuel H. Graves. He bought the George Bracket wagon toll road (from Skagway to White Pass) for \$100,000, hired 1000 men and launched construction of the Alaska segment on May 27, 1898. This Alaska-based span covered the dizzying, rocky mountain drop from desolate, snowcapped White Pass at the Canadian border down to sea level, the ice-free Lynn Canal docks. The White Pass and Yukon Railroad initially was mining-oriented. And so too, were all but one of railroads actually built in Alaska. In slightly more detail, the Alaskan lines were:

The Copper River and Northwestern--\$23,000,000 worth--started in 1905 and completed in 1911, out of the seaport of Valdez initially, but finally from Cordova. An incredibly difficult 195 miles into the mountain-river glaciated interior terrain, it tapped the copper-silver lodes of the Kennecott-Guggenheim-Morgan Alaska Syndicate Interests and was entirely mining oriented. The final CR & NW train run was November 11, 1938, when the mines were finished. Its peak years were from 1911 to the end of World War I.

2. The Seward Peninsula Railroad (80 miles) and its Paystreak Branch railroad (6.5) were both narrow-gauge. They were vital to one of the world's most spectacular 1898-1900 gold strikes on the bleak tundra and beaches of the isolated Seward Peninsula, off the Arctic Bering Sea. Also there were two other lines to the South, the Council City & Solomon River and the Wild Goose of Ophir Creek. All four were entirely gold-oriented, resulting from the rich discoveries there after 1898 and all were built and operating soon after 1900.

3 & 4. Alaska Northern and Alaska Central Railroads which overlapped and in turn were absorbed with beginning of construction of the Alaska Railroad; from the southernly ice-free port of Seward, eventually, to service the more frigid interior regions north of Mt. McKinley (pre-

INTRODUCTION

In his prize-winning book The Age of Reform, Richard Hofstadter analyzed the American Populist and Progressive movements in the late nineteenth and early twentieth centuries as a popular assertion of agrarian, Yankee-Protestant ideals which seemed threatened by the impersonal forces of industrialization and urbanization. Alarmed by the increasing numbers of immigrants, the power of the newly rich, the widespread corruption in the cities, the questionable future of the small farmer, the Progressives moralized on the need for economic and social reforms. In Hofstadter's words, the Progressives wanted "to restore a type of economic individualism and political democracy that was widely believed to have existed earlier in America and to have been destroyed by the great corporation and the corrupt political machine; and with that restoration to bring back a kind of morality and civic purity that was also believed to have been lost." Abandoning traditional suspicions of big government, the Progressives demanded national legislation to check and regulate the activities of the large corporations, and thereby preserve the social and economic opportunities of an earlier America.

Much of the history of Alaska since the Klondike Gold Rush of 1897-98 can be understood in light of the Populist and Progressive experience. Since the Klondike Gold Rush, Alaska was seen as a land of opportunity, a pioneer country where the "man on the make" could still strike it rich. In the mid-1900's, however, the specter of big business was raised in the form of the Alaska Syndicate, a powerful combination of corporations popularly believed to be devoted to the monopolization of Alaska fishing, railroad, steamship, copper, gold, and coal mining industries. Such incidents as the "Keystone Canyon Clash" in 1906 and the ensuing trials confirmed the belief that the corporations would stop at nothing to control and exploit the natural resources of Alaska.

The coal-land withdrawals in 1906 and 1909, the creation of several forest reserves, and the extension of the Interstate Commerce Commission's authority to Alaska in 1911 were important checks on the corporations in Alaska. These actions, however, also had the effect of blocking practically all industrial developments in Alaska. Soon, Alaskans were complaining that Eastern faddists were reserving Alaska to death, that the Government policies of conservation restricted the economic development of Alaska.

Following the Ballinger-Pinchot controversy and the "Cordova Coal Party" in 1911, both events receiving wide publicity in the muckraker press, the Government took up the question of Alaska's economic future. In the political turmoil of the early 1910's, the Government searched for a means to provide for the development of Alaska industries by small entrepreneurs rather than the large corporations. This search yielded three proposals. First, Alaska should have an Alaska Development Board

"Had it happened that way the Copper River Valley would be a mecca today for hunters and fishermen from the lower 48, its lodges and resorts advertised in brochures on the counters of New York travel agencies. And there would have been no Anchorage. Cordova, solidly dug into the rocky slope about Prince Williams Sound, would reign as Alaska's number one city."

"Cordova's ill-fortune did not end with the broken dream of being the railhead for the Alaska Empire's artery of steel. Hope flared anew with plans to convert the old rail bed to a modern highway linked to the Richardson to open a truck route to Fairbanks. This would uncork the hunting, fishing and recreational potential of the valley (and significantly improve Interior transportation).

"But the 1964 earthquake blasted the dream by destroying several of the steel railroad spans whose existence was essential to financing the highway construction."

The reality becomes even more pertinent in 1975 with the building of the trans-Alaska pipeline. Had AEC recommendations been followed, a new era of railroading in Alaska would now be underway.

Perhaps there may be a return to railroading in Alaska. If so it lies in the future. But at the turn of this century, there was no doubt in most minds that the transportation dilemma of The Great Land would be solved by rails. It was almost universally agreed that this was the only pragmatic, viable means of economic and social advancement; for best exploitation and utilization of treasuries of untapped Alaska natural resources; and improving general commerce.

The Railroad Era of Alaska, therefore, is a tantalizing enigma of history. Since it happened, and is documented history, it is our concern. Such facts may help predicate the future. Perhaps not; but as history alone it is significant and fascinating; yet requiring extensive further study. This, then, is a beginning of that applied knowledge, leading to possible preservation of some of the historic properties which resulted from Alaska's "railroad age".

Michael S. Kennedy

which would consolidate and coordinate Federal activities in Alaska. Second, the Alaska coal-lands should be opened to development with the adoption of a coal-land leasing law. And finally, the Government should construct and own a system of public railroads in Alaska. According to the Progressives, these measures would facilitate the development of Alaska industries, and yet spare Alaska from the worst effects of industrialization.

This study presents an historical sketch of the Government railroad in Alaska to 1925. In addition, the study includes historical summaries of two private railroads in Alaska, namely the Tanana Valley Railroad and the Alaska Central Railway, both of which were later incorporated in the Government railroad system. The study then closes with an inventory of historical sites and structures, and a description of certain structures which deserve entry to The National Register of Historic Places.

Chas. C. ...
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Falcon Joslin and the Tanana Valley Railroad

"A railroad system is like a plant; once you lay down the trunk line, it grows." (US Senate April 1912: 31) When Falcon Joslin, president of the Tanana Valley Railroad Company, made this statement before a Senate committee deliberating transportation problems of Alaska, he endorsed the popular impression that railroads were indeed the key to the economic development of frontiers. Pioneer railroads brought reduced transportation rates which in turn allowed settlers, miners and the like to ship heavy machinery into the wilderness for extensive and intensive development of agricultural lands, gold, copper, and coal mines, etc. In other words, railroads brought Progress, which in turn brought more railroads. That Joslin should adopt this popular view of railroads was somewhat paradoxical. His own enterprise, the Tanana Valley Railroad, was founded with the idea that the road would grow with each passing year. Like most Alaska railroads, however, the Tanana road was a failure almost from the very beginning.

A participant in the Klondike gold rush of 1897, Joslin first engaged in railroad construction in the North during the years 1902 and 1903. In that time he built twelve miles of narrow-gauge road linking a coal mine which he had leased near Dawson with the Yukon River. On hearing news of the Fairbanks gold rush, Joslin sold his unprofitable Canadian railroad in 1904 and rushed to the Tanana Valley. Soon after his arrival he again found himself making plans for another railroad project. (US Senate April 1912: 25)

As Joslin early recognized, the Tanana Valley promised years of gold production. As an experienced railroad builder, he also saw the excellent opportunity in constructing a light road from Chena, where river steamers unloaded heavy freight directly onto the banks, to the junction of Pedro and Gilmore Creeks, near the site of one of the richest gold strikes in the district. Prospectors were paying at a minimum \$3 per ton-mile in transporting freight by team from Chena to their diggings. A railroad could reduce these rates substantially, and perhaps monopolize heavy freight traffic from navigable waters to the mines. (Joslin 1909: 247) It was an exciting proposition, leading Joslin to believe that he could construct twenty or thirty miles of road a year. The road could be extended either to Circle City or Rampart, thence to Nome. An even more attractive possibility was to extend the road up the Tanana Valley to the International Boundary, there connecting with a proposed Canadian line from Haines. This line would not only provide year-round connections with Pacific ports; but also tap various coal fields and "a mountain of undeveloped iron ore" near tidewater. (Joslin 1909: 245, 247; US Senate April 1912: 22)

With high expectations, Joslin made preliminary surveys, collected data, and then left the Tanana Valley for London in search of financial backing. He found it in the Close Brothers & Company, the same financial house which invested in the White Pass & Yukon Railway. Securing nearly \$400,000 and a tentative promise of more money to extend the road periodically, Joslin thus organized the Tanana Mines Railroad under the laws of Maine with himself as president. (US House 1903: 12; US House, The Building of Railroads...1913: 44)

In the middle of May 1905 river steamers arrived at Chena with equipment and materials for the new railroad. Construction began immediately with common laborers hired at \$7 a day, which Joslin complained were "the highest wages in the world" but necessary to attract men from the placer mines. (US House April 1912: 9) From Chena, the base of operations, the narrow-gauge road was pushed about twenty-one miles to Gilmore and Pedro Creeks, a 4.8-mile branch to Fairbanks leaving the main line from a point five miles north of Chena. On July 17, 1905, citizens of Fairbanks gathered to hear District Judge James Wickersham's address before the driving of the golden spike by Virginia Barnette, daughter of E. T. Barnette, one of the earliest settlers of Fairbanks. (Wickersham 1905: 3-4) Within two months, then, Joslin's men had constructed twenty-five miles of a light road at about \$20,000 a mile. Much of this expense, Joslin noted, was due to high freight rates: a forty-pound rail, for example, cost more than twice its actual value to ship from Milwaukee to Chena. (Joslin 1909: 247; US Senate April 1912: 7-9)

Shortly after his railroad was placed in operation, Joslin returned to the States in hopes of finding money to extend his road. Unable to raise money through the Close Brothers, which was then investing heavily in a railroad up the Copper River and wanted out of the Tanana railroad, Joslin organized the Tanana Valley Railroad Company. Selling bonds at a considerable discount chiefly through the Knickerbocker Trust Company of New York, Joslin eventually raised \$700,000 from American and European subscribers and paid his debt to the Close Brothers. Thus on January 1, 1907, the property of the Tanana Mines Railroad Company was transferred to the new company. Once these financial negotiations were concluded, Joslin then appealed to Congress for relief from the license tax of \$100 per operating mile. On March 2, 1907, Congress suspended the tax as applied to the Tanana railroad for five years. With this boon Joslin hurriedly returned to Alaska to prepare for spring construction. (TVRR Annual Report 1908: 1; TVRR Annual Report 1911: 3; US Senate April 1912: 19,22; US House, The Building of Railroads...1913: 44,50)

Joslin originally intended to extend his railroad only twelve miles; but after surveys demonstrated increasing mining activities in the Chatanika Valley, he decided upon twenty miles of new road. Completed on September 29, 1907, when the last spike was driven at Chatanika, the narrow-gauge road extended from a point near Gilmore Station down the valley of Fox Gulch, continuing on a line between Vault City and Dome City and then through the Chatanika Valley to the town of

Chatanika. Although the road cost more than \$330,000, exceeding Joslin's original estimate of \$167,000, it tapped several placer mining districts previously without access to navigable waters. Believing the new extension had lessened the effects of the financial Panic of 1907, Joslin predicted that further extensions would be made in a few years. (TVRR Annual Report 1908: 1-3)

However, Joslin's optimism was premature. After 1909, the year of its greatest earnings, the fortunes of the Tanana railroad began a persistent, almost uninterrupted, decline. There were many causes for the decline. The Alaska Road Commission having just completed a road system in the Fairbanks district, Joslin was periodically forced to reduce freight and passenger rates in order to compete with automobile and wagon transportation companies. Also, the railroad invested in its own wagon transportation business, hauling freight and passengers at a distance of one to five miles to and from certain railroad stations. (TVRR Annual Report 1909: 1) Although these measures produced a slight rise in passenger traffic, the railroad could not compete with the frequent services of automobiles in short distances. The Government road from Fairbanks to Fox, for example, was only eleven miles in distance; the railroad route was eighteen miles. (TVRR Annual Report 1910: 1) To offset the effects of automobile competition, Joslin ordered an Edison-Beach Electric Storage Battery Passenger Car as a popular attraction and inexpensive means of transportation. At first, the experiment appeared a success, Joslin noting in 1912 that "automobile competition for passenger business has practically ceased." (TVRR Annual Report 1912: 1) The increase in passengers was misleading; there was no corresponding increase in passenger earnings. Most passengers made use of the passenger car for short distances at low rates. Even another substantial reduction in passenger rates in 1913 could not offset automobile competition. (TVRR Annual Report 1913: 1)

In general, the same decline in passenger earnings on the Tanana Valley Railroad was reflected in freight transportation. Seldom a year passed without Joslin expressing hopes that quartz gold production, the primary source of freight revenue, would develop in the Fairbanks district. Due to limited capital, only a few stamp mills were operating in 1910. (TVRR Annual Report 1910: 1; Annual Report 1911: 2) When in 1912 a number of new stamp mills were erected, Joslin observed that the railroad would benefit indirectly from the quartz mines, which were five to ten miles beyond the railroad line. He wanted to construct a ten-mile branch directly to or within a mile of several stamp mills; but again was unable to raise the money. (TVRR Annual Report 1912: 2-3) In 1913, however, many of the new stamp mills failed, evidently because of lack of capital and excessive speculation. Joslin contended that most would have succeeded if cheap means of transportation from Pacific ports to the Tanana Valley had been available. In any case, Joslin periodically reduced freight rates in order to attract ore shipments from the few mills working regularly. He was never able to capture the market. (TVRR Annual Report 1913: 1-2)

In addition to the revenue losses from automobile and team competition as well as the stagnation of gold production in the Fairbanks district, the Tanana railroad was also subject to high maintenance costs. Each winter exacted heavy damage on roadbeds, ties, and timber trestles. Excessive snowfalls sometimes curtailed railroad traffic for several weeks. In 1911, 1913, and 1916 severe winters caused a significant rise in fuel consumption and considerable labor expense in removing snow and ice from steel rails. The winter of 1911 was particularly expensive, hard-packed snowdrifts blocking the line for three weeks on one occasion and for shorter periods at other times. After experiencing that winter, Joslin pleaded "that such season may not occur again for many years." (TVRR Annual Report 1911: 2) With the arrival of spring, however, rivers flooded the low roadbed and washed out trestles.

Of course, whenever the Chena River flooded, the Tanana railroad underwent heavy losses in passenger and freight business. During the summer months the railroad relied upon "steamboat freight" shipments between Chena and Fairbanks. When, however, the Chena River was high, steamboats proceeded directly to Fairbanks.

In view of the persistent decline in railroad revenues, Joslin took an active role in provoking the Government's interest in Alaska railroads. In 1909, when President Taft endorsed Government aid for Alaska railroads, Joslin began a long campaign for a Government-aided railroad from the Gulf of Alaska to the Tanana Valley. Like many other interested Alaskans, he believed that the Copper River & Northwestern Railway and the Alaska Central Railway would have pushed a road into the Tanana Valley if the Government had not withdrawn the coal-lands in 1905 and 1909. A trans-Alaska railroad would have reduced transportation costs from West American ports to interior Alaska, and thereby stimulated business in the Tanana Valley. Moreover, without coal, the quartz mining industry in the Tanana Valley could only develop slowly. The only source of energy in the Tanana Valley was wood, and that was being rapidly depleted. Reasoning thus, Joslin at first urged the Government to extend its credit to private railroads in Alaska. Later he supported Government construction, but not ownership of an extension of the Copper River & Northwestern Railway from Chitina to the Tanana Valley. As chairman of the Alaska committee of the American Mining Congress and as a witness before numerous Congressional hearings, Joslin played an important role in bringing about the Government railroad. Ironically, the Government railroad was the coup de grace for Joslin's railroad.

In the fall of 1914 Joslin reported that the Tanana Valley Railroad Company was forced to borrow money from a Fairbanks bank in order to meet the semi-annual installment on its bonds falling due June 1, 1914. Considering that Congress had relieved all Alaska railroads of the license tax with a tax of one percent on gross earnings, and that wages and salaries on the Tanana railroad were reduced to the minimum, Joslin believed that "a substantial and rapid business improvement would follow," since the Government had at last decided to construct a trans-Alaska railroad. The expected revival of business did not occur. Indeed, the

coming of the Government railroad had just the opposite effect, some mining operators reducing operations and postponing the opening of new mines until the Government railroad brought lower rates for fuel, supplies, etc. When the second semi-annual installment fell due in December 1914, Joslin again admitted that he was unable to make payment without borrowing money. (TVRR Annual Report 1914: 2-3)

Joslin hoped that the Government railroad would terminate at Chena, allowing the Tanana Valley Railroad to survive as a transporter of freight from Chena to Fairbanks. However, during the summer of 1915, Government survey crews located a line into Fairbanks which paralleled the Tanana railroad for a distance of fourteen miles. Joslin thus entered negotiations with the Government whereby the latter would purchase the entire Tanana Valley Railroad or purchase that portion which paralleled the Government railroad. The Tanana Valley Railroad Company would reserve trackage rights on that portion. (TVRR Annual Report 1915: letter) Apparently these negotiations were unsuccessful, for in 1916 Government forces began grading operations on a line paralleling the Tanana railroad. Joslin made a "strong protest" against the work until the Government first made some satisfactory compensation and a traffic connection with the Government railroad. As a result, the Government changed its course and began grading from Happy Station south to the new town of Nenana, which, incidentally, drew a considerable portion of the Fairbanks population and further reduced the revenues of the Tanana Valley Railroad. (TVRR Annual Report 1916: 1-2)

As early as 1912 the Government apparently considered the purchase of the Tanana Valley Railroad as a branch to a trans-Alaska railroad. Without purchasing the Tanana railroad, the Government would have been forced to arrange a joint right-of-way occupancy. On the other hand, if the railroad was purchased, the ten miles of road from Chena to Fairbanks could be converted into a standard-gauge road by simply laying a third rail. Besides, adequate terminal facilities existed and it was recognized that the road would be a valuable feeder to the mainline. (US House 1919: 193-94)

Negotiations continued through the spring of 1917. Finally, on June 2, 1917, Secretary of the Interior Lane announced that the Government was authorized to purchase the property of Tanana Valley Railroad Company at a price not to exceed \$300,000. Until the transaction was formalized, the Alaska Engineering Commission would lease and operate the road. Five months later the Tanana Valley Railroad was sold for \$200,000 in foreclosure proceedings at Fairbanks to Benjamin Allen, president of the Columbia Trust Company and one of the vice-presidents of the Tanana Valley Railroad Company. With the title cleared, the railroad was then turned over to the Alaska Engineering Commission for \$300,000, or about \$6,818 per mile. (The Nenana News November 3, 1917: 2; US House 1919: 194) The Tanana Valley Railroad, estimated to have cost the private owners about \$867,000, was now public property.

After the sale of the Tanana Valley Railroad, Falcon Joslin made plans for another Alaska railroad. In 1917 he leased several quartz mining claims on Ester Dome near Fairbanks and developed, with George C. Haselet of Cordova, the property of the Chilkat Oil Company near Katalla. In 1918 Joslin organized the Bering River Coal Company and announced his intention to construct a sixty-five-mile railroad from a Bering River coal mine to the Copper River & Northwestern Railway, a Morgan-Guggenheim enterprise. In 1923, however, the United States Navy again tested the Bering River coal and found it unsatisfactory for steaming purposes. The Bering River coal company thus allowed its coal-land lease to expire. Joslin of course decided not to build the railroad. At any rate, Joslin remained active in Alaska politics as a director of the Alaska Steamship Company (another Morgan-Guggenheim enterprise) a leading member of the Seattle Chamber of Commerce, and head of the Chilkat Oil Company. (The Nenana News June 9, 1917: 2; October 13, 1917: 2; November 3, 1917: 2; The Nenana Daily News July 3, 1918: 1)

In closing, the story of the Tanana Valley Railroad is not unlike that of several other minor Alaska railroads. Insufficient capital, excessive debts, lack of a viable source of revenue, high maintenance costs, etc.—all contributed to the failure of Joslin's railroad. Behind all of these considerations, however, is the inescapable fact that the Tanana Valley, indeed most of Alaska, was economically depressed in the two decades after the Klondike Gold Rush. The depression was a leading factor in the failure of the Tanana Valley Railroad. A trans-Alaska railroad might have stimulated business in the Tanana Valley, hence the fortunes of the Tanana railroad. Although many trans-Alaska railroads were planned, none was ever constructed by private enterprise. In the end, it would take the failure of one of these private railroads, the Alaska Central, before the Government decided that the economic needs of Alaska would not be satisfied by private enterprise.

The Alaska Central Railway

Like many other railroad companies, the original Alaska Central Railway Company was an attempt to profit from the peculiar transportation situation which developed in Alaska following the Klondike gold rushes of 1897-98. Since the early 1900's most traffic to interior Alaska flowed over one of two routes: the White Pass and Yukon Railway route, or the Bering Sea-Yukon River route. Each, however, had its disadvantages. For a considerable part of the year ice fields blocked access to the Yukon River by way of the Bering Sea. Although providing year-round services, the White Pass and Yukon Railway traversed mainly Canadian territory, which of course meant payment of duties on the Alaska-Canada frontier. In addition, both routes did not open up areas of Alaska known to be rich in natural resources but inaccessible by water. What was needed, then, was a direct, short route linking the ice-free waters of the Gulf of Alaska with the Yukon River.

In response to this widespread agitation for an "all-American" route to interior Alaska, the War Department and Geological Survey cooperated in a number of fact-finding expeditions in the late 1890's to locate such a route. By 1900 the Government decided to improve a trail from Valdez to Eagle for use of military telegraph construction and maintenance crews as well as for the public. While the trail was a popular winter route among small bands of travelers in the early 1900's, it was hardly passable in summer and at no time was it an inexpensive means for heavy freight shipments to and from interior Alaska. As a result, the popular cry for an "all-American" route to interior Alaska persisted.

To speculators following events in Alaska closely, a marvelous opportunity presented itself in constructing a pioneer railway. Rumors circulated wildly of rich gold and copper deposits, and extensive coal and oil fields throughout Alaska. Government expeditions reported in glowing colors of Alaska's mineral, agricultural, and timber resources. The tens of thousands of people in the Klondike, and later Nome, promised a profitable passenger traffic. The activities of the Army and Post Office in interior Alaska almost guaranteed Government contracts for freight and mail deliveries. On the other hand, the Government presented few obstacles for railroads in Alaska, indeed urged railroad construction by only requiring an annual tax of \$100 per mile of operating road, the lowest rate in the United States. Taking into account all of these attractions, it is no wonder that railroad speculators flocked to Alaska in the early 1900's. If there remained doubters, it was only necessary to point out the success of the White Pass and Yukon Railway, which paid for itself in less than a year.

These attractions did not escape the attention of young John E. Ballaine, the leading force behind the original Alaska Central Railway Company. Following his return to Washington state from the Philippines, "Major" Ballaine spent the years 1900 and 1901 examining routes for a railroad from the southern coast of Alaska to the Tanana Valley. Finally deciding upon the Resurrection Bay-Susitna Valley route, Ballaine interested a number of prominent men to form the Alaska Central Railway Company, incorporated under the laws of Washington in March 1902. George W. Dickinson, president of the new company, was formerly the general superintendent and general manager of the Northern Pacific Railway. Other directors included United States Senator George Turner, a former Federal judge who would represent the United States in the Alaska Boundary Tribunal in 1903; John H. McGraw, a later Governor of Washington who once spent two years at Rampart; E. E. Caine, president of the Alaska Pacific Steamship Company; James A. Haight, a Seattle attorney; F. Augustus Heinz, a Butte, Montana copper mining operator and president of the Mercantile National Bank; and Frank L. Ballaine. The secretary of the finance committee was John Ballaine, formerly a teacher, journalist, newspaper publisher, and secretary to Governor John R. Rogers of Washington. (Ballaine 1923: 1,7)

Although familiar with the agricultural, timber and mineral resources of the Cook Inlet-Susitna Valley region, the officers of the Alaska Central were not certain that the area could support a railroad during construction or, for that matter, whether a railroad route from Resurrection Bay to interior Alaska could be found, military and Geological Survey reports to the contrary. A survey expedition was thus organized from money raised through the sale of preferred stock in Minnesota. In the spring of 1902, eight survey crews of seventy-seven men under chief engineer C. M. Anderson began running preliminary lines in sections from Resurrection Bay northward. By early November, 1902, Anderson's men had surveyed a crude line from Resurrection Bay to Turnagain Arm, the line then following the northerly shore of Turnagain Arm to Knik Arm, thence northward to Broad Pass, terminating at Atwood (probably named after W. G. Atwood, who surveyed the line north from Broad Pass) at the confluence of the Tanana and Nenana Rivers. (Dickinson 1903: 4-5, 18) In addition, a crew under assistant engineer R. E. Field located 1,400 acres on Lowell Point, Resurrection Bay, for a townsite and terminal. (Dickinson 1903: 30-31)

Submitting their reports in late 1902, the Alaska Central engineers claimed that the construction of a standard-gauge railroad from Resurrection Bay to Atwood presented few of the difficulties encountered by the transcontinental railroads in mountain country. Only a few miles of light rock work was necessary to maintain the easy grade characteristic of the entire line. An abundant supply of timber ensured ties and bridging material at cheap cost and without the necessity of long hauls. Labor would not be any more expensive than at Seattle; and transportation rates from Seattle to Resurrection Bay were nominal. Since most of the line penetrated a region subject to pleasant winters and light snowfalls, at least not as great as in Minnesota and Wisconsin, construction of the road could proceed throughout the year, and at a cost not exceeding \$35,000 per mile. (Dickinson 1903: 19-22)

The Alaska Central board of directors issued a prospectus in January 1903, describing their intention to push a railroad "through the richest mineral, timber, agricultural and stock-grazing region in the central part of Alaska." (Dickinson 1903: 1) Five considerations were taken into account in choosing the Resurrection Bay-Atwood route: First, Resurrection Bay was an ice-free, deep-water port, bordered with land for a town with a population of 25,000 to 35,000. Second, Atwood, the interior terminal, was located a point central to the widest possible area of producing country. Third, the route offered easy grades, protected from heavy snowfalls and floods. Fourth, the tributary country was capable of supporting traffic from the beginning. And lastly, the route could be regarded as a trunk line with branches to be later constructed to the semi-anthracite coal beds in the Susitna Valley and particularly to the coal deposits near present-day Healy, described as "one of the most extensive blanket deposits of coal on the American continent" and suitable for steaming and coking purposes. (Dickinson 1903: 5-6, 10-12)

Finding it nearly impossible to sell the Alaska Central bonds, partly because of panic resulting from President Roosevelt's unexpected court attack against the Northern Securities Company, Ballaine organized the Tanana Construction Company with himself as president, general manager, and the largest stockholder. Ballaine then accepted a contract from the Alaska Central to construct the first twenty miles of road in Alaska. As payment, the Tanana company received \$35,000 a mile in Alaska Central bonds and a majority of Alaska Central stock. Using the contract as security, Ballaine then borrowed about \$325,000 from several financial houses in Chicago and Seattle. (US House, The Building of Railroads...1913: 96; Ballaine 1923: 1,8)

With his financial negotiations concluded, Ballaine proceeded to Resurrection Bay in late August 1903. His brother Frank had landed a month earlier to make surveys and file on the future townsite of Seward. Through the fall and winter the Ballaine brothers and chief engineer "Colonel" A. W. Swanitz directed about 200 workers in constructing a dock, sawmill, and various temporary structures. Bridge timbers were hauled to the various river and creek crossings. In early spring, 1904, the laying of steel began with the driving of the first spike on the dock on April 16, 1904. About four months later, workers had extended fifty-six-pound steel about eighteen miles north of Seward to Kenai Lake. Grading was completed about eight miles beyond the end of steel. (US Senate 1913: 26, 393; Ballaine 1923: 8)

When construction was underway at Seward, John Ballaine returned to Washington in hopes of finding additional financial aid. Apparently he was unsuccessful. When, however, the high-grade Chickaloon coal fields received wide publicity in a Seattle newspaper report by George Janne, a prospector, Ballaine was able to attract the interest of Frost & Osborne Company of Chicago and Toronto, a financial house which had already invested a substantial amount in the Alaska Central. Following favorable reports on the value of the Matanuska coal by William Griffith, reportedly "one of the best mine experts in the United States," and a survey of the railroad route by W. P. Poland, a construction engineer formerly with the Baltimore & Ohio Railroad, Frost and Osborne offered to purchase

Ballaine's stock in the Tanana Construction Company, which also meant ownership of the Alaska Central. Having few alternatives, Ballaine agreed. In December 1904, ownership in the construction company and the Alaska Central was transferred to A. C. Frost and H. C. Osborne. Ballaine, Turner and Haigh retained a minority of stock in Alaska Central as well as their seats on the railroad board of directors. Ballaine, who was very much embittered by the whole transaction, continued to possess numerous properties at Seward. (Ballaine 1923: 8-9; US Senate 1913: 26-27; US House, The Building of Railroads...1913: 199)

The transfer of ownership in the Alaska Central marked the beginning of a two-year period in heavy construction. Backed by the Sovereign Bank of Canada for \$3.5 million with a tentative promise of up to \$18 million, Frost and Osborne Company accelerated construction in an effort to reach the Matanuska coal fields by the fall of 1906. For the season of 1905 it was expected that fifty to seventy-five miles of road would be constructed at a cost between \$20,000 and \$30,000 per mile. (US House Railroads in Alaska, 1906: 99)

Through the summer of 1905 various survey crews located lines for the road from the Placer River valley to present-day Potter (Mile 45 to Mile 101). Contractors erected sawmills along the right-of-way which produced ties and, in some cases, bridge material. Along the first twenty miles of steel, laborers eliminated curves and improved the roadbed. (US Senate 1913: 26, 393) At Seward, carpenters constructed numerous structures, including a large, two-story general office building. All the while, 1,000 or more men cleared the right-of-way, graded, and laid steel north of Kenai Lake. By early fall, 1905, steel was extended about forty-seven miles north of Seward, more than double the distance accomplished in 1904 and over a much more difficult terrain. (Atwood 1909: 199-200) According to Ballaine, however, that distance cost \$55,000 per mile and for every mile, \$35,000 "might just as well have been thrown to the sea....It was an expensive mistake." (US House, The Building of Railroads...1913: 153)

With winter approaching, men hastened to establish a large camp near Mile 52 in the upper Placer Valley, where high mountains sloped sharply into the valley. The problem confronting engineers was how to push the road through Placer Valley to the head of Turnagain Arm without exceeding a three percent grade and a twelve degree limit of curvature. Two routes appeared feasible. Originally surveyed by engineers employed by Ballaine, one route followed the westerly mountain sides to Turnagain Arm at Mile 63. Although this line could be had at a 1.2 percent grade, it required heavy rock work and numerous snowsheds. During the summer of 1905, however, chief engineer W. P. Poland and locating engineer G. A. Kyle ran seven preliminary lines into Placer Valley, finally locating an alternative route shorter in distance. The line required two 14° curves, one with a central angle of 233° and the other 213°; seven tunnels; and a number of high bridges. (Atwood 1907: 199) Although much criticized later, the "Loop District" between Mile 48 and Mile 52 was widely recognized as an important, if costly, engineering achievement.

Agreeing to complete the tunnels by April 1, 1906, contractors began bridge and tunnel work in October 1905. Two months later, the contractors abandoned the work, finding it too difficult and expensive

to attract and retain laborers from the Pacific Coast states. Alaska Central company men thus resumed work in the "Loop District." Tunnel work was forced into ten-hour days, sometimes day and night, each man receiving a weekly bonus if he exceeded his work of the previous week. Labor and supply shortages, however, prevented the completion of the tunnels until November 1906. Even then steel could not be laid through to the tunnels since the bridges had not yet been completed. (Brooks Jr. 1903: 264; "Methods..." 1909: 276-77, 281)

Anticipating that work in the "Loop District" would deplete his financial resources, A.C. Frost applied to Congress in February 1906 for Government assistance, that is, a guarantee of the interest on Alaska Central bonds. According to Frost, the Alaska Central had underestimated construction costs, spending more than \$2,500,000 for forty-five miles of road. After that unexpected expense, the Alaska Central believed that investors would have been sufficiently assured of the enterprise and readily subscribed to Alaska Central bonds. Due to lack of interest and knowledge of Alaska's natural resources, however, investors would not subscribe to Alaska Central bonds except at a "ruinous discount." Therefore, construction of the railroad would probably be stopped or curtailed in late 1906. If, however, Congress guaranteed the interest on the bonds, capital might be attracted to the road. Once the road reached the Matanuska coal fields, Frost assured the Congressmen, the road would begin earning a profit. (US House, Railroads in Alaska, 1906: 99-104) Congress was unaffected, only passing legislation which relieved the Alaska Central of the license tax for a period of three years.

As Frost predicted, work on the Alaska Central railroad was virtually halted in the fall of 1906. Whether Frost was unable to raise capital after the Alaska coal-lands were withdrawn, or whether he decided to channel Alaska Central money into various mining properties or his Chicago & Milwaukee Electric Railway is unknown. In any case, through the winter of 1906 and into the summer of 1907, a reduced force of workers were employed to complete the four main bridges in the Placer River Valley, and to clear a right-of-way and grade the line along Turnagain Arm. By fall, sixty-five-pound steel was laid as far as Mile 52. Grading and pile bridges were completed and ready for track between Mile 53 and Mile 67. About seventy-five percent of the grading was completed between Mile 67 and Mile 75. Right-of-way was cleared and some grading finished (mostly beyond Mile 90) between Mile 75 and Mile 105, Knik Arm. (US Senate 1909: 1; Brooks Jr. 1903: 264)

In the last two weeks of October 1907, financial panic again swept across the United States. The Sovereign Bank of Canada, on the point of failing, appealed to a number of the largest banks in Canada and the United States for assistance in meeting its liabilities. Financiers, including J. P. Morgan & Company, agreed to aid the failing bank and took over its assets as security. The Sovereign Bank then voluntarily liquidated, its bondholders appointing three trustees to wind up the affairs of the bank. Frost & Osborne Company, in debt to the Sovereign Bank to the sum of \$4 million or more, was ruined. The bondholders of the Sovereign Bank of Canada now owned the Alaska Central Railway Company.

While the Sovereign Bank was undergoing a reorganization, John Ballaine and James Wickersham petitioned the Fairbanks court to appoint a receiver for the Alaska Central Railway. Without notice of a hearing and much to the surprise of the petitioners, Judge Silas Reid appointed his brother-in-law, O. G. LeBaron of Seattle, as receiver in September 1908. Reid then adjourned his court for six months. As Duncan M. Stewart, the business manager of the Sovereign Bank until 1907, pointed out, this action effectively prevented the Sovereign Bank from removing the receiver and gaining rightful management of the Alaska Central. (Stewart 1911: 322) The receiver, under court orders, continued work on the Alaska Central with funds aggregating \$275,000 raised on receiver's certificates. By the close of 1909, steel extended as far as Mile 71 near Kern Creek on Turnagain Arm. (US Senate 1913: 388) For the next seven years this was to be the most northern point reached by the Alaska Central.

In October, 1909, all assets of the Alaska Central Railway Company was purchased by F. G. Jemmett, a trustee of the Sovereign Bank, after a decree of foreclosure and sale was entered by the Alaska District Court, Third Division. (US House #1547 1913: 2) On Jemmett's recommendations, bondholders in the Sovereign Bank organized a syndicate in the Alaska Northern Railway Company. Incorporated under the laws of Washington in late October, 1909, with \$30 million in capital, the Alaska Northern was entirely a Canadian venture, although the board of directors were residents of Seattle. All stock was owned and controlled by the three trustees of the Sovereign Bank: F. G. Jemmett, manager of the Sovereign Bank since 1907; W. E. Stewart, assistant manager of the Bank of Montreal; and W. J. Boland, a Toronto barrister. On April 15, 1910, Jemmett conveyed by deed all Alaska Central property, with the exception of a strip of land at Seward, to the Alaska Northern. (US House 1910: 115; US House #1547 1913: 2)

In gaining control of the Alaska Central, the Canadian owners hoped of course to recoup their losses in the financial panic of 1907. Under the circumstances, only two alternatives seemed open. One possibility was to sell the railroad for the amount actually invested. On the other hand, if steel was extended to the coal fields, the Navy, which had made a reservation in Resurrection Bay in 1907, might be inclined to establish a coaling station at Seward. The Government might then be pressed to make a decision on the Alaska coal problem. Whatever decision the Government made—to mine the coal itself, or open the coal fields to private operators—the Alaska Northern was sure to profit, since it was the only railroad in the area with an ice-free port. This was the reasoning that the Canadian owners eventually adopted, but not after considering an offer to sell the railroad outright.

During the Congressional hearings of 1913 on bills authorizing Government construction of railroads, John Ballaine revealed startling negotiations between himself and J. P. Morgan & Company in 1909 and 1910. When the Sovereign Bank failed, Ballaine approached George W. Perkins of the J. P. Morgan & Company through Richard A. Ballinger, who was soon to be appointed Secretary of the Interior. Ballaine wanted the financial assistance of the Morgan interests in taking over the Alaska Northern road. According to his plan, Morgan & Company would assume all of Ballaine's property in

Alaska and all of its stocks and bonds in the project until the road was completed to the Tanana River. At that time, the bonds would probably be marketable and Ballaine could repay the debt. A railroad constructed at \$10,000 a mile was of course an attractive proposition. Perkins reportedly agreed to enter negotiations with the owners of the Alaska Central bonds and to send an expert to investigate the Seward-Fairbanks route.

Whether Perkins actually entered negotiations with the Canadian owners of the Alaska Central was unknown to Ballaine; but Perkins did travel to Seward, meeting Ballaine there in July 1909. A. N. Grey, a traffic and tonnage expert with J. P. Morgan & Company, had already started an inspection of the Alaska Central road. Upon receiving Grey's report, Perkins reportedly told Ballaine that the resources along the railroad were better and more varied than expected. Perkins said that he would favor financing the railroad project on Ballaine's terms in the event that the Guggenheim Brothers refused to back the road and if he could make a satisfactory settlement with the owners of the Alaska Central. The consent of the Guggenheim Brothers was necessary, for in forming the Alaska Syndicate in the spring of 1906, J. P. Morgan & Company had agreed with the Guggenheim Brothers not to engage in additional Alaska railroad or mining enterprises without first conferring with the Guggenheim Brothers. Nevertheless, Perkins apparently believed that the transaction would be effected inasmuch as J. P. Morgan & Company held a substantial interest in the Sovereign Bank. By investing in the Alaska Central, J. P. Morgan & Company might be able to recoup its losses in the Sovereign Bank.

In late November 1909, Ballaine met Perkins by appointment in New York, expecting them to close negotiations. However, Perkins informed him that the trustees of the Sovereign Bank were having problems in persuading their bondholders to accept the Ballaine proposal. Although Perkins did not expand on the nature of those problems, he made it clear in a later conference with Ballaine. According to Perkins, the Guggenheim Brothers refused to consent to the plan for "they regarded the Tanana Valley as their field." Furthermore, Morgan interests were not anxious "to encourage any railroad building in Alaska until the Government issued patents to coal claims then pending" in Alaska. When Ballaine questioned Perkins as to whether the Alaska Syndicate would oppose anyone trying to finance a railroad from Seward to Fairbanks, Perkins reportedly answered, "We could not allow a railroad to be built through the Susitna Valley into the Tanana. There will be no more railroad building in Alaska until the coal fields are opened." (US Senate 1913: 37)

Ballaine's account of these negotiations before several Congressional committees in 1913 was a sensational argument for Government-constructed railroads in order to free Alaska from the unfair practices of the Morgan-Guggenheim syndicate. For it was his contention, and Alaska Delegate James Wickersham's conviction, that the Sovereign Bank of Canada, hence the Alaska Northern, was controlled by Morgan-Guggenheim interests. The Alaska Syndicate did not want a rival railroad in Alaska, especially one that would tap the important Matanuska coal fields. Whether in fact the Morgan financiers had any influence over the affairs of the Sovereign Bank and the Alaska Northern is an open question.

Wickershan's evidence was very weak. Representatives of the Sovereign Bank and Alaska Northern emphatically denied that Morgan interests ever controlled or opposed the Alaska Northern; they admitted, however, that J. P. Morgan & Company was a bondholder.

Nevertheless, the Alaska Northern made no immediate effort to continue construction of the road. This did not mean, however, that they were willing to lose their right-of-way. According to the Act of 1893, Alaska railroad companies were to construct a minimum of twenty miles a year which carried a year's extension of rights. Due to financial and construction problems, the Alaska Central Railway Company applied to Congress in 1906 and 1909 for three-year extensions of rights. In both cases, Congress approved the requests without objection. When, however, the Alaska Northern applied for another extension, it met opposition from the Department of the Interior.

After a brief tour of Alaska in the fall of 1911, Secretary of the Interior Walter L. Fisher urged Government construction of a trans-Alaska railroad, and suggested that the Alaska Northern Railway would serve that purpose. In November 1911, F. G. Jemmett of the Sovereign Bank conferred with Fisher on Alaska transportation problems, and stated that the bondholders would sell the Alaska Northern if a coal-land leasing law was applied in Alaska. Fisher responded favorably to Jemmett's reluctant offer, and proposed that a commission be formed to ascertain the value of the road. Fisher would appoint one member; Jemmett would select another; and the appointees would then select the third member of the commission. Jemmett agreed.

By February 1912, however, it was apparent that Secretary Fisher could not get his railroad plan adopted. So Jemmett began pressuring the Navy on two fronts: either endorse Government purchase of the Alaska Northern or open a portion of the Matanuska coal fields for the use of the Navy which would provide an incentive for the Alaska Northern to continue construction. Secretary of the Navy George von L. Meyer refused to take a position, believing that it was Fisher's intention to allow the Alaska Northern to build the railroad on its own initiative. If the Alaska Northern demonstrated unwillingness or inability to complete the road, the Government should then take over the property and complete the railroad. (US Senate 1913: 291)

Unable to obtain the Navy's endorsement, Jemmett again conferred with Fisher to persuade him to support a Navy reservation in the Matanuska coal fields. Fisher refused on the grounds that it would increase the value of the Alaska Northern railroad. Jemmett assured Fisher that, if the Navy reservation was established, the Alaska Northern would construct the road to Matanuska fields and then sell the extension to the Government at actual cost. The existing road from Seward to Kern Creek would, of course, be sold to the Government at a fixed price before the extension. Fisher apparently approved of this idea, requiring a formal letter from the Alaska Northern to the effect that it would not in any event introduce evidence that the Alaska Northern should receive more than the cost and interest in constructing the extension. Jemmett believed that this was an unfair stipulation, but agreed.

Later, however, Fisher reversed himself, claiming that the United States had no power to enter such an agreement with the Alaska Northern.

Although the board of directors of the Alaska Northern attempted to assure Fisher by a formal resolution, Fisher did not change his mind. Fearing that Fisher might make public the resolution of the board of directors, the Alaska Northern notified Fisher that negotiations were at an end. (US Senate 1913: 379-80)

In early 1912 the Alaska Northern succeeded in introducing a bill in Congress which extended the time for filing maps of definite location for five years, and an additional year to complete the road after filing the maps. In support of the request, the Alaska Northern demonstrated that their road would bring the Matanuska coal fields, where there was "an unlimited supply of the finest coal in the world," to Resurrection Bay, one of the best harbors on the Pacific coast. Clearly, it was of benefit to the United States to extend the rights of the Alaska Northern since there was no satisfactory coal for the use of the Navy in the Pacific. The Senators agreed; and the bill passed unanimously. (US Senate #2534 1911: 3-5)

When the Alaska Northern bill was reported in the House, Secretary Fisher intervened and requested a hearing. Fisher questioned the Alaska Northern's claim that it would build a road to the Tanana Valley. In view of the fact that in March 1911 a Federal Grand Jury in Chicago had indicted Frost and associates in connection with Alaska coal-land frauds, Fisher believed that the Alaska Northern would build no further than the Matanuska coal fields. If Congress chose to consider the Alaska Northern bill, Fisher insisted upon inserting certain provisions in the bill which, according to G. H. Patrick, an attorney for the Alaska Northern, "practically compelled us in order to get our extension to concede that the Government might buy a portion of our road and not take the other." At any rate, the Alaska Northern bill was passed, reaching the President late in the session. On Fisher's recommendations, President Taft did not sign the bill into law. (US Senate, Committee on Public Lands 1912: 23-24; US Senate 1913: 252-53)

Having failed to reach an agreement with the Government, the Alaska Northern had only one remaining alternative if it intended to retain rights to the road: construct the road on its own initiative. Since the bondholders in the Sovereign Bank refused to invest, the Alaska Northern solicited financial aid from O. L. Dickinson, president and general manager of the Pacific & Arctic Railway & Navigation Company (otherwise known as the White Pass & Yukon Railway) and in charge of the American branch of the Close Brothers, a London financial house. (US Senate 1913: 147) The alliance between the White Pass railroad and the Alaska Northern was not unnatural. If the Government constructed a trans-Alaska railroad, both private railroads would suffer. Unlike the Copper River & Northwestern Railway, which could probably survive Government competition since it relied on the Kennecott copper mines for revenue, the White Pass railway was significantly dependent upon Yukon River traffic. In view of this fact, Jennatt interested Dickinson and both presented plans to the Close Brothers, plans that included the financing of the Alaska Northern to the Matanuska coal fields. When, however, President Taft appointed the Railway Commission, these negotiations were immediately suspended, pending the outcome of the investigation of the Railway Commission. (US Senate 1913: 147, 160)

As the Alaska Northern no doubt anticipated, the Taft Commission of 1912 recommended a Government railroad from Kern Creek to the Matanuska coal fields and thence into the Kuskokwin Valley. As the Commission believed the question of Government purchase of the Alaska Northern beyond its purview, the Alaska Northern still had a chance to retain its Alaska property. Thus, in the hearings before the Senate in 1913, representatives of the Alaska Northern attempted to demonstrate that there was no reason for the Government to construct railroads in Alaska, that the Government itself was to be blamed for the situation of the Alaska Northern. According to George W. Patrick, an attorney for the company, "there had not been a corporation anywhere in the United States, anywhere in the known world, that has received the antagonism of a Government like this road, the Alaska Northern." (US Senate 1913: 229) Alaska Northern representatives argued that construction would proceed if certain obstacles were removed. That is: eliminate the Chugach National Forest; suspend the annual license tax of \$100 for every operated mile; free the railroad from any further taxation from the Territory of Alaska once a reasonable rate was fixed; and allow the Alaska Northern the right to go before the Interstate Commerce Commission and fix a reasonable tariff for a number of years. (US Senate 1913: 375) In particular, give the Alaska Northern a Navy contract to transport 300,000 to 400,000 tons of coal per year from the Matanuska fields to Seward. Under these conditions, particularly the Navy contract, the Alaska Northern would undoubtedly construct the railroad to the Matanuska coal fields, possibly with the aid of London financiers. When asked, however, if the Alaska Northern would continue the road into the Kuskokwin Valley or to Fairbanks, the representatives could not offer guarantees that such extensions would be made in the immediate future. (US Senate 1913: 259, 301, 360-61)

In the end, the arguments of the Alaska Northern failed to stem the tide of Government construction of a Seward-Fairbanks railroad. On the recommendation of the Alaska Engineering Commission, which had negotiated with the Alaska Northern for a reasonable price for its Alaska property rather than enter into condemnation proceedings, President Wilson ordered, on April 19, 1915, the Secretary of the Interior to purchase the Alaska Northern. The Interstate Commerce Commission evaluated the property, and concluded that the price quoted by the private owners was not in excess of its value. Thus on August 25, 1915, when litigation over the title ceased, the Government paid an initial installment of \$500,000 for the Alaska Northern. The final sum of \$550,000 was paid on June 30, 1916, the Government coming into full possession of the Alaska Northern at that time. An enterprise which was estimated to have cost the private owners more than \$5 million thus became public property. (Alaska Railroad Record May 7, 1918: 203)

Alaska Coal and Trans-Alaska Railroads

The history of Alaska railroads in the decade following the Klondike Gold Rush is a story of failures. From the late 1890's to about 1908 fifty or more corporations were formed to undertake railroad construction projects in Alaska. Some existed only on paper; but most companies did in fact send crews to Alaska at considerable expense to survey preliminary lines and investigate the natural resources along proposed routes. Many companies even began construction, but abandoned the work after a few years. Following the failure of the Alaska Central Railway in 1908, all but one or two railroads stopped construction. By 1910, only three of the eight or nine railroads in Alaska—the Tanana Valley Railroad, the Copper River & Northwestern Railway, and the White Pass & Yukon Railway—were operating on a year-round basis. Excepting the White Pass road, which was mostly in Canadian territory, none of the Alaska railroads linked the navigable waters of interior Alaska with an ice-free port.

Why did so many railroads fail? Unsound policies, poor management, waste of funds, costly engineering mistakes in choice of routes, disputes over rights-of-way, financial panics, and high construction and maintenance costs were contributing factors. One of the most popular explanations which emerged in the mid-1900's was that most railroad companies lacked sufficient financial resources. At least three reasons were cited for this situation. First, many financiers harbored the belief that Alaska was a land mostly of snow and ice, and too distant for capital investments. If capitalists decided to risk an Alaska railroad, they purchased the bonds at a high discount, which imposed an excessive initial indebtedness on the enterprise. Second, financiers such as J. P. Morgan & Company, the Guggenheim Brothers, and the Close Brothers (popularly known as the Alaska Syndicate) had monopolized Alaska navigation companies. In order to sustain that monopoly, the Alaska Syndicate set high transportation rates, making it prohibitively expensive to ship laborers, materials, and equipment to Alaska for railroad construction purposes. In the meantime, the Alaska Syndicate had monopolized the chief railroad routes to interior Alaska. And finally, the conservation policy which the American Government pursued in Alaska, particularly the withdrawal of the coal-lands in 1906 and 1909, undercut most sources of revenue for railroads in Alaska.

There were many other explanations for the failure of private railroads in Alaska. By the mid-1900's, however, it was apparent to many capitalists that Alaska was not developing as expected during the Klondike gold rushes. Indeed, Alaska appeared to be in a period of economic stagnation, which many believed to be the result of high costs of transportation and of course lack of trans-Alaska railroads. Both the Roosevelt

and Taft administrations recommended Government assistance for trunk line railroads. Various bills were introduced in Congress providing for large lands grants, subsidies, relief from taxation, Government credit, and so on. Other than measures which released specific railroads from payment of the license tax for a number of years, Congress refused general Government assistance to Alaska railroads. This policy was due in part to opposition by several Alaska railroad companies, which presented arguments to the effect that a trans-Alaska railroad could be constructed without any Government assistance at all. With, however, the Ballinger-Pinchot controversy and the so-called "Cordova Coal Party" in 1911, the problem of the Alaska economy was thrown into the national spotlight as a conflict between the Government and capitalism over the question of conservation. Without coal, it was argued, a trans-Alaska railroad would not be constructed. The issues of coal and railroads thus entangled in the general conservation controversy of the late 1900's, it became increasingly clear that Alaska needed legislation which would stimulate economic development. Thus, early in the fall of 1911, Secretary of the Interior Walter L. Fisher was sent to Alaska to investigate the problems of Alaska coal and railroads, and to determine a solution.

Accompanied by Dr. A. H. Brooks, director of the Alaska division of the Geological Survey, Dr. J. A. Holmes, director of the Bureau of Mines, several prominent mining and railroad engineers, and a flock of newspapermen, Secretary Fisher arrived in Alaska in August 1911. His tour was brief and limited to southern Alaska, but in that short time he inspected the terminal facilities of the White Pass, Copper River and Alaska Central railroads, interviewed many local residents and studied the literature about Alaska. Dr. Holmes and several of the mining and railroad engineers made personal field investigations of the Bering River and Matanuska coal fields and assessed the feasibility of building railroads to the fields. After his return to Washington, Fisher prepared a memorandum based upon his own observations in Alaska and the reports of Dr. Holmes and others. Presented before the Fourteenth Annual Session of the American Mining Congress in Chicago and later published as a bulletin of the Bureau of Mines entitled Alaskan Coal Problems, this important document included "definite suggestions for a policy under which the Territory may be immediately opened for wise and vigorous development." (Fisher 1912: 32)

In Fisher's view, the economic stagnation of Alaska was largely due to inadequate transportation facilities and coal-land laws. He viewed Alaska as a "country of great mineral and agricultural possibilities; indeed, I should go further and say a country of great mineral and agricultural probabilities, needing development, ready for development, and inviting development, but held back chiefly by inadequate transportation facilities and inadequate laws." However, Alaska railroads were merely "incidents to the exploitation of its (Alaska's) mineral resources." Contrary to the belief of many Alaskans and those with financial interests in Alaska that the development of trans-Alaska railroads was curtailed by the coal-land withdrawals in 1906 and 1909, Fisher retorted that "the coal withdrawals have exerted only an incidental influence upon the development of railroads in Alaska." The coal-land laws as extended to

Alaska in 1900, and amended in 1904, adequately provided against the possibility of coal monopolies. If these laws had been enforced, the effect would have been the same as the withdrawals. In Fisher's mind, then, "the critics of the withdrawals are usually either those who do not realize the prohibitory effect of the coal laws in Alaska or those who have assumed that these laws could be violated with impunity." Reflecting on the damage resulting from "joint or common ownership of coal fields and railroads" in older portions of the United States, Fisher urged that that same mistake should not be repeated in Alaska or elsewhere. However, "this does not mean that Alaska coal should not be developed and developed at once. It means merely that the coal should be developed properly as well as promptly." (Fisher 1912: 9-10) In other words, Alaska should have a liberal coal-land leasing law and a Government-constructed trans-Alaska railroad.

To counter fears that Alaska coal would flood the markets if the coal lands were opened, Fisher stressed the point that Alaska coal would only benefit the industrial development of Alaska. The Matanuska and Bering River coals were valuable, but the extent and character of the coal was too exaggerated. True, there was no anthracite and little high-grade bituminous coal on the Pacific coast except in Alaska. There was little if any high-grade coking coal on the Pacific coast. Nevertheless, considering freight and handling charges necessary to ship coal from Alaska to West American ports, British Columbia and Pacific coal would continue to hold the market on coal for steaming purposes. California oil would remain a serious competitor, although at that time oil was only used experimentally in smelting and steel-making. Except for coking purposes, then, Alaska coal would contend with strong competition. Admitting that even in Alaska there was little market for coal, Fisher predicted that demands for coal would "rapidly increase as the country (was) developed" by a trans-Alaska railroad. If Alaska coal-lands were opened, one or more smelters for copper would probably be established in Prince William Sound. (Fisher 1912: 10-12)

The key to the economic development of Alaska was a trans-Alaska railroad which would tap the coal fields, particularly the Matanuska field. Although Bering River coal had a high thermal value, much of it was crushed and it was unknown how much lump coal existed. Crushed coal could be used for smelting purposes; but it required greater expense in mining. The coal could not support the roof of a mine and, therefore, considerable timbering was necessary which meant high labor costs. The Government need not construct a railroad to the Bering River coal field. Simply enact a coal-land leasing law and Morgan-Guggenheim interests or competitors would build the railroad. (Fisher 1912: 12-13, 17)

The Matanuska coal field was a more attractive proposition from the Government's point of view. The field was extensive and contained coal of the same quality or "slightly superior" as the Bering River field. The coal was in better physical condition and posed fewer obstacles for mining. The field was less broken, faults and pinches were less evident, and the rising process appeared to be less prevalent. Although mining costs may be higher, since igneous rock intruded at places, it was probable that the Matanuska field had more coal of coking quality than the Bering River field. Moreover, fewer claims had been entered in

the Matanuska field, and most of these claims were probably illegal because of dummy entries and other violations of the law. That the field was farther from tidewater than the Bering River field was actually an advantage: "This very distance connects it more intimately with the real problem of Alaskan development--that of adequate transportation from tidewater to the Yukon." (Fisher 1912: 18)

More than anything else, Fisher continued, Alaska needed a trunk line railroad from Seward to Fairbanks in order to develop Alaska's mineral and agricultural resources. Resurrection Bay was the best harbor in Alaska and comparable to that in Seattle. The Susitna Valley contained some of the best farmland in Alaska. Moreover, since the Navy had plans for a coaling station in Resurrection Bay, the Government should take the opportunity to open a mine in the Matanuska coal field, "where it can be made to serve as an example for private mining, where it can furnish information and serve as a check upon excessive profits by leasees under Government leases." Since it was apparent that officers of the Alaska Northern Railway Company were not eager to continue construction, and evidently preferred to sell the road to the Government for the face of outstanding bonds, about \$4.6 million, Fisher recommended that the Government purchase the Alaska Northern for the real value of the road. Fisher argued that:

The adoption of a leasing policy will take away from the promoters of such a road the lure of great gain from the exploitation of the coal fields. This exploitation clearly should be prevented in the public interest. But at the same time the Government must recognize that if it withdraws from private capital this incentive for railroad construction the Government itself must assume the obligation of making that kind of development upon which it insists for the general good. It has been urged that the Government should meet this objection by guaranteeing the payment of bonds or the interest on bonds equal to the cost of the construction of the road. I can see no advantage whatever in this policy. If the Government is to guarantee the cost of construction, I see no reason why the Government should not own the road outright, whether it operates it or leases to an operating company. (Fisher 1912: 18)

Anticipating charges that a Government constructed and owned railroad was nothing less than socialism, Fisher cited various Supreme Court decisions supporting his thesis that the Government was not invading "the legitimate domain of free enterprise," but simply resuming "one of its own proper functions." The Government railroad at Panama was a clear precedent. In any case, a private railroad in the Bering River field and a public road in the Matanuska field would demonstrate by comparison the problems in private versus public ownership of transportation. (Fisher 1912: 20-22)

Not long after Fisher proposed his solutions to the Alaska coal and transportation questions, he left for Panama in order to investigate the

possibility of us equipment of the Panama Railroad in Alaska. On February 2, 1912, President Taft sent a special message to Congress urging that Fisher's recommendations be effected as soon as possible. However, two years were to lapse before Congress succeeded in providing for a Government railroad. In the interval, Congress debated whether in fact a Government railroad and coal-land leasing law was needed in Alaska and where in Alaska the need for railroads was most pressing. In the end, a Democratic administration would implement Fisher's proposals in their entirety.

The Fisher proposals for a coal-leasing law and a Government constructed and owned railroad in Alaska far exceeded the expectations of Congress. Most Congressmen apparently recognized the need to resolve the politically embarrassing problems of Alaska transportation and coal, but were not prepared to abandon the free-enterprise method. Many expected the Government simply to extend its credit or guarantee the interest on bonds to Alaska railroads as was done in the Philippines. While it was true that the Panama railroad was a precedent, it was also true that the railroad was a source of political scandals and, unlike the Alaska railroad, was of international importance. Besides, it was not clear that existing railroads would not be extended to the Yukon River. Private owners claimed that a trans-Alaska line would be constructed if only the Government coal lands were opened or if the Government assisted in some fashion. Moreover, there was no justification for Fisher's claim that the Resurrection Bay-Susitna Valley route was the best possible. In view of these and many other objections to the Fisher plan, President Taft apparently relaxed efforts to aid legislation for Government railroads. Instead, he urged Congress to appoint a commission to investigate the problem of Alaska transportation.

For some Alaskans, namely John Ballaine, this call for a commission was due to the influence of the Guggenheim Brothers, who desired the Government to purchase the Copper River railroad. Considering the debates in Congress, however, it is more probable that Taft decided to compromise the Government's position on the question of Alaska home-rule in order to obtain action on the Fisher plan for Alaska railroads and coal-lands. Few Congressmen knew much about Alaska. A commission would analyze the situation and present their findings to Congress in a readable, objective and balanced report. Since a commission's report did not necessarily mean that a decision would have to be made, Congress allowed a few lines in the Alaska home-rule bill providing for Presidential appointment of a commission to examine Alaska's transportation routes.

A week after the Second Organic Act of August 24, 1912 was signed into law, President Taft announced the appointment of four highly-qualified individuals to the Alaska Railway Commission. Appointed chairman of the commission, Major Jay J. Morrow of the Corps of Engineers, USA, was an expert in fortifications and experienced in river and harbor improvements. Vice-chairman Dr. A. H. Brooks was director of the Division of Alaskan Mineral Resources, Geological Survey, and widely known as a leading authority on Alaska natural resources. Lieutenant-Commander Leonard M. Cox, USN, was experienced in the construction of mining railroads and served in the Bureau of Yards and Docks of the

Navy. Colin M. Ingelsoll of New York was a noted railroad and railroad bridge engineer and board chairman of a harbor commission. (Mitchell 1913: 580)

Since President Taft wanted the commission's report in hand before Congress met for its next session, the commissioners ignored the late season and departed for Alaska shortly after their appointments. The purpose of the commission, as Cox explained, was "to report on the best routes from the sea coast to the coal fields and to the navigable river systems of the interior which would best develop the country and its resources. The primary object of the project was...the development of Alaska, not the development of gold mines, for gold mines do not make for permanent prosperity, nor the development of any other particular industry, but the encouragement of settlers and the making of a permanent population. (US Senate 1913: 46)

Leaving Seattle on September 7, 1912, on revenue cutter McCulloch, the Commission intended to begin their inspection at Katalla and Controller Bay. Due to rough seas, however, plans were altered to begin work at Seward. The commissioners traveled over the Alaska Northern on a small gasoline car to Kern Creek, thence by gasoline launch down Turnagain Arm to Knik. After a three-day trip by horse to the Willow Creek mining district, they sailed to Iliamna Bay and Iniskin Bay, both of which were proposed as possible terminals for trans-Alaska railroads. From Cook Inlet the Commission went to Katalla and inspected the abandoned work and shops of the Copper River & Northwestern and the Alaska Pacific Railway & Terminal Company. Another attempt was made to reach Controller Bay by launch but, again, weather conditions prevented their reaching the bay.

Arriving at Valdez on September 26, the Taft Commission spent two days reviewing the records of the Alaska Road Commission, and interviewing local residents. On September 28, they began the 400-mile journey by buckboard and automobile to Fairbanks, arriving there on October 12. The commission spent three days in the Fairbanks district, examining the Tanana Valley Railroad, the Government experimental farm, and various gold mines on Gold Creek and Cleary Creek. From Fairbanks, they traveled to Chitina, and inspected the entire length of the Copper River & Northwestern Railway.

On November 4 the Commission left Cordova for Fort William H. Seward on steamer Alameda. Upon arrival they inspected Haines and Pyramid Harbor, and studied the terminal plans of the Alaska Midland Railroad Company. After a brief excursion to Skagway, the Commission went to Prince Rupert and studied the terminal plans and development of the Grand Trunk Pacific Railway. A "most impressive" trip was made on the railroad to and from Nichols. From Seattle the Commission went to Ottawa and interviewed the Canadian minister for railways and canals. On December 2, 1912, the Commission finally convened at Washington, D.C., to prepare their report to the President. (US Alaska Railway Commission 1913: 18-21)

Less than two months were necessary for the Taft Commission to prepare this report. Entitled Railway Routes in Alaska, the Commission's report included a mass of statistics relative to Alaska economic growth; an account of the tour of Alaska; a discussion of Alaska's agricultural

and mineral potentialities; a description of about fifteen railroad routes with detailed physical descriptions of the Alaska Northern, Copper River, and Tanana Valley railroads; analysis of the kinds of traffic which these railroads would probably handle; estimations of construction costs of the various railroads and terminal facilities; discussions of the various harbors, and so on. In the final analysis, the Commission recommended the construction of two independent railway systems in Alaska, aggregating 733 miles at a cost of \$35 million. Both railroads linked important navigable river systems in interior Alaska with ice-free ports; both ensured the development of the Eastern and Western Districts of Alaska; and both would probably be connected some time in the future. One railroad should extend from Kern Creek to Knik Arm, thence to McGrath, the head of navigation of the Kuskokwim River. This line would tap the Matanuska coal field, and the farm lands of the Susitna and Kuskokwim valleys. Another railroad should be constructed from Chitina to Fairbanks with a branch to the Bering River coal field. In the Commission's view, the Copper River route was best for a trunk line railroad. Cordova had "distinct advantages" as a harbor. The route had easy grades and thus would give the lowest freight rates into the Tanana Valley. The route was already an established commercial route with farms, roadhouses, telegraph services, and the like already established along the wagon road. Finally, the route offered the shortest amount of construction. The Copper River & Northwestern Railway penetrated interior Alaska for a distance of 132 miles before turning easterly at Chitina to Kennicott. Considering the question of public versus private railroads in Alaska beyond their review, the Commission made no recommendations on the subject.

In early February 1913 President Taft submitted the Commission's report to Congress with a message expressing agreement with the recommendations of the Commission and urging early legislation to effect the proposals. As to who should construct and own the Alaska railroads, Taft simply reiterated the Fisher plan of 1911: "If the Government is to guarantee the principal and interest of the construction bonds, it seems clear that it should own the roads, the cost of which it really pays. This is true whether the Government itself should operate the roads or should provide for their operation by lease or operating agreement. I am very much opposed to Government operation, but I believe that Government ownership with private operations under lease is the proper solution of the difficulties here presented." (US Alaska Railway Commission 1913: 11) Government ownership was a radical decision on Taft's part. Government operation, however, was even more radical, as it implied a conscious intent to compete with and eventually control private railroads in Alaska. Moreover, the Government might have to construct branches, if not trunk line roads, throughout Alaska for all time to come.

Bills introduced during the summer of 1913 providing for Government construction of Alaska railroads found a relatively warm welcome in both houses of Congress. Now, with President Wilson in power, the Democrats and Progressives pushed legislation through Congress without much compromise. However, such questions as public ownership and operation of the railroads, as well as where the railroads should be located were carefully avoided in the bills. On January 24, 1914 the Senate passed an

Alaska railway bill with the vote 16 to 16; a majority of Democrats voting in favor of the bill, but the Republicans almost nearly divided. Less than a month later, the House overwhelmingly passed a similar bill. Differences between the Senate and House bills were ironed out and then sent to the President. On March 11, 1914 President Wilson signed the measure into law.

The Alaska Railway Act of 1914 was in many respects similar to the Panama and Philippines railway bills. The President was given broad powers to select any railroad route in Alaska. Not more than 1,000 miles of road were to be constructed, and at a cost not exceeding \$35 million. The railroad(s) were to be so located as "to connect one or more of the open Pacific Ocean harbors on the southern coast of Alaska with the navigable waters in the interior of Alaska, and with a coal field or fields so as best to aid in the development of the agricultural and mineral or other resources of Alaska."

The President was authorized to purchase or condemn "all real and personal property necessary to carry out the purposes" of the act. In the case of private railroads, the price must not exceed the actual physical value of the railroad. The President was to utilize any machinery, equipment, materials, etc. available in Panama for construction of Alaska railroads. The Isthmian Canal Commission was to deliver such property to the President's designees without charging against the \$35 million fund provided by the act. The President was empowered to construct, maintain, and operate telephone and telegraph lines in connection with the railroad(s), and to withdraw, locate, and dispose of areas of the public domain along the road(s) for townsite purposes. The regulations of the Interstate Commerce Commission would apply to the Government railroad(s).

As far as Government ownership of Alaska railroads was concerned, the Act directed the President "in his discretion to lease the railroad(s) or portions thereof, including telegraph and telephone lines, after the road was completed." The only stipulation was that such "no lease shall be for a longer period than twenty years." If the railroad could not be leased, the President was "to operate the same until the further action of Congress."

With the passage of the Alaska Railway Act of 1914 President Wilson faced the task of selecting the railroad routes. Before Congressional hearings and in debates on the floor, the recommendations of the Alaska Railway Commission had come under heavy attack. There were charges that the Commission had overestimated the construction costs of the trunk line railroads; that it had ignored certain harbors such as Passage Canal, Knik Harbor, Orca Bay, and Controller Bay, as possible railroad terminals; that it had misplaced its priorities in recommending a trunk line railroad over an established commercial route rather through some of the finest agricultural lands in the Matanuska and Susitna Valley; and of course that certain members of the Commission, namely Morrow and Cox, were pandering to the Alaska Syndicate, which, according to rumors, wanted to sell the Copper River railroad to the Government. On the other hand, advocates of the Copper River route, such as Alaska Delegate James Wickarshan, argued that a Government railroad would at last relieve the strangling hold which Morgan-Guggenheim interests had

on the Copper River region. Another strong advocate of the Copper River route was Falcon Joslin of Fairbanks who wrote an excellent summary of the advantages of the route: Cordova was a day closer to the lower United States than Seward and thus transportation rates were lower; the Cordova-Fairbanks route was shorter in distance by eighteen miles; the Bering River coal could be hauled to tidewater at less than half of the cost required to bring the Matanuska coal to seaboard; the Copper River route would be commercially profitable at once while it would be many years before the Seward-Fairbanks route would pay for a railroad; the Copper River route would tap the rich Chitina copper region and enable private operators to establish copper smelters; the Chitina-Fairbanks road would be less expensive to construct, maintain and operate; Cordova harbor was vastly superior to Seward; and Orca Bay was much better for a military and naval base. (Joslin 1915?: 1-13) There were many other arguments over the relative value of the various railroad routes. To many observers, however, it was clear that a more detailed, less rushed field investigation of Alaska railway routes was necessary.

On May 2, 1914, President Wilson directed Interior Secretary Franklin K. Lane to proceed with the surveying of railway routes in Alaska. A commission designated the Alaskan Engineering Commission (hereinafter referred to as AEC) was created by Presidential appointment. Three persons were selected. W. C. Edes had long experience in locating and constructing railroads for the Santa Fe, Southern Pacific, and other railroad companies. Thomas Riggs, Jr., a future Governor of Alaska, had years of experience in Alaska as a surveyor on the International Boundary Commission. Lieutenant Frederick Mears of the Corps of Engineers, USA, was formerly an engineer on the Great Northern railroad and a construction engineer on the Panama Railroad. Once the AEC was formally organized, Secretary Lane ordered the commissioners to Alaska at the earliest date.

Like its predecessor, the AEC divided Alaska into two districts, East and West, and isolated the routes in those regions which would link the Gulf of Alaska with the navigable river systems in interior Alaska. Within the Eastern District, a railroad could begin either at Cordova or Valdez, thence lead north via the Copper, Tonsina, Delta and Tanana rivers to the vicinity of Fairbanks. In the Western District, a railroad could begin either at Portage Bay or Seward, follow the north shore of Turnagain Arm and Knik Arm, thence north through the Susitna Valley, over Broad Pass, down Nenana River to its junction with the Tanana River. Considering the large amount of information already available on railway routes in the Eastern District, as well as the short time available to the AEC, it was decided to concentrate investigations in the Western District. The AEC was to make a "careful preliminary survey and estimate of the western route, with a branch therefrom to the Matanuska coal fields; to survey from Chitina to the Matanuska coal fields, there being little information on this route and to (make?) a reconnoissance (sic) from the western route into the Kuskokwim and Iditarod districts, as this had never been covered with railroad construction in view." (US AEC 1916: 10) In addition, the AEC was to investigate various harbors proposed for railroad terminals, and examine the feasibility of a road from the Bering River coal field to tidewater or to the Copper River & Northwestern Railway.

Arriving in Seattle in late May 1914, the AEC rented offices, employed men for the survey expedition, purchased supplies and pack animals, and arranged for the transfer of the International Boundary freight boat Midnight Sun for use on the Tanana and Nenana rivers, and for the construction of a boat for use on the Susitna River and tributaries. Eleven survey parties, each composed of fifteen to twenty men, were organized in Seattle. One party was directed to survey and evaluate the Alaska Northern Railway and locate alternative routes along the Kenai Peninsula; one party was to make a careful topographical survey of Passage Canal while another surveyed a preliminary line from Passage Canal to Turnagain Arm; three parties were to locate a route from Turnagain Arm to Broad Pass with a branch to the Matanuska coal fields; another three parties were to locate routes north of Broad Pass; and finally two separate parties were to run preliminary lines from Chitina to the Matanuska coal fields, and from the Susitna Valley to the Kuskokwim and Iditarod country. (US AEC 1916: 10-11) Each party was to map their lines and, as time permitted, marked the line on the ground; take careful topographic notes on both sides of the line; carefully note the physical characteristics of the country, soil, probable resources, "and any other items of interest." The field parties were to relay frequent reports to AEC headquarters at Ship Creek and Fairbanks. (US AEC 1916: 14)

By mid-June 1914 most of the survey parties were in the field. Meanwhile, the members of Commission made investigations of their own. Every member of the Commission visited the harbors of Cordova, Valdez, Portage Bay, Seward, and Knik; two inspected Controller Bay. Three inspections were made of the entire length of the Copper River & Northwestern Railway. Also, the AEC entered into an agreement with the railway company to survey a line from the road to the Bering River coal field via the Lake Charlotte route. Finally, each member of the AEC personally inspected assigned portions of the entire Seward-Fairbanks route. Edes supervised work in the Seward area; Mears, in the Ship Creek region; and Riggs, in the Fairbanks district. (US AEC 1916: 19-19, 76)

Late in the fall of 1914 the AEC and survey parties returned to the lower United States. A few men were left behind to record weather and ice conditions in Passage Canal and Cook Inlet, and one man to observe winter operations of the Copper River road. About three months later, on February 11, 1915, the AEC submitted its report to President Wilson. According to the AEC, the report attempted an "unprejudiced, conservative opinion throughout of present operations and possible development of the country to be traversed by suggested lines of railroads." (US AEC 1916: 62)

In general, the report of the AEC was very similar to the Alaska Railway Commission's Railway Routes in Alaska. Based on personal observations, government reports, data supplied by chambers of commerce, navigation and transportation companies, the report included detailed accounts of work accomplished in 1914; physical descriptions and estimates of necessary improvements on the Copper River, Alaska Northern, and Tanana Valley railroads; descriptions of the resources tributary to

trunk line railroads and branches in the Eastern and Western Districts; descriptions of the various harbors in the Gulf of Alaska; reports of reconnaissance surveys; maps, photographs, etc. Even the conclusions of the AEC as regards the transportation needs of Alaska were similar to those of the Taft Commission:

That Alaska is wonderfully rich in minerals has already been proven. That its agricultural resources are at least sufficient to sustain a large population can easily be demonstrated to those willing to listen. There is practically no limit to its coal supply.

The initial need of the Territory is reasonable transportation. With that, a rapid development is probable; without it, the growth will be exceedingly slow... That the high rates of transportation are a leading factor in the high costs of food stuffs and general supplies is self-evident. That there may be a few lean years for a pioneer railroad while the country is building up is possible, in fact quite probable, but that it will eventually be a success can not be doubted. Take the history of many of our western railroads for example; they started through a country in many instances much less promising than Alaska, and now who would dare question their success? (US AEC 1916: 84)

These of course were harmless statements, Congress already having arrived at the same conclusions in passing the Alaska Railway Act. The question was no longer whether the Government should build the railroad, but where the railroad should be built.

It was precisely on this crucial question that the AEC differed with the Alaska Railway Commission. The AEC evaded any explicit recommendations as to where the Government railroad should be constructed. The justification was that "this commission is essentially an engineering one, organized to handle the subject along technical lines. In selecting a route other questions besides strictly engineering ones are to be considered. The commission had understood that their special mission was to collect the evidence and present it in as impartial form as possible." (US AEC 1916: 83) In spite of this disclaimer, however, the evidence presented in the AEC report was heavily weighted in favor of a trunk line railroad in the Western District, and in particular the Seward-Fairbanks route.

From the AEC's point of view, there were only two railroad routes in Alaska worth serious consideration: the Alaska Northern and the Copper River routes. The choice between these two routes did not hinge on the question of harbors. Every harbor which the AEC visited was suitable for a railroad terminal, although each had its particular advantages and drawbacks. As concerns the two railroads, the Copper River road was by far the better. The Alaska Northern was in very poor condition and necessitated considerable repairs and improvements. However, no major line changes were necessary. Contrary to the Taft

Commission's belief, the "Loop District" between Mile 48 and Mile 52 need not be eliminated. While construction work along Turnagain Arm would be heavy, requiring an expense of \$77,000 per mile in some places, the line could be pushed rapidly inasmuch as laborers could work from both ends of Turnagain Arm simultaneously and all work was easily accessible by water. Most important, Ship Creek was an excellent site for a construction base and supply camp, for "even the most pessimistic acknowledge that for seven or eight months the shipping conditions would be favorable in Knik Harbor." (US AEC 1916: 82) Construction work north of Ship Creek would present no major difficulties. Numerous streams and rivers would have to be bridged, but the expense would not be great. Most of the line was accessible via the Susitna River. Construction could proceed in two directions simultaneously. Generally on an easy grade, the entire line traversed forested areas and thus local timber could be used for ties and bridge material. All in all, the AEC estimated that the Seward-Fairbanks road would cost about \$25.6 million, including improvements (but not purchase) on the Alaska Northern branch lines to Ship Creek and the Matanuska coal fields, and terminal facilities at Ship Creek and Seward. (US AEC 1916: 90, 169)

In demonstrating the feasibility of the Seward-Fairbanks route, the AEC stressed the fact that "we are building not simply for the present population of Alaska but for the far greater population that is to come." (US AEC 1916: 84) With respect to mineral resources and agriculture potentials, the Western District held a decided advantage over the Eastern District. A Seward-Fairbanks railroad would tap a number of placer and quartz gold mining districts. Many of these districts were undeveloped due to the lack of cheap means of transportation. The agricultural possibilities along the Western route were greater than in the Eastern District, and more than 100 homesteaders had already filed at Knik. The climate in the Cook Inlet area was regarded "the most favorable of any found on the coast of Alaska." (US AEC 1916: 70-73)

Finally, the Western Route offered the greatest effective use of Alaska coal resources. The Western route would tap not only the Matanuska coal field but also the Nenana field. According to the AEC, the Fairbanks district was rapidly being stripped of wood as a source of fuel. Unless cheap means of transporting coal from the Nenana coal field to Fairbanks and vicinity could be immediately furnished, "the production possibilities of a great section of Alaska will become insignificant." (US AEC 1916: 65) Although only lignite coal was probably available in the Nenana field, it could be used for heating and steaming purposes. Also, in view of the Navy tests of the Bering River coal in 1912, and Chickaloon coal in 1913, it was discovered that the latter coal was entirely satisfactory for Naval purposes. Although the Bering River coal was found to be unsatisfactory, the AEC noted that the whole field should not be condemned. Geologists familiar with the field stated that the samples collected by the Navy may not have been representative of other veins in the field. (US AEC 1916: 75) Nevertheless, Chickaloon coal could be brought to Knik Harbor at an expense not much greater than a railroad could transport Bering River coal to Cordova or Controller Bay.

In view of the optimistic reports of the AEC, it is little wonder that President Wilson finally decided upon the Western Route. On April 10, 1915, the President announced his choice of railroad route from Seward to the Tanana River via Broad Pass with a branch line to the Natanuska coal fields. The Secretary of the Interior was directed to purchase the line of the Alaska Northern Railway Company. On the same date, Wilson instructed Interior Secretary Lane by letter to proceed with the construction of the railroad. The AEC was to direct the work under the supervision of the Secretary of the Interior. W. C. Edes was appointed chairman of the AEC and chief engineer of the railroad project; he was to have "immediate charge of the work in Alaska and have power of approval or disapproval of all administrative matters connected with the work in Alaska." Apparently there was some doubt as to the division of authority and responsibility between the President and the Interior Secretary in the affairs of the AEC, for on April 30, 1915, President Wilson declared that all work of the AEC was to be supervised and controlled by the Department of the Interior. With these orders, then, the building of the first (and only) trans-Alaska railroad was formally authorized.

Building the Government Railroad

For nearly a decade Alaska politicians and capitalists with interests in Alaska had complained that the withdrawal of the coal-lands and high transportation rates presented major obstacles in the development of Alaska industries. After nearly three years of debate, Congress finally passed the Alaska Railway Act of May 12, 1914 and the Alaska Coal-Land Leasing Act of October 20, 1914, the former providing for a system of Government-constructed and-owned railways in Alaska, the latter opening up the coal-lands to local miners rather than to corporation giants. Once Alaska coal was on the market, Alaskans would no longer rely on costly foreign coal and California oil. Consequently, the cost of operating gold and copper mines would decline; river and ocean transportation rates would be reduced; and smelters would be established in Prince William Sound. Moreover, the first of the Government railroads, the trans-Alaska railroad, would tap the Nenana and Matanuska coal fields; reduce the distance, time, and cost of transporting supplies and equipment from the coast to Interior Alaska; and finally, penetrate a vast, undeveloped region with high potentials for agricultural and mining industries. Taken together, the trans-Alaska railroad and the opening of the coal-lands promised a bright future for Alaska.

Considering the importance of coal in the Alaska economy, it is not surprising that the Alaska Engineering Commission should first direct its efforts to bring Matanuska coal to tidewater at an early date. The AEC had known for some time that the President would select the Seward-Fairbanks railroad route, and made preparations for the construction season of 1915. In early spring, 1915, an AEC representative at Panama arranged for shipments of machinery, equipment, and materials to Alaska. At Seattle, Lieutenant Mears secured additional railroad equipment and supplies, ordering the first shipment to Alaska in early April. On April 18, 1915, just four days after President Wilson's formal announcement of the selected Government railroad route, Mears left Seattle with engineering and office forces, pile-driver operators, carpenters, and other skilled laborers. Their destination was Knik Harbor, the nearest tidewater point to the Matanuska coal fields, and soon to become Alaska's busiest port.

Upon landing on Knik Arm, the AEC surveyed and cleared land for terminal facilities. A dock was erected on the north bank of Ship Creek. Alaska Northern railroad flat cars were shipped from Seward to Ship Creek by barge for use in transporting equipment and materials from the dock to the storage yard. Cottages, an amusement hall, a tennis court, commissary, and small hospital were constructed for the benefit

of AEC employees. Carpenter shop, lumber shed, magazine shop, small engine house, and a water and pumping plant was built in the freight yard. A temporary telephone and telegraph line was erected from Ship Creek to Seward, the administrative headquarters of the AEC and the nearest town with communication connections with the States.

When it was learned that the AEC would begin railroad construction on Knik Arm and do most of their hiring in Alaska as a matter of policy, many persons gathered at Ship Creek in search of employment. In a few weeks, 2,000 or more people were living in tents and log cabins in the new town of Anchorage. The AEC had not expected this rush to Ship Creek. The newcomers having gathered on land intended for railroad terminal grounds, the AEC decided to lay out a townsite about one-half mile distant. Nearly 1,500 lots were surveyed in 1915, the Government reserving 100 lots for federal and municipal purposes. During the week of July 10, 1915, the first auction of lots was held, each lot selling at an average price of \$200. In order to curb the excesses of "boom-town" life, the Government decided to hold title to the lots until the completion of the railroad project. The AEC appointed a townsite manager, under whose direction the land was cleared, streets improved, and water supply, fire protection, and telephone and electrical systems provided. The costs were met from special assessments levied on the lots. Although a number of people left during the winter of 1915, about 1,500 people remained in the new Government town. Heartened by the fact that Anchorage residents accepted Government regulations, the AEC congratulated itself "on the success of its first experiment in town building in Alaska." (US AEC 1916: 191) The AEC later established towns at Wasilla, Matanuska, and Nenana, but none were as successful as Anchorage.

Beside the construction of terminal facilities at Anchorage, the AEC also made considerable progress on the railroad to the Matanuska coal fields. For maximum efficiency and economy, the AEC utilized two construction methods. In the building of snowsheds, culverts, and most bridges, as well as in track-laying operations, the AEC employed laborers on an eight-hour basis. For the more arduous work, such as clearing right-of-way, grubbing, grading, excavation, etc., the AEC utilized "station gangs." A number of men associated as partners, and then accepted an AEC contract calling for a specific type of work at a certain price per cubic yard for grading, or per acre for clearing and grubbing. Each man signed the contract, and thereby became a contractor; each received a check for his portion of the completed work. The contractor rented equipment from the AEC and purchased supplies from the commissary. An attempt to employ resident Alaskans rather than large construction companies, the "station gang" system proved a success, despite the occasional abuses of commissary privileges and complaints that contracts were let in preferences to foreigners. (US AEC 1916: 186)

Using these two methods, then, the AEC was able to push the end of steel as far as Eagle River, a distance of about thirteen miles from Anchorage, by the fall of 1915. The right-of-way was cleared for about forty miles; and grading, about thirty-five miles. During the winter of 1915, a small AEC force constructed a temporary bridge across Eagle

River. Supplies and materials shipped to Anchorage in USS Crook, which the AEC chartered to avoid rising war-time freight rates, were transported to a large winter camp at Peters Creek and then distributed by sled along the line. In mid-February, 1916, station gangs resumed the work of clearing a right-of-way, and about a month later, began work on some of the rock cuts. Grading and track-laying operations beginning in July, 1916, AEC forces were able to push the end of steel to King River, about sixty-one miles from Anchorage, before severe winter conditions again curtailed work. A large winter camp was then established at the end of steel. (Alaska Railroad Record (hereinafter referred to as ARR) May 7, 1918: 204a-b)

With only fourteen miles remaining before steel reached the important Chickaloon coal mine, a rather large construction force continued work on the Matanuska line through the winter. In February, 1917, station gangs began work and, by mid-August, the entire grade from King River to Chickaloon was ready for steel. With the use of a modern track-laying machine, AEC forces rapidly put down ties and steel. On October 20, 1917, the end of steel was finally pushed to the Chickaloon coal mine. Unable to use Chickaloon coal for construction purposes, the field having been reserved for the Navy, the AEC purchased the privately-operated Eska coal mine for \$15,650. Mining operations beginning in June 1917, the AEC was thus ensured of an adequate supply of fuel for locomotives, terminal facilities, and construction purposes. (ARR May 14, 1918: 210; Barnhardt 1922: 20-21)

Following the completion of the road to the Matanuska coal fields, the AEC directed its attention to the Seward-Anchorage line, which, when completed, would provide a year-round outlet for Matanuska coal. Since the beginning of the railroad project, little work had been done in extending the old Alaska Northern line beyond Kern Creek. Although an agreement for the purchase of the Alaska Northern had been concluded in 1915, the transfer of title to the Government was not effected due to certain unexpected suits against the private railroad. Until these suits were resolved, the AEC could only undertake minor projects, such as repairing the road as far as Mile 34 for summer and winter gasoline car traffic, constructing a temporary machine shop at Seward, and repairing Alaska Northern rolling stock. On August 25, 1915, litigation over the Alaska Northern title ceased, and the Government paid \$500,000 with interest as an initial installment. The final payment of \$650,000 was made on June 30, 1916, the Government then coming into full possession of the railroad. (US AEC 1916: 189-91)

After a careful inspection of the Alaska Northern line in the summer of 1915, the AEC concluded that the entire road needed to be rehabilitated before undertaking any major construction on the line immediately north of Kern Creek. The condition of the railroad was poor. Most of the bridges and ties were decayed, and many trestles in the "Loop District" and lower Placer River valley were washed out. Rock slides had blocked the road in some places, and rivers had made serious cuts into the roadbed. In many cases, the embankments were too low. The tunnels needed enlargement, and snowsheds needed to be constructed. Finally, the entire line needed ballasting and surfacing. (ARR May 7, 1918: 206)

Upon obtaining possession of the Alaska Northern, the AEC initiated a massive rehabilitation project. In the summer of 1916, AEC forces constructed many new trestles, while station gangs widened the right-of-way, and reconstructed the grade. Parts of the road were relocated in order to improve alignments. About five miles of bridges were thoroughly inspected and repaired, most of the superstructures generally found to be in good condition for light traffic. By early October, 1916, the Alaska Northern line was sufficiently improved for light trains. In mid-November, however, a large snowslide in Mile 53 interrupted traffic. Since the bridges in the "Loop District" could not support the weight of rotary snowplows, the AEC was forced to await spring before transporting equipment, material, and supplies to the end of steel for the summer construction season.

Considering the unexpected delays and poor condition of the Alaska Northern railroad, the AEC revised their original plans, deciding that the Turnagain Arm road should be built almost entirely from Anchorage. Thus, in early 1916, survey parties were sent to locate a satisfactory line which would pass through Anchorage and connect with the Ship Creek spur, thus becoming part of the main line. A line on an easy grade was soon located, and station gangs began clearing and grading operations. A small track-laying force was spared from work on the Matanuska branch line. Before the onset of winter, steel was laid about ten miles south of Anchorage.

With the Matanuska branch nearly completed in early spring, 1917, the AEC shifted the bulk of its forces and station gangs for heavy work on Turnagain Arm. Despite a lack of men, supplies, and materials resulting from America's entry in the European war, AEC forces managed to push the end of steel to Rainbow Creek (Mile 93) by late 1917. During the winter of 1917, about 1,000 men, or less than half the number really needed, continued working on the Turnagain Arm road, mostly between Bird Point and Rainbow Creek. Construction materials and supplies were shipped by water to various camps on Turnagain Arm which the Alaska Northern had erected in the late 1900's. A dock was built at the Rainbow Creek camp, and large freight warehouses erected at Rainbow Creek and Potter Creek. In the meantime, station gangs and AEC laborers constructed bridges, blasted rock, and graded the line. The work was extremely heavy, Mears later describing the work as the most difficult on the Government railroad:

Occasionally, for a short distance, a bench occurs, on which the line can be placed with easy construction; but for the greater part of the distance, the line has to be benched in on heavy transfer slopes. The contour of the country is very irregular, making it impossible to secure light work even by the introduction of very sharp curvature. In many cases deep embankments and gulches occur, and in order to save expensive cuts in the precipitous rock bluffs, it was necessary to make heavy fills, the slope extending into the waters of Turnagain Arm, where they are affected by the heavy tides. (ARR May 14, 1918: 210)

By March 1918, most of the grade on Turnagain Arm was ready for steel. For a short time it was feared that AEC forces would have to be cut back due to lack of funds and supplies. On July 1, 1918, however, more than \$5 million was made available, permitting the AEC to obtain materials and continue track-laying operations. With AEC forces laying steel north from the Girdwood area and south from Rainbow Creek, rivalry between the two track-laying forces developed as both attempted to extend the steel beyond Mile 79, the line of demarcation between the Seward and Anchorage Divisions.

The Anchorage Division won the race. On September 10, 1918, the ends of steel were joined at Mile 78.75, one-quarter of a mile within the Seward Division. William C. Edes, chairman of the AEC, drove the last spike that finally closed the gap between the Matanuska coal fields and an ice free port. It was a memorable day, only marred by the absence of Mears and Riggs. (Mears resigned from the AEC on January 13, 1918, to re-enter active military service as a colonel of the Thirty-first Engineers. Riggs resigned on April 25, 1918, to accept his appointment as Governor of Alaska). Nevertheless, upon learning of the completed railroad between Seward and Matanuska, Secretary of the Interior Franklin K. Lane wired, on September 12, his congratulations to the AEC: "This is a matter of great gratification and begins a new day in the history of Alaska, which now will be able to reveal to the world more fully her resources, draw new people to the Territory, and become more perfectly an integral part of our Nation." (ARR September 17, 1918: 353)

The AEC had earned the congratulations of Secretary Lane. The Matanuska-Seward railroad had been constructed under the most difficult circumstances. The war had drawn heavily upon the Alaskan labor force. Wages, the price of supplies, materials, and equipment had steadily increased since 1915. Many materials, such as steel products, were difficult to obtain. Yet, in the face of these obstacles, the AEC had not only completed the Seward-Matanuska railroad, but had also established a rail link between the Nenana coal field and the town of Nenana on the Tanana River.

The last member of the AEC to arrive in Alaska, Thomas Riggs, Jr., dispatched survey parties in 1916 to locate a line from Fairbanks directly to the Nenana coal field. When, however, station gangs began clearing and grading a line from Fairbanks which paralleled the Tanana Valley Railroad, Falcon Joslin, president of the private railroad, protested against the work unless some satisfactory arrangement or compensation was made with his company. For a variety of reasons, the AEC chose to purchase the entire Tanana Valley Railroad. In late 1917, negotiations were concluded, the Government securing ownership of the narrow-gauge railroad for \$300,000.

As in the case of the Alaska Northern, the Tanana Valley Railroad was in poor condition. The AEC thus initiated a rehabilitation program. Most of the trestles were reconstructed; sections of the line relocated to higher ground; heavier steel rails laid; the roadbed widened; and the entire line surfaced. By late 1920, the Tanana Valley Railroad was sufficiently improved to handle two freight and passenger trains a week from Fairbanks to Chatanika.

In order to incorporate the Tanana Valley Railroad in the Government railroad, and thereby establish a rail link between the Nenana coal field and Fairbanks mining district, the AEC decided to construct a narrow-gauge railroad from Happy Station to North Nenana. In the summer of 1917 about 700 to 800 men began clearing and grading the new Happy line. The work was slow and expensive. Station gangs, mostly one man contractors, could only use wheelbarrows to prepare the grade, the country too marshy to support teams and scrapers. Unable to obtain gravel, station gangs simply used dirt for the grade, which had to be reconstructed after a rainfall or the spring break-up. Thus, it was not until early November 1919 that AEC forces managed to extend the narrow-gauge steel to North Nenana on the Tanana River. The old Chena spur no longer of use, the steel was removed in early 1920.

By the time the railroad between North Nenana and Fairbanks was completed, the AEC had already constructed another road from Nenana to the coal fields. In late May 1916, the first of the AEC employees, office and field forces landed at Nenana and began erecting mess halls, offices, quarters, a commissary, power plant, etc. In July, the AEC began piledriving operations on the Nenana waterfront. Four months later, the Nenana dock was ready to receive freight. Anticipating the hundreds of people who left Fairbanks for Nenana, the AEC surveyed a townsite and sold lots in the summer. By the close of 1916, Nenana was a flourishing town of about 600 people. (The Nenana News November 18, 1916: 4; December 30, 1916: 1)

While AEC forces established a terminal base at Nenana, station gangs cleared and graded a line and disconnected sections as far south as present-day Healy (Mile 358), in the heart of the Nenana coal fields. Considering the high freight rates in interior Alaska, the AEC postponed track-laying operations until a special tariff agreement was negotiated with the White Pass & Yukon Railway Company. In early 1917, the White Pass railroad allowed the AEC a forty percent reduction in commercial rates. While this agreement helped the AEC to avoid high transportation costs, which were then increasing rapidly, it proved to be of little immediate benefit. For it was not until August 1917 that the first large shipment of steel rails arrived at Nenana. Despite the late season, the AEC decided to begin track-laying operations. Station gangs burning brush fires at night to thaw the ground for gravel, AEC forces laid steel day and night in November. By the close of the year, the railroad had not been extended more than several miles beyond Julius Creek, or about fifteen miles from Nenana. However, grade was practically completed as far as Mile 370 (Nenana River crossing), and ties were distributed.

As soon as weather conditions permitted in early 1918, AEC forces resumed laying track in an effort to reach Lost Slough crossing before early summer. In late March, 1918, however, the railroad project suffered a major setback when the Nenana River flooded into Lost Slough for the first time in many years. About twenty miles of grade and many trestles, including a 1,300-foot timber bridge across Lost Slough, was washed out by the flood. Nearly \$500,000 of work was ruined.

During the summer of 1918, station gangs and AEC forces worked on the so-called "D-line", which replaced the former line between Mile 387 and Mile 410. By early September, most of the grade on the new line was ready for steel. Steel was laid rapidly; and by late October 1918 the "D-line" was ready for light trains. As the grade south of the "D-line" as far as Lignite (Mile 363) was ready for steel, AEC forces had few difficulties in extending the steel to the Nenana River crossing (Mile 370) by the end of the year. In early April 1919, they pushed the end of steel to Lignite (Mile 363), where an important coal mine operated by Robert E. Burns and Company was located. Several months later, the end of steel was pushed to Healy (Mile 358):

By 1919, then, the AEC had achieved one of its major purposes, that is, the construction of railroads to the Nenana and Matanuska coal fields. Of course, both railroads were far from completed. Most of the bridges were temporary and needed replacement by heavy truss spans. Tunnels in the "Loop District" remained to be enlarged and timbered. Snowsheds needed to be constructed at several points on Turnagain Arm. In the case of the Nenana-Healy railroad, major steel bridges were required over the Nenana and Tanana rivers. The line gap at the Tanana River was filled with ferries in summer and sleds in winter. The Nenana River bridge was only a temporary structure needing reconstruction each spring after the ice break-up. Finally, the North Nenana-Fairbanks railroad needed to be converted to standard-gauge before uninterrupted services could be offered between Healy and Fairbanks. Most of these improvements were to be postponed until the AEC constructed a railroad from Anchorage to Nenana.

The AEC intended of course to incorporate the Nenana-Healy railroad in the trans-Alaska main line. Because of higher wages and transportation rates, as well as the problem of shipping materials during winter months into Interior Alaska, the AEC decided that it was more practical and economical to construct the trans-Alaska railroad mainly from Anchorage. Once the Seward-Matanuska railroad was completed, the AEC would have not only a plentiful supply of coal for construction purposes, but also a means to obtain supplies and equipment throughout the year.

Until 1917, the AEC engaged in little work on the line north of Anchorage. Dissatisfied with the lines located in 1914 from Matanuska Junction (Mile 151) through the Susitna Valley, the AEC sent Frederick D. Browne, a location engineer formerly with the Southern Pacific Railroad, to find a new route in early 1916. The original location was revised from a point ten miles of Matanuska Junction to Montana Creek (Mile 209). As soon as Browne's location was accepted by the AEC, station gangs began clearing and grading the line in sections north and west of Matanuska Junction. Before the onset of winter, the first eight miles of grade was ready for steel. In view of heavy rains, however, the AEC decided to await spring before laying track.

In the meantime, materials and supplies were delivered by water to various camps on the upper Susitna River. Steam-operated, sternwheel river boats navigated the Susitna River as far as the Indian village of Croto. Beyond that point, the AEC required the use of eighty-foot "river tunnel boats," which had a draft of only eighteen inches when loaded. With these boats, AEC forces could supply station gangs clearing and grading the main line as far north as Indian River, or more than 100 miles from Matanuska Junction. (ARR May 14, 1918: 210)

Inasmuch as most AEC funds were channeled into construction of the Matanuska branch and the Seward-Anchorage line, the AEC planned only to push the end of steel within a reasonable distance of the Willow Creek and Cache Creek mining districts for the 1917 season. In April 1917 a small force began laying steel north from Matanuska Junction, managing to push the track as far as Montana Creek (Mile 211) by late 1917. With the exception of a few gaps, the grade was ready for steel as far as Dead Horse Hill (Mile 249). (ARR May 14, 1918: 211)

Having exhausted most supplies and materials on the Matanuska and Anchorage-Seward lines, the AEC virtually halted all work on the road north of Anchorage in 1917 and 1918. By late November 1918, when an influenza epidemic immobilized the workers, steel had not been extended beyond Mile 224, or about two miles south of Talkeetna. A year later, the end of steel was no further than Mile 245.

This slow progress was due to the fact that the AEC had almost expended its \$35 million appropriation of 1914. With only \$4 million remaining in early 1919, the AEC suspended work on the main line until AEC forces in interior Alaska completed their section of the road to the Nenana coal field. In order to persuade Congress of the need for a supplemental appropriation, the AEC employed J. L. McPherson, a former chief engineer of the Copper River & Northwestern Railway and a prominent member of the Seattle Chamber of Commerce, to compile detailed estimates for work to be completed on the Government railroad. McPherson estimated that more than \$20 million was needed to complete the railroad. (US House 1919: 34) In hearings before the House Committee on the Territories, the AEC demonstrated the effects of the war on the Government railroad project. Since 1915, labor wages had increased fifty-nine percent; materials and supplies, 161 percent; and transportation costs, 147 percent. (Bernhardt 1922: 35) In 1915, the cost of labor and material for one mile of track had been \$9,860; in 1919, the cost was \$14,264. (US Department of the Interior 1922: 213) Clearly, the AEC was a victim of inflation.

William Edes, chairman of the AEC, also admitted that the AEC had underestimated the conditions of railroad construction in Alaska. The railroad along Turnagain Arm, for example, required an expense of \$200,000 to \$300,000 in some places, and still the railroad was not ready for standard equipment. Further investigations indicated that similar heavy work would be encountered in the Broad Pass country.

War-time conditions and heavy construction costs did not fully explain the slow progress of the railroad project. Congress itself was partly to blame. It was the old problem of irregular appropriations: "If we do not have the money, we can not get to work, and the trouble with our appropriations have been that that feature of it has never been realized—that is, that due to this method of appropriating, always in May or June, when we should be pushing and pushing, we have been waiting around to see what Congress would do on the regular appropriation." (US House, Committee on Appropriations 1920: 1318) Irregular appropriations, Mears argued, interfered with nearly every aspect of the AEC's original program to construct the Government railroad from three points simultaneously. Instead, the AEC was forced to assign priority

to the railroads to the coal fields. More often than not, the AEC lacked sufficient funds to begin large scale construction in the spring; and when the funds were available, it was never enough to sustain intensive work through the brief summer and fall months. By the time winter conditions halted work, the AEC had nearly exhausted its funds, and so could not take full advantage of the favorable winter months to purchase and distribute supplies and materials along the railroad line. Without a continuous appropriation, railroad construction could only proceed in spurts. Apparently Mears' argument was convincing. When, on October 18, 1919, Congress approved a supplemental appropriation of \$17 million, three-quarters or \$13 million was made available in fiscal year 1920.

During the winter of 1919, Colonel Mears, who was appointed chairman and chief engineer of the AEC upon Edes' retirement, made preparations for the construction season of 1920. Special tariff agreements were concluded with the regular steamship lines—the Alaska Steamship Company and the Pacific Steamship Company—for transportation of freight and AEC employees to Alaska. Army transport South Bend was chartered in early 1920 to ship laborers from the Pacific coast states to Alaska. AEC administrative offices in Alaska were consolidated, and new offices created to handle the supply, purchasing and an accounting aspects of the railroad project. Arrangements were made for the fabrication and erection of large steel structures over Hurricane Gulch, and the Susitna, Nenana and Tanana Rivers; each bridge site was to be inspected by W. E. Angier, "one of the best known bridge engineers in the United States." (ARR April 20, 1920: 191) Finally, the AEC transferred the Chickaloon coal mine, which it had been developing at considerable expense since 1919, to the Navy. The Navy took over the mine on July 1, 1920, when \$1 million was made available for mining operations. (US Department of the Interior 1920: 132)

By early 1920, work on the main line north of Anchorage was active. Efforts were made to complete several short unfinished sections of grade between the end of steel at Mile 237 and the crossing of the Susitna River (Mile 264). By July 1920, AEC forces had pushed the end of steel to Susitna River, and began grading the approaches, constructing the falsework and concrete piers for the first large steel bridge on the Government railroad. Two months later, American Bridge Company forces began erecting the steel structure. By January 1921, the bridge was ready for traffic.

In early spring, 1921, the entire line between the ends of steel at Mile 275 in Chulitna Pass and at Mile 355, just south of Healy, was covered by workers. About 4,000 men, many of them imported from Seattle and San Francisco, were clearing and grading the line, and driving tunnels. In early June, 1921, AEC forces pushed the end of steel to Hurricane Gulch (Mile 284). On June 11, 1921, American Bridge Company forces began erecting the second largest bridge on the Government railroad. The steel arch was closed on August 8. One week later, the first train passed over the 920-foot bridge.

As supplies, materials, and men were plentiful, and most of the grade between the ends of steel was completed, Mears decided to force track-laying operations and trestle construction day and night through the fall of 1921. In late December, 1921, the end of steel finally reached the south bank of Riley Creek, where only one month earlier AEC

forces headquarters at Nenana and Healy had pushed their end of the steel to the north bank. Upon arriving at Riley Creek, AEC forces began constructing the approaches and piers for the steel bridge. Finally, in early February, 1922, the last steel rail was laid on the new bridge, marking "the practical completion of one of the most difficult engineering projects undertaken by the United States Government." (The New York Times February 3, 1922: 20) For the first time in Alaska history, the navigable waters of Interior Alaska were linked by railroad with an ice-free port.

Nevertheless, a considerable amount of work remained to be done before the railroad was actually completed. During the summer of 1922, AEC forces were engaged in much repair work and ballasting. Numerous station buildings were constructed, and a five-mile spur was built from Healy to the important mines of the Healy River Coal Corporation at Suntrana. Finally, AEC forces constructed the approaches and piers of the Tanana River bridge, the last major gap in the Government railroad. In early September, 1922, American Bridge Company employees began erecting the steel structure. By late November, freight trains were able to pass over the bridge. In late February 1923, the Tanana River bridge, the largest on the railroad, was finally completed for traffic. (US Department of the Interior 1923: 111-12) Shortly thereafter, AEC forces began converting fifty-six mile road between North Nenana and Fairbanks to standard-gauge. On the morning of June 15, 1923, the last rail was laid at Fairbanks, thereby permitting for the first time through traffic from Seward to Fairbanks. (US The Alaska Railroad 1925: 8) The trans-Alaska railroad was finally a reality.

The highlight for the year 1923 was of course President Harding's visit to Alaska to participate in the "Golden Spike" ceremony on the Government railroad, officially designated "The Alaska Railroad" on March 26, 1922. (The New York Times March 26, 1922: 14) Arriving at Seward on transport Henderson on July 13, President Harding, Mrs. Harding, and party toured the entire length of the railroad as far as Fairbanks. Stops were made at Tunnel, Anchorage, Chickaloon, Wasilla, Willow, Curry, Broad Pass, Cantwell, McKinley Park, Healy, and Nenana. On July 15, at the north end of the Tanana River bridge, the train stopped for the "Golden Spike" ceremony. Standing in the center of the track, facing the bridge and a host of cameras, President Harding commented: "I am frank to say that when the enterprise was first proposed I was inclined to oppose it; but, having seen the empire of Alaska and the possibilities which this railway opens up, I am glad a generous government undertook and carried to completion the construction of the Alaska Railroad." (The Nenana News July 17, 1923: 1) With these words, the President then lightly tapped the spike in place.

Throughout his tour of Alaska, President Harding repeatedly assured his audiences that the Alaska Railroad would facilitate the development of Alaska industries. Many Alaskans greeted this news with loud cheers, believing that the Government would operate the new railroad due to, or in spite of, the economic conditions in Alaska. Since 1914, the Government had adhered to the view that the development of Alaska industries would be slow. Few officials, however, had anticipated a worsening of

economic conditions. The fisheries were in poor condition; gold-mining industries were almost at a standstill; farming remained an insignificant industry; no smelters had been established in Alaska, despite the fact that copper production in the Prince William Sound had increased tremendously in the war years; and finally, the white population of Alaska had actually declined by at least 10,000 people in the period 1910 to 1920.

In light of these conditions, the Alaska Railroad came under heavy attack in Congress. According to some politicians, the only interests which benefited from the Government railroad were the Morgan-Guggenheims. Now that the railroad was completed, the Alaska Syndicate could develop the Mayo silver mines in Canada and ship ore at low cost to the coast of Alaska via the Government railroad. Congressmen deplored the fact that the Government had spent \$56 million to build a railroad that benefited less than 5,000 people along the Seward-Fairbanks main line; that the railroad was operating under an annual deficit of more than \$1 million; that the AEC has wasted money and time in building a modern railroad when it was clear that Alaska needed tens of thousands of miles of pioneer railroads, roads, and trails.

In response to these attacks, the Government urged special legislation designed to stimulate the Alaska economy. In April 1920, Secretary of the Interior John B. Payne created an Alaska Advisory Committee to investigate the economic problems of Alaska, and to make recommendations. On June 11, 1920, the Committee submitted a report of its investigations, recommending, first, that the two regular steamship companies in Alaska be combined into one company. This action would reduce ocean freight and passenger rates and improve transportation and mail service. If the two companies would not merge, the Committee suggested that the Government establish its own steamship line from Seattle to major Alaska ports. Second, an Alaska Development Board should be created to coordinate Federal control of Alaska lands and resources. Until such a board was appointed, the Government should create an Inter-Departmental Alaska Committee from representatives of Federal agencies with responsibilities in Alaska. Third, Federal road construction programs in Alaska should be coordinated, and a plan developed for a comprehensive road and trail system. Fourth, the Government should investigate the commercial feasibility of smelting copper ores within Alaska. Finally, the Government should allow for the development of the Alaska pulp-wood industry, and additional surveys should be made of timber and water power resources.

Many of the Committee's recommendations were eventually implemented, but the one recommendation which Interior Secretary Payne chose to support as "essential for the real development of Alaska," that is, a Government steamship line, failed to receive Congressional action. Secretary Payne thus settled for a special tariff agreement with the regular steamship lines. When, in 1922, the White Pass & Yukon Railway abolished transportation services on the Tanana River, Interior Secretary Albert B. Fall, apparently at Mears' suggestion, authorized the AEC to enter the river transportation business. Thus, in late 1922, the AEC took over steamers General Davis and General Jacobs, as well as a number of barges from the War Department, which was then closing the Fort Gibbon post at Tanana. In the following year, the AEC began opera-

ting steamers from Nenana as far as Holy Cross and Marshall on the Yukon River.

In order to develop traffic for the Alaska Railroad, the Government urged Congress to approve a plan which would develop a road and trail system in Alaska as feeders to the Alaska Railroad. The Government wanted Alaska included in the Federal Highway Act or, at least, be considered for annual direct appropriations of \$10 million for road and trail construction. As a first step in this plan, the AEC was placed under the direction of the Alaska Road Commission in the Department of War. On March 24, 1923, Colonel Mears was transferred back to service in the Corps of Engineers. Two days later, Colonel James G. Steese and Major John C. Gotwals assumed active charge of the AEC as chairman and chief engineer, and vice-chairman, respectively. Both officers retained their seats on the Alaska Road Commission. (Steese was president of the Road Commission; Gotwals was the engineer officer.) (US The Alaska Railroad 1925: 5) Congress, however, refused to act on the recommendations of the Secretary of the Interior. Thus, on June 8, 1923, President Harding ordered the operations of The Alaska Railroad returned under the direction of the Department of the Interior. On August 15, 1923, the AEC organization was abolished with the Alaska Railroad.

By 1924, the Government had accepted the fact that it would have to operate the trans-Alaska railroad until economic conditions in Alaska improved. In view of Congress's criticism of the Alaska Railroad deficit, Interior Secretary appointed, on July 7, 1924, Noel W. Smith of the Pennsylvania Railroad as special assistant to investigate the conditions of the Alaska Railroad. Smith was to estimate the cost of completing the railroad, and recommend future policies and methods of operation, organization, etc.

Later appointed General Manager of the Alaska Railroad, Noel Smith established policies which set the tone of subsequent Alaska Railroad operations for the next thirty-five years. Adopting a policy of economy and business methods, Smith eliminated many employee positions, consolidated the work of departments, restricted train service to the "actual necessities," loaded trains and cars to capacity, etc. Smith claimed that additional measures of economy could be effected, but they would be small due to the lack of funds; he estimated that about \$12 million was needed to put the railroad in condition for efficient and economical operations. As far as the future of the Alaska Railroad was concerned, Smith predicted that the railroad would not be on a paying basis for many years:

While no rapid development of the resources of the Territory can be looked for in the next few years, there is every indication of a gradual and healthy growth in traffic for the railroad as a result of the development of the resources which is now taking place in a more business-like and substantial manner than in the past. So that, while there is no prospect that the operation of the railroad can be continued for some years to come without substantial appropriations being made to meet the deficit in operations incurred, there is every reason to believe that eventually the railroad may be operated without such appropriations. (US The Alaska Railroad 1926: 2)

Contrary to Smith's predictions, the Alaska Railroad has seldom operated without a large appropriation to meet the annual deficit. Through the years, additional measures of economy were effected in the operation and maintenance of the railroad. In the early 1930's, the Chatanika branch was finally abandoned due to automobile and truck competition. The Chickaloon branch soon followed. In the late 1930's and early 1940's, the hopes of the Alaska Railroad were revived with increasing military activities in Alaska. An eleven-mile branch to the Whittier military post was constructed at tremendous expense. In the post-war slump, however, the value of the Alaska Railroad was again questioned, and inevitably found wanting. Despite repeated efforts to lease, and later to sell the railroad, the Government (1975) remains the owner and operator of the only trans-Alaska railroad.

That the Alaska Railroad has not been abandoned or converted into a highway testifies in part to the lingering effects of the Progressive mood which spawned the Government railroad. The Government railroad was to perpetuate a Progressive ideal, an innocent, naive belief in the honest and hardworking nature of the small, independent businessman and farmer. According to many Progressives, Alaska was to be industrialized, but not in the same manner as the United States. Too often, American railroad companies had monopolized the coal-lands, acquired the best agricultural and grazing lands, and set freight rates which often exasperated the farmer who depended on the railroad to transport his products to the market. Alaska was to be spared of these avaricious practices. By owning the railroad, the Government would set low freight rates to facilitate the development of Alaska industries. An anti-monopoly measure, the coal-land leasing law would put Alaska coal on the Alaska market at cheap prices. With Government regulation of coal mining and public railroads, the economic development of Alaska would remain in the hands of the small entrepreneur rather than the big corporations.

And that, to now, in the story of the Alaska Railroad. What is the future? Has the Railroad Era closed in Alaska, as elsewhere in the United States or will it again experience rejuvenation and expansion as a result of oil, gas, minerals, timbers, further need for coal, and greatly expanded economic and population growth?

TABLE I

Principal Railroads in Alaska, 1913

<u>Name</u>	<u>Mileage</u>
Copper River & Northwestern	195.0
White Pass & Yukon	102.0 (20.4 in Alaska)
Seward Peninsula (Nome-Shalton)	80.0
Paystreak Branch	6.5
Alaska Northern	71.6
Tanana Valley	44.7
Council City & Solomon River	32.5
Yakutat Southern	12.0
Cook Inlet Coal	8.5 (not operated)
Katalla	6.0 (abandoned)
Wild Goose (Council-Ophir Creek)	5.0

The Act of March 12, 1914,
38 Stat. 305

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

March 12, 1914.
[S. 43.]

[Public, No. 89.]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States is hereby empowered, authorized, and directed to adopt and use a name by which to designate the railroad or railroads and properties to be located, owned, acquired, or operated under the authority of this Act; to employ such officers, agents, or agencies, in his discretion, as may be necessary to enable him to carry out the purposes of this Act; to authorize and require such officers, agents, or agencies to perform any or all of the duties imposed upon him by the terms of this Act; to detail and require any officer or officers in the Engineer Corps in the Army or Navy to perform service under this Act; to fix the compensation of all officers, agents, or employees appointed or designated by him; to designate and cause to be located a route or routes for a line or lines of railroad in the Territory of Alaska not to exceed in the aggregate one thousand

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

Location and pur-
pose.

miles, to be so located as to connect one or more of the open Pacific Ocean harbors on the southern coast of Alaska with the navigable waters in the interior of Alaska, and with a coal field or fields so as best to aid in the development of the agricultural and mineral or other resources of Alaska, and the settlement of the public lands therein, and so as to provide transportation of coal for the Army and Navy, transportation of troops, arms, munitions of war, the mails, and for other governmental and public uses, and for the transportation of passengers and property; to construct and build a railroad or railroads along such route or routes as he may so designate and locate, with the necessary branch lines, feeders, sidings, switches, and spurs; to purchase or otherwise acquire all real and personal property necessary to carry out the purposes of this Act; to exercise the power of eminent domain in acquiring property for such use, which use is hereby declared to be a public use, by condemnation in the courts of Alaska in accordance with the laws now or hereafter in force there; to acquire rights of way, terminal grounds, and all other rights; to purchase or otherwise acquire all necessary equipment for the construction and operation of such railroad or railroads; to build or otherwise acquire docks, wharves, terminal facilities, and all structures needed for the equipment and operation of such railroad or railroads; to fix, change, or modify rates for the transportation of passengers and property, which rates shall be equal and uniform, but no free transportation or passes shall be permitted except that the provisions of the interstate commerce laws relating to the transportation of employees and their families shall be in force as to the lines constructed under this Act; to receive compensation for the transportation of passengers and property, and to perform generally all the usual duties of a common carrier by railroad; to make and establish rules and regulations for the control and operation of said railroad or railroads; in his discretion, to lease the said railroad or railroads, or any portion thereof, including telegraph and telephone lines, after completion under such terms as he may deem proper, but no lease shall be for a longer period than twenty years, or in the event of failure to lease, to operate the same until the further action of Congress: *Provided*, That if said railroad or railroads, including telegraph and telephone lines, are leased under the authority herein given, then and in that event they shall be operated under the jurisdiction and control of the provisions of the interstate commerce laws; to purchase, condemn, or otherwise acquire upon such terms as he may deem proper any other line or lines of railroad in Alaska which may be necessary to complete the construction of the line or lines of railroad designated or located by him: *Provided*, That the price to be paid in case of purchase shall in no case exceed the actual physical value of the railroad; to make contracts or agreements with any railroad or steamship company or vessel owner for joint transportation of passengers or property over the road or roads herein provided for, and such railroad or steamship line or by such vessel, and to make such other contracts as may be necessary to carry out any of the purposes of this Act; to utilize in carrying on the work herein provided for any and all machinery, equipment, instruments, material, and other property of any sort whatsoever used or acquired in connection with the construction of the Panama Canal, so far and as rapidly as the same is no longer needed at Panama, and the Isthmian Canal Commission is hereby authorized to deliver said property to such officers or persons as the President may designate, and to take credit therefor at such percentage of its original cost as the President may approve, but this amount shall not be charged against the fund provided for in this Act.

Construction, etc.

Rights of way, terminals, etc.

Transportation rates, etc.

Common carrier duties.

Lease after completion.

Provisos. Subject to interstate commerce laws if leased.

Purchase of existing lines.

Price.

Joint agreements with other carriers.

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

The authority herein granted shall include the power to construct, maintain, and operate telegraph and telephone lines so far as they may be necessary or convenient in the construction and operation of the railroad or railroads as herein authorized and they shall perform generally all the usual duties of telegraph and telephone lines for hire.

Operation of telegraph and telephone lines.

That it is the intent and purpose of Congress through this Act to authorize and empower the President of the United States, and he is hereby fully authorized and empowered, through such officers, agents, or agencies as he may appoint or employ, to do all necessary acts and things in addition to those specially authorized in this Act to enable him to accomplish the purposes and objects of this Act.

Full powers vested in President.

The President is hereby authorized to withdraw, locate, and dispose of, under such rules and regulations as he may prescribe, such area or areas of the public domain along the line or lines of such proposed railroad or railroads for town-site purposes as he may from time to time designate.

Townsites authorized.

Terminal and station grounds and rights of way through the lands of the United States in the Territory of Alaska are hereby granted for the construction of railroads, telegraph and telephone lines authorized by this Act, and in all patents for lands hereafter taken up, entered or located in the Territory of Alaska there shall be expressed that there is reserved to the United States a right of way for the construction of railroads, telegraph and telephone lines to the extent of one hundred feet on either side of the center line of any such road and twenty-five feet on either side of the center line of any such telegraph or telephone lines, and the President may, in such manner as he deems advisable, make reservation of such lands as are or may be useful for furnishing materials for construction and for stations, terminals, docks, and for such other purposes in connection with the construction and operation of such railroad lines as he may deem necessary and desirable.

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

Sec. 2. That the cost of the work authorized by this Act shall not exceed \$35,000,000, and in executing the authority granted by this Act the President shall not expend nor obligate the United States to expend more than the said sum; and there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of \$1,000,000 to be used for carrying out the provisions of this Act, to continue available until expended.

Construction materials.

Limit of cost.

Appropriation.

Sec. 3. That all moneys derived from the lease, sale, or disposal of any of the public lands, including townsites, in Alaska, or the coal or mineral therein contained, or the timber thereon, and the earnings of said railroad or railroads, together with the earnings of the telegraph and telephone lines constructed under this Act, above maintenance charges and operating expenses, shall be paid into the Treasury of the United States as other miscellaneous receipts are paid, and a separate account thereof shall be kept and annually reported to Congress.

Specified receipts to be paid into Treasury.

Sec. 4. That the officers, agents, or agencies placed in charge of the work by the President shall make to the President annually, and at such other periods as may be required by the President or by either House of Congress, full and complete reports of all their acts and doings and of all moneys received and expended in the construction of said work and in the operation of said work or works and in the performance of their duties in connection therewith. The annual reports herein provided for shall be by the President transmitted to Congress.

Reports to be made.

Approved, March 12, 1914.

ALASKA RAILROAD TRANSFER ACT

June 22 (legislative day, June 8), 1982.—Ordered to be printed

Mr. Packwood, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

[To accompany H. 1500]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 1500) to provide for the transfer of the Alaska Railroad to the State of Alaska, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill do pass.

PURPOSE OF THE BILL

The bill, as reported, provides for the orderly transfer of the Alaska Railroad from the Federal Government to the State of Alaska. Specifically, the Secretary of Transportation is authorized to transfer the railroad by one deed of conveyance upon ensuring that the State will continue rail service; assume certain liabilities and obligations; and protect the interests of the employees during a specified transition period, and thereafter. The legislation would facilitate the transfer of the railroad lands by providing for the conveyance of the track right-of-way in fee and an expedited process for adjudicating Native and other third party claims of valid existing rights to other railroad lands. Also, the legislation is intended to ensure that upon transfer the State will essentially operate the railroad as any other railroad in interstate commerce. This legislation represents an appropriate balance of interests intended to ensure that the transfer takes place equitably and expeditiously, and with minimal disruption to those affected.

BACKGROUND AND NEEDS

Congress authorized the construction of the Alaska Railroad pursuant to the Alaska Railroad Act of 1914 in order to provide for the

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transportation and development needs of the Territory of Alaska. The 527-mile railroad has been in operation since 1923, and is administered by the Secretary of Transportation. Today, the railroad serves as a vital element of the transportation system of the State of Alaska. The railroad links Fairbanks and Anchorage, the State's two major metropolitan centers, with freight and passenger service and connects the interior of the State with Pacific Ocean ports on the southern coast. During the last decade when the Alyeska Pipeline was being constructed from Prudhoe Bay to Valdez, the railroad played a critical role in transporting pipe, heavy equipment and other vital construction materials. The railroad connects Alaska with the "lower 48" and Canadian rail systems via float barges operating to and from Whittier.

The continued desirability of Federal ownership and administration of the Alaska Railroad has been a subject of considerable debate for many years. There are several reasons for this.

First, it is clear that while the railroad served the interests of the Federal Government in the past by opening up the Territory of Alaska and providing transportation for government cargo, today it exists primarily for the benefit of residents and shippers in the State of Alaska, and tourists who visit the State. In fact, nearly three-fourths of the present traffic volume on the railroad moves interally in Alaska.

Second, since Alaska became a State in 1959, its ability and interest in providing for its own transportation needs have changed considerably. Since 1959, other Federal transportation facilities, such as airports and highways, have been transferred to the State. Further, the State is expected to experience a period of further growth in the future as newly discovered deposits of oil, natural gas, coal, and other natural resources are developed. In order to ensure that the railroad plays an essential role in sustaining this growth, the railroad's operations should be improved and expanded. Such improvement and expansion are matters primarily of State concern.

Third, there is a consensus that the Federal Government should not continue to control those activities which might better or more appropriately be controlled by State and local governments or the private sector. This is especially true today when extreme budgetary constraints are forcing the Federal Government to scrutinize all of its activities. In this regard, it should be pointed out that while the Alaska Railroad is structured to operate on a self-sustaining basis to the greatest extent possible, it has not been a profitable enterprise, except for those periods when freight traffic levels have been especially high. As a result, Federal appropriations of over \$200 million have been provided since 1923 primarily for capital and maintenance purposes. Over \$50 million of this has been appropriated in the last 7 years to continue the railroad as a viable entity during a period of declining traffic following the completion of the Alaska Pipeline. Transfer of the railroad to the State would reduce Federal spending by eliminating such appropriations. In addition, the Committee believes that such a transfer would be consistent with the pending transfers of Conrail's freight and passenger operations as provided for in legislation passed last year. It is also in line with past acquisitions of intrastate railroads by States, such as Vermont and West Virginia.

For all of the above reasons, the Committee believes it is appropriate for the Federal Government to transfer the Alaska Railroad to the State of Alaska. Further, the Committee believes that such a transfer should be completed on an expedited basis and should encourage the State to establish a suitable framework to continue operating the railroad and to assume the Federal Government's rights and obligations for the railroad. The transfer should also undertake to resolve a number of outstanding questions concerning land claims to the Alaska Railroad.

In this regard, a number of claims have been pursued on the railroad properties through the land disposal laws of the United States, and particularly through the Alaska Native Claims Settlement Act of 1971 (ANCSA). Further, there are differing interpretations regarding the nature of the Federal interest in the right-of-way created under the March 14, 1914 Alaska Railroad Act.

Congress sought to resolve Alaska Native claims through ANCSA in 1971 and subsequent perfecting amendments in each Cong. session since 1971. The act set up private Regional and Village Corporations and transferred selection rights to approximately 44 million acres of Federal and State lands in satisfaction of aboriginal claims. Section 3(e) of the act defines "public lands" to be selected as "all Federal lands and interests therein located in Alaska except . . . the smallest practicable tract, as determined by the Secretary, enclosing land actually used in connection with the administration of any Federal installation." Regulations interpreting the provision were promulgated and finalized on October 22, 1980.

Pursuant to the act and the regulations, six Alaska Native Village Corporations have sought selections on the railroad right-of-way and attendant properties. Out of approximately 38,000 acres of railroad lands, roughly 3,000 acres have been claimed by the villages on over 180 miles of right-of-way and upward of 3,700 acres of additional railroad properties.

Further, Cook Inlet Regional Corporation (CIRC) has sought extensive railroad acreage pursuant to a "Terms and Conditions Agreement" with the Federal and State governments codified under its 1976 amendment to ANCSA. Other Native claims could conceivably arise through amendments to ANCSA housed in the Alaska National Interest Lands Conservation Act of 1980 (ANILCA). Although these latter claims are deemed by the Committee to have little likelihood of validity, they still present potential difficulties in arranging this transfer due to a likelihood of protracted administrative and judicial review. After reviewing these various claims to railroad properties created by amendments to ANCSA, the Committee believes they should be barred in any legislation dealing with the transfer of the Alaska Railroad.

The problem of Native claims to Alaska Railroad properties has been of continuing concern to the Committee and the Department of Transportation (DOT). In October of 1979, Chairman Howard W. Cannon wrote Senator Henry Jackson Chairman of the Energy Committee, expressing the view of the Committee that protection of important Alaska Railroad properties from Native claims must be

assured. Moreover, the past three Secretaries of Transportation have all gone on record opposing conveyances of railroad properties to Alaska Native Corporations.

To ensure these issues are adequately addressed in the transfer process, the Committee believes that any transfer legislation should seek to balance the competing interests in the railroad properties. The fundamental objective of such legislation must be to transfer all lands required for current and future operation of the Alaska Railroad, and these lands should be transferred as free of claims as possible. At the same time, the Committee recognizes the need to protect valid existing rights on railroad lands that may not be crucial to railroad operations, and these outstanding claims should be resolved while fully protecting the operation of the future State-owned railroad. The procedural mechanisms and the substantive requirements of any such legislation should be designed to provide clarity in land status and to facilitate a smooth transition to State ownership. The Committee is persuaded that the highest interest to be protected in any transfer legislation is the delivery of an economically viable railroad to the State, which can be accomplished with adequate protection for the valid existing rights of Native Corporations or other parties claiming an interest in railroad properties.

With respect to the matter of the continued operation of the railroad, the Committee believes it is appropriate to point out that attempts have been made during past administrations to sell the Alaska Railroad to private buyers on the condition that it continue to be operated as a rail carrier. However, such buyers have only been interested in purchasing the railroad for the purpose of liquidating it. The Committee believes that it is essential that the railroad be operated as a rail carrier after its transfer in order to avoid disruption to employees, shippers and others, and to protect the Federal Government's past investment in the railroad. Further, it is apparent that the State is the only likely taker that shares this interest in the continued operation of the railroad. Under the circumstances, the Committee believes it makes sense to provide for a transfer of the railroad to the State at no cost, provided the State agrees to operate it as a rail carrier and to assume certain liabilities for the railroad's employees and shippers. Such a no-cost transfer would also help compensate the State for the fact that in taking over the railroad it would have to assume substantial financial obligations in the form of employee protection, deferred maintenance, and the cost of subsidizing passenger services. These obligations have been estimated at at least \$100 million. Further, such a no-cost transfer would be consistent with the pending transfer of Conrail's commuter and intercity rail passenger operations, and with the past transfer to the State of Alaska of other federal transportation facilities, including highways and airports.

LEGISLATIVE HISTORY

On July 7, 1981, Senator Stevens introduced on behalf of himself and Senator Murkowski S. 1500, a bill to provide for the transfer of the Alaska Railroad to the State of Alaska. On August 10th and 11th, the full Committee held hearings on the bill in the State of Alaska. The full Committee met in open executive session on May 11, 1982 to dis-

gress and mark up S. 1500. On the same day, the Committee by unanimous vote ordered S. 1500, as amended, favorably reported.

SUMMARY OF BILL

TRANSFER

As stated earlier, the Committee believes that the transfer of the Alaska Railroad from the Federal Government to the State is appropriate and has approved legislation which would implement the transfer with minimal disruption. The railroad is of primary benefit to the State, and the Committee believes that a transfer would provide the State with the opportunity to ensure that the railroad remains responsive to the needs of Alaska. Furthermore, a transfer would realize certain savings for the Federal Government and would remove its involvement in the operation of the railroad, which is no longer necessary or appropriate.

The legislation, as reported, provides for a transfer to the State or a State-designated entity. This provision is intended to afford the State with the flexibility to decide how the railroad is to be managed and operated once it is transferred.

The transfer is to occur without any direct monetary compensation by the State. Instead, the legislation provides for a transfer subject to certain conditions relating to continued operation as a rail carrier; assumption of its liabilities and obligations; and protection of affected employees. As previously stated, the Committee believes that direct compensation by the State would be inappropriate for several reasons. First, the Committee believes that the State is the only entity that is likely to take over the railroad and operate it as a rail carrier. Second, the state is being required to assume substantial financial obligations in taking over the railroad. Third, a no-cost transfer is consistent with past transfers of transportation facilities to the State and the transfer of Conrail's passenger operations to the public sector.

The Committee supports the above-mentioned transfer conditions as representing a sufficient protection of the prior federal investment in rail service while at the same time ensuring that federal ownership and operation are terminated. In this regard, the Committee wants to ensure that important rail service is maintained, and has provided for a reversion to the Federal Government, or payment by the State, in the event that continued operation of the railroad is prevented. Also, the legislation provides that if the Secretary of Transportation is not able to certify a transfer to the State of Alaska, the rail properties would be otherwise disposed of, with preference being given to a prospective owner committed to continuing rail service.

In addition, the Committee believes that the conditions for transfer would ensure continued service with minimal disruption to shippers, employees, and affected areas. Thus, the Committee deems it appropriate for the State to assume certain liabilities, including employee obligations and small tort claims. The Committee notes that these conditions are consistent with the approach taken in prior legislation approved by Congress relating to the transfer of Conrail's freight operations to the private sector and its passenger operations to the public sector.

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In approving this legislation, the Committee wants to ensure that a change in ownership is smooth and equitable for the employees. The status of current Alaska Railroad employees presents special problems in the face of state ownership; they are Federal employees, with rights and benefits not necessarily equaled under the State employment system. To ensure that such accrued rights and benefits are not unjustly lost, the Committee believes that the State, as owner of the railroad, should assume responsibility for assuring the protection of those employees transferred to the State-owned railroad until new employee arrangements can be made. Furthermore, retention of the employees is vital to the continuation of the railroad, and thus it is in the interest of the State to provide the protections included in the reported bill to create a climate in which the employees would be willing to transfer to the State-owned railroad.

The legislation provides for a transition period of 2 years following the date of transfer, during which time the status-quo is to be essentially maintained. Those employees who choose to work for the State-owned railroad would be retained at their present salary levels and positions under existing collective bargaining agreements. In addition, the State during this period would be obligated to give credit for certain Federal benefits, and would be responsible for severance pay to those transferred but terminated during this period. The Federal Government, of course, would continue to be responsible for those employees who choose not to transfer. The Committee believes that a 2-year period is sufficient to minimize any uncertainties which the employees might fear, and also to allow time to incorporate the transferred employees into the State-owned railroad.

At the same time, the Committee believes that it is important for the State to have control over the shaping of its work force. Thus, the State would be able to reassign employees during this 2-year period. Also, the legislation provides that existing collective bargaining agreements would be inoperative at the end of this transition period: the Committee expects that these agreements would be renegotiated during this 2-year period and that employee benefits, excepting retirements, would thereafter be determined through contract negotiations. In addition, under this legislation, the railroad officers would be treated somewhat differently than the employees: the current top five officers would not have to be retained in their present positions. The Committee believes that the State should have the flexibility to choose its own management as soon as possible after the transfer, and to begin to tailor its work force and employee benefits to the needs of the railroad under its direction.

To further protect the interests of the employees, the reported bill ensures the continuation of some type of retirement system after the transfer for those currently covered by the Federal program. Significant monetary contributions have been made into the Federal program on behalf of these employees, and the legislation ensures that accrued benefits are kept alive. For those employees who transfer to the state-owned railroad, whether or not they are terminated during the 2-year transition period, the Federal program would continue to cover them,

but the State would become the contributing employer and would remain responsible for dispensing the benefits. Those who do not transfer would be entitled to the Federal benefits, the payment of which would remain the obligation of the Federal Government.

However, to allow the State flexibility and consistency in dealing with the employees transferred to its railroad, the legislation provides the State with the option during the 2-year transition period of placing these employees under an equivalent state retirement program. Under this scenario, the contributions made into the Federal fund would be transferred to the State fund. This option, however, would not apply to those transferred employees who are to retire within 5 years of the transfer, if they choose to remain under the Federal system.

The Committee believes that this legislation provides certainty important to the employees: it maintains essentially a status-quo for a specified time and ensures the retention of accrued Federal benefits. At the same time, it affords the State the flexibility which it needs to ensure an efficient rail operation under its leadership.

TRANSITION

The Committee understands the concerns of the State about the uncertainties surrounding the transfer. Accordingly, the legislation directs the State and the DOT to compile a report within 6 months of enactment, setting forth the lands to be transferred and the obligations to be assumed. The information on the lands would form the basis for the identification of the rail properties in the deed of conveyance, and an assessment of the obligations would assist the State in preparing for ownership.

In further preparation, the State would have access during this period to railroad properties and records, and the DOT would be required to ensure that the railroad accounting practices are adequate to provide the necessary information to the Interstate Commerce Commission (ICC). To ensure that there is no material change in the assets which the State expects to acquire, the legislation also provides that between enactment and transfer the railroad would not take certain actions affecting its properties without concurrence of the State. It is intended that these requirements facilitate an orderly and expeditious transfer.

DISPOSITION OF RAILROAD LANDS

Throughout its deliberations on this legislation, the Committee has given careful consideration to the many complex issues surrounding the status of the Alaska Railroad lands. As indicated earlier, the Committee deems it essential that the legislation ensure a smooth and timely transfer of the railroad to the State and the continued operation of the railroad. At the same time, the Committee remains concerned about a fair and expeditious resolution of Native and other third party claims to portions of the railroad properties. The Committee believes that the reported legislation strikes an appropriate balance of these interests.

Under the transfer provisions of this bill, the Federal Government upon certification would transfer to the State all the rail properties by

one deed of conveyance, subject to certain statutory exemptions. This deed is to convey legal title and possession to the State, subject to valid existing third-party rights and reconveyance in satisfaction of those rights. The Committee wants to ensure that the State is able to assume operation of the railroad immediately upon transfer.

This deed is to include a description of the properties to be transferred. The Committee understands the concern of the State in knowing the status of the properties it is acquiring. The Committee is also aware that survey descriptions of the railroad right-of-ways are unavailable and that less specific descriptions would have to be included in the deed. The Committee expects the Departments of Interior and Transportation to work closely with the State to identify as fully as possible all rail properties and prepare appropriate legal descriptions for inclusion in the deed.

A transfer by one deed of conveyance presupposes the parties' ability to identify and agree upon the contents of the rail properties. The preparation of the report required during the transition period is intended to provide a mechanism for reaching a mutual understanding on this matter. If, however, the parties are not able to identify all the rail properties or disagree on whether certain properties are to be included in the deed, the deed and report requirements are not to stand as impediments to timely transfer. Transfer could be made subject to a latter reformation of the deed by appropriate means if additional property should need to be transferred or more specific descriptions required. This legislation is intended to facilitate a timely and orderly transfer, and its implementation is to be understood in light of this objective.

Under the reported bill, the deed would convey to the State a fee interest in the 200-foot strip comprising the railroad track right-of-way, amounting to roughly 12,000 acres. This fee estate is recognized by the Committee to be the current interest of the Alaska Railroad derived from common practice and authorized under section 1 of the March 12, 1914 Alaska Railroad Act. The other rail properties would be conveyed subject to valid existing third-party rights.

In this regard, earlier legislation considered by the Committee included provisions which would have extinguished third-party property claims for which title has not vested, including those made by Native Corporations under the Alaska Native Claims Settlement Act (ANCSA). These provisions were based on the legal position as set forth in a letter to the Committee from the Department of Justice dated December 10, 1981, which states that such extinguishment would not be an unconstitutional taking under the Fifth Amendment, since no property rights have vested. During the hearings on this original legislation, the Committee received testimony raising concerns about these provisions as frustrating the intent of ANCSA, and also disrupting their constitutionality.

The Committee considered these concerns in light of its continuing interest in ensuring that the State receive properties which are compatible with continued operations of rail service. The reported bill is the result of these deliberations and strikes a sound balance of interests. It ensures conveyance of the track right-of-way in fee so that the State can continue to operate the railroad. At the same time, the legislation

allows for a determination of the validity of Village Corporation claims on other rail properties.

To ensure that valid existing claims to railroad properties are adjudicated and satisfied as soon as possible, the legislation would provide for an expeditious determination by the Department of Interior (DOI) and the courts of such claims, and for subsequent reconveyance of properties for claims proven valid through the expedited determination. The Committee notes that this process is similar to that adopted in Section 906 of the Alaska Lands Act to expedite conveyance to the State of its land entitlement under the Alaska Statehood Act. The process provided in the reported bill reaffirms the ongoing responsibility which DOI has under ANCSA to expeditiously adjudicate these claims.

In this regard, the reported legislation specifically directs the agency within 1 year of date of enactment to make determinations under section 3(e) of ANCSA, which identifies public lands available for selection by Alaska Natives. That section provides that with respect to Federal installations, of which the railroad is one, the Secretary of Interior is to determine the "smallest practicable tract" actually being used for the administration of such an installation. If certain properties are determined to be part of this tract, they are not public lands as defined under the Act and thus not subject to third-party claims.

The reported bill directs DOI to make the determination of the smallest practicable tract within this 1-year period and also provides for expedited judicial review of any such decision. The Committee believes that such claims can be adjudicated by the Secretary of Interior within 1 year. It has been over 10 years since the passage of ANCSA and nearly a year and a half since the promulgation of the final 3(e) regulations. Considering the concentrated effort by State and Federal agencies and by affected Native Corporations to determine the land status of the railroad properties, 1 year is not an unreasonable time frame. Further, it is the belief of the Committee that immediate discussions among the Departments of Interior and Transportation, the State of Alaska and Native claimants should go forward to assist in the ultimate settlement of this issue.

The Committee expects DOI to apply the section 3(e) regulations in making determination of smallest practicable tract. The Committee notes that during the deliberations on these regulations, concerns were raised about their impact on the ability of the railroad to continue to operate as envisioned and authorized by its enabling legislation. Letters were written by the Committee and the DOT voicing such concerns.

The reported legislation would not change the section 3(e) regulations as finally promulgated by DOI. However, the legislation does reflect the continuing concern of the Committee that these lands important to the operation of the railroad remain part of the railroad. Specifically, the legislation directs the Secretary of the Interior to consider its findings and policies, including the belief of the Committee that a transfer of the railroad right-of-way in fee simple is essential to the continued operation of the railroad, and that the actual physical characteristics of the railroad (e.g., the right-of-way and reserves) be

maintained to the extent required to assure the transfer of an economically viable railroad operation.

The Committee believes that title to the railroad lands must be cleared and that the State should be able to assume operation of the railroad at the earliest date allowed under this legislation. In approving the legislation, the Committee anticipates this result without any inappropriate infringement upon the valid rights of the Natives and other third parties.

STATE OPERATION

Section 8 of the bill governs the application of various Federal and State laws to the State-owned railroad after its transfer to the State. The Committee believes that it is necessary to clarify the application of these laws, because as a federally owned and operated entity, the Alaska Railroad is now exempt from many of these laws. In general, the Committee believes that in the future, the State-owned railroad should be treated like all other railroads subject to Federal and State laws. However, at the same time, we are aware of the need on the part of the State to have flexibility in setting up and operating the railroad. Section 8 reflects these concerns.

This section specifically provides that the State-owned railroad shall be subject to the jurisdiction of the ICC and to other Federal laws. Currently, the Alaska Railroad is subject to limited ICC jurisdiction, which was invoked pursuant to a 1963 Presidential Executive order. During the Committee's consideration of S. 1500, some of the Alaska Railroad's competitors recommended that in addition to normal ICC procedures, special subsidy and pricing limitations be applied to the State-owned railroad to protect its competitors from unfair subsidized competition. The Committee rejected these recommendations for several reasons.

First, ICC studies of Alaska Railroad rates submitted to Congress in 1981 showed that all of its interstate rates were fully compensatory and covered all of the railroad's costs, including an imputed cost of capital. Since these studies indicate that Federal support has not been used to compete unfairly with other carriers, the Committee does not expect any state support of the railroad to be used to compete unfairly with its competitors.

Second, the Committee believes that the State has the greatest interest in fostering competition among the carriers serving the State. This includes encouraging all carriers to provide services to shippers and consumers at the lowest possible cost. It would not be in the interest of the State to take actions that would result in the loss of competition.

Third, the Committee believes it would be inappropriate for the Federal Government to dictate to the State how it should set up and operate the railroad beyond what generally applies to all rail carriers under existing law.

The Committee believes that existing ICC regulations provide sufficient recourse to the railroad's competitors if they wish to challenge the railroad's rates as too low or to challenge proposed exemptions from the Interstate Commerce Act and regulations. The Committee also rejects any notion that a special regulatory regime or scheme, be-

yond that normally applied by the ICC, ought to be imposed on the state-owned railroad. In this regard, the Committee notes that whatever the outcome of pending ICC proceedings regarding the exemption from regulation of trailer-to-trailer (TUT) and container-on-trailer (COT) service provided by the Alaska Railroad, we question the holding in *American Trucking Associations v. I.C.C.*, ___ F.2d ___ (5th Cir. 1981), as it may apply to the State-owned railroad.

During the Committee's consideration of the bill, questions were raised regarding the application of the Federal antitrust laws to the State-owned railroad. During markup, the Committee agreed to an amendment offered by Senator Stevens that clarified this matter.

At present, the Alaska Railroad may not be sued under the Federal antitrust statutes because federal instrumentalities cannot be sued under those statutes. *Sea-Land Service, Inc. v. Alaska Railroad*, ___ F.2d ___ (D.C. Cir. 1981). Senator Stevens' amendment to the section 8 provision making the State-owned railroad subject to the jurisdiction of the antitrust laws recognizes that the transfer of the railroad to the State will terminate the railroad's status as a Federal instrumentality and thereby subject the railroad to the jurisdiction of those statutes. This provision is not intended to modify existing law relating to the availability of exemptions from the antitrust laws. *Parker v. Brown*, 317 U.S. 341 (1943). It expressly provides that the State may invoke any exemption from the antitrust laws that may be available to the State-owned railroad. In this regard, the provision requires such state action invoking an exemption to be explicit, as is required by recent court decisions. *Community Communications Co., Inc. v. City of Boulder*, ___ U.S. ___ No. 80-1350 (January 13, 1982); *City of Lafayette v. Louisiana Light & Power*, 435 U.S. 389 (1978).

In the process of clarifying the application of the antitrust laws, the Committee rejected a recommendation that the State not be permitted to invoke any exemption authority that it has pursuant to the State government action doctrine. The Committee's rejection is based on several reasons. First, we believe that the bill, as reported, clearly favors the application of the antitrust laws without unduly restricting the State's ability to set up and operate the railroad as it deems most appropriate. Second, we think it would be unfair to limit the State of Alaska's actions when other States, such as Vermont and West Virginia, are free to invoke this exemption for their state-owned railroads. Finally, in view of the State's interest in fostering competition among the carriers serving the State, we seriously doubt that the competitors have reason to fear this exemption authority.

The Alaska Railroad currently is treated as subject to the Federal safety laws and regulations administered by the Federal Railroad Administration (FRA). However, the FRA has sanctioned noncompliance with its regulations in some limited areas by issuing "waivers of compliance." After the transfer, the Committee expects the same situation to prevail. In this regard, section 8 specifically provides that any waivers of compliance in effect on the date of transfer shall continue in effect. It is the Committee's understanding that any cases of noncompliance by the Alaska Railroad are currently contained in waiver memoranda. However, if this is not so, then the Committee

strongly urges the FRA to officially note these cases of noncompliance in waiver memoranda to the maximum extent possible prior to the transfer. In accepting the continuance of waivers of compliance, the Committee expects that the Alaska Railroad will be operated at an optional level of safety.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., May 26, 1982.

Hon. Bob PACKWOOD,
*Chairman, Committee on Commerce, Science, and Transportation,
U.S. Senate, Dirksen Senate Office Building, Washington, D.C.*

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed S. 1500, the Alaska Railroad Transfer Act of 1982, as ordered reported by the Senate Committee on Commerce, Science, and Transportation, May 11, 1982. The bill would allow the Secretary of Transportation to transfer the Alaska Railroad to the State of Alaska without monetary consideration to the United States.

Section 7 of the Alaska Railroad Transfer Act of 1982 allows the State of Alaska the option of providing retirement benefits to transferred federal employees through a retirement system maintained by the State. Should the state elect the option, as anticipated by the Federal Railroad Administration (FRA), all Alaska Railroad contributions and employee withholdings on deposit with the Civil Service Retirement Trust Fund would be transferred to the State of Alaska. Based on information provided by the FRA, this would equal approximately \$20 million, if the transfer of the railroad were to take place on July 1, 1983. CBO estimates that the total cost impact of transferring the retirement contributions would be slightly greater than \$20 million, to reflect contributions made by other federal agencies that previously employed Alaska Railroad employees.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

ALICE M. RIVLIX, *Director.*

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation.

The purpose of S. 1500, as reported, is to provide for the transfer of the Alaska Railroad from the Federal Government to the State of Alaska. As a condition of the transfer, the State is required to assume certain liabilities and obligations of the railroad, make arrangements

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to protect employee interests, and agree to continue operating the railroad as a rail carrier. Prior to the transfer, the Secretary of Transportation and the Governor of Alaska must prepare a report for the U.S. Congress and the State legislature, which details the rail properties to be transferred and the rights, liabilities, and obligations to be assumed by the State. After the transfer, the State-owned railroad is to be subject to the same federal laws as are other rail carriers regulated by the ICC. The ICC is required to promulgate a procedure for providing an operating certificate to the state-owned railroad.

The requirements outlined above will result in some increase in economic regulation of what is now the Alaska Railroad. As a federal entity, the Alaska Railroad has not been subject to complete ICC jurisdiction. Once it is transferred to the State, it will have to file the same reports with the ICC as the other carriers do, and file an application for an operating certificate. The State will also be subject to limited paperwork requirements and costs associated with the proposed transfer of the railroad. This includes the one-time report to Congress and the State legislature. The Secretary of Transportation will be subject to similar paperwork requirements and costs.

While the state-owned railroad and the State will be subject to some increased costs and paperwork as a result of the reported bill, the Committee believes these should be weighed against the savings to the Federal Government of eliminating the DOT's responsibility for administering the Alaska Railroad and eliminating subsidies for its operations. The Committee does not believe that the reported bill will have any impact on the privacy of any individual or business.

SECTION-BY-SECTION ANALYSIS

SECTION 1.—TITLE

This section provides that the legislation may be cited as the "Alaska Railroad Transfer Act of 1982."

SECTION 2.—FINDINGS

This section states the reasons why the Committee believes that the Alaska Railroad should be transferred to the State of Alaska. An important consideration is the fact that while the railroad has served the interest of the Federal Government in the past, today it primarily serves residents and businesses in the State. Further, the transfer is consistent with the Federal Government's efforts today to transfer programs to the States whenever appropriate. Finally, the transfer is necessary in order to ensure that in the future the railroad will be operated and its services expanded to meet the needs of the State and the railroad's users.

SECTION 3.—DEFINITIONS

This section defines the major terms used in the legislation. Among those defined is "rail properties of the Alaska Railroad." This definition is important because it describes the rail properties that will be transferred to the State. As defined by the legislation, the term rail properties means all right and title to real and personal properties

held by or for the Alaska Railroad as of the date of enactment with some limited exceptions. The exceptions are specified in the definition as follows: (1) the unexercised reservation to the United States in all patents for lands in Alaska as provided for the construction of future railroad rights-of-way; (2) the right of the Secretary of Transportation to exercise the power of eminent domain; (3) any money in the Alaska Railroad Revolving Fund that the Secretary and the State agree is needed to pay certain Federal obligations arising from the operation of the railroad, which are not assumed by the State; (4) certain properties that the Secretary determines with the consent of the State to be necessary to carry out Federal functions after the transfer; and (5) certain properties near McKinley Park Station that are used by the National Park Service.

The Committee believes that the definition of rail properties should be broadly construed so as to ensure that all properties used or useful for continued railroad operations, which are not expressly excluded from the definition, are transferred to the State. This includes properties that the Federal Government has removed from the unappropriated public domain for the benefit of the railroad and that are being held for railroad needs.

In view of the broad interpretation the Committee expects to be given the term rail properties, it should be noted that the exclusion specified in paragraph (D) is a narrow one. It is intended to cover only property necessary to carry out Federal functions, such as those related to Federal employment or the national defense.

This section also defines the terms "State" and "State-owned railroad." The definitions are broadly worded to give the State maximum flexibility in designating an appropriate organization for state ownership, operation and management of the railroad after the transfer.

SECTION 4.—TRANSFER AUTHORIZATION

This section relates to the transfer process itself. Under subsection (a)(1), the Secretary of Transportation shall transfer the Alaska Railroad to the State without monetary consideration as soon as possible after four specified certifications are made. The transfer is to be made by one deed of conveyance, and the date of transfer is to be the date the deed is delivered to the State.

Subsection (a)(2)(A) sets forth the specifics of the deed of conveyance. The deed is to convey possession and legal title to the State of all the railroad properties. The track right-of-way is to be transferred in fee simple. In addition, the other railroad properties later determined not to be equitably owned by a third party are to be transferred in fee.

The deed is to include a warranty from the Federal Government as to the interests being transferred. This warranty in essence operates as title insurance: the Federal Government is to reimburse the State for its loss if there is a conflicting claim which diminishes the State interest in rail properties. The warranty applies to the fee interest transferred in the rights-of-way, and also in those properties determined by the DOI to be free of third-party claims but later determined by a court to be subject to a valid claim.

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This subsection also requires that the deed expressly transfer to the State all reservations for the Alaska Railroad withheld from Federal patents or other title documents under authority of the March 12, 1914 Alaska Railroad Act, other than unexercised reservations for the expansion of the railroad. For example, the reservation for a railroad right-of-way in a homestead patent is to be transferred to the State, thereby creating the same title in the State as that currently held by the United States for the railroad. It is intended that these reservations pass to the State even if by ministerial error they are not expressed in a particular titled document—such reservations are nevertheless effective by direct operation of the March 12, 1914 act.

Under subsection (a)(2)(B), the Park Service will be able to continue to use and occupy, through the Secretary of Interior, a small tract at Talkeetna, Alaska. The tract is currently used for certain park activities, including those related to hiking and climbing. The Committee believes that the Secretary of Interior should continue to employ these lands for this use so long as railroad operations are unimpaired. In this unlikely event, it is incumbent upon the State to demonstrate interference with railroad operations in order to obtain a right of re-entry.

The deed, under subsection (a)(2)(C), is also to reserve to the Secretary of Interior a right-of-way and easement in the Denali National Park and Preserve in order to administer the Park and carry out attendant responsibilities. Again, these rights are granted so long as they do not unreasonably interfere with the operation of the railroad.

With respect to the required certification, the Secretary of Transportation is to find under subsection (b)(1) that the Senate will operate the railroad as a rail carrier in intrastate and interstate commerce. In addition, the Secretary is to certify under subsection (b)(2) that the State will assume the rights, liabilities and obligations of the railroad. However, the State will not be responsible for claims and causes of action accruing on or before the date of transfer, or judgments rendered before the transfer, except those tort actions which result in claims of less than \$2,500.

Under subsection (b)(3) of this section, the Secretary must find that the State has established specified employee protection arrangements to apply during the seven-year period after the date of transfer. For those employees who choose to transfer to the State-owned railroad, the State must ensure their retention in their same positions, and unless otherwise agreed to, at least at the same level of compensation in effect at the time of the transfer.

These provisions are not to apply to those employees who are reasigned, retired, or separated for cause or lack of work. Nor are these provisions to apply to the officers of the railroad, defined as the general manager, assistant general manager, assistant to the general manager, chief of administration, and chief counsel, whom the State is not required to retain in their present positions. However, unless there has been a reassignment, the State is required to pay compensation to them equivalent to the level in effect on the day before the transfer, and such sum is to be in the form of a one-time severance payment.

Also under this subsection, the State is to continue existing collective bargaining agreements during this 2-year period unless otherwise agreed to. This section further provides that these agreements are to be renegotiated during this period unless otherwise agreed to, and that they are to expire at the end of the 2-year period.

Finally with respect to the employees, the State is to ensure that certain Federal benefits are retained. These include accrued leave, insurance, seniority rights, and cost-of-living increases. Also, those employees who are transferred to the State-owned railroad but terminated or laid off during the 2-year transition period shall be entitled to priority of reemployment in the railroad, and prior Federal service is to be counted in determining seniority for such purposes.

The fourth certification requirement is provided in subsection (b)(4). It ensures that the State will allow the Secretary of Transportation access to the employees and records of the railroad as needed to carry out the remaining Federal responsibilities connected with the transfer.

SECTION 5.—TRANSITION PERIOD

This section sets forth the activities which are to occur, or are not to occur, during the period between the enactment of this legislation and the date of transfer. Subsection (a) of this section provides for joint submission by the Secretary of Transportation and the Governor of Alaska, no later than 6 months after enactment, of a report which describes in appropriate detail the rail properties of the railroad, the liabilities and obligations to be assumed by the State, and the sum of money, if any, in the Alaska-Railroad Revolving Fund to be used by the Federal Government in carrying out its remaining responsibilities. With respect to real property, the Committee understands that the type of description contained in the mandated report will be dependent on available title information.

Under subsection (b), the State shall have access to properties of, and records pertaining to, the railroad in order to evaluate and prepare for the transfer. Also, the Secretary is directed not to take certain actions relating to the transfer, sale, or lease of the railroad properties, or to the obligation of railroad monies, without the consent of the State.

Finally, subsection (c) directs the Secretary prior to transfer to ensure that the railroad's accounting practices and systems are capable of reporting the required data to the ICC. This action will facilitate the transition of the railroad to its status as a regulated rail carrier in intrastate and interstate commerce.

SECTION 6.—LANDS TO BE TRANSFERRED

This section sets forth the status of the rail properties to be transferred and provides for the orderly adjudication of valid existing rights to those properties. Subsection (a) establishes that the rail properties are to be transferred to the State subject to valid existing rights and are to be reconveyed in order to satisfy such claims. This subsection clarifies the current law with respect to satisfaction of these

claims under the ANCSA: rail properties which under this act are determined to be part of the "smallest practicable tract" under section 3(c) are not public lands and not subject to any claims. The properties transferred are specifically excluded from selection or conveyance provided under amendments to ANCSA relating to the Cook Inlet Regional Corporation, the Chugach Native Regional Corporation, and certain Eklutna Village Corporation selections provided for in the ANILCA.

Subsection (b) reinforces the Department of Interior's existing responsibility to adjudicate third-party claims and to issue written opinions and appropriate documents of title. Specifically, the Secretary of Interior is directed to complete the determination of smallest practicable tract under Section 3(e) of ANCSA within one year of the enactment of this legislation. In making this determination, the Secretary of Interior is directed to consider the findings and policies of this legislation, including the importance of transferring the right-of-way in fee to the continued operation of the railroad and the need for existing and future rights-of-way to conform to the existing physical characteristics of the railroad. The Committee believes that this determination is critical to the future of the railroad and must be made expeditiously.

Under subsection (c), any decision by the Secretary of Interior pursuant to this section is reviewable but only by a nation brought in the Federal District Court for Alaska, and is to be expedited. The State is allowed to participate in such an appeal, as well as in any agency proceeding. To ensure that the goals of this legislation are not frustrated, this section further provides that no injunctive or other relief can delay the transfer of the railroad or impede its operations. The Committee intends that relief to protect claims be fashioned so as to permit the railroad to substantially maintain its operations.

Lands among the rail properties are expressly excluded by subsection (d) from selection by Cook Inlet Region, Inc. (CIRI) and Chugach Natives, Inc. under 43 U.S.C. § 1611 and sections 1425 and 1430 of Public Law 96-487. The Committee has reviewed these provisions and finds no intent by Congress to create claims against the Alaska Railroad through the provisions of these acts. Thus, the Committee in this section deals with the claims of CIRI by affirming CIRI's inability to validly select railroad properties while ensuring that CIRI's overall ANCSA selection rights are expedited. Similarly, any conceivable interest in railroad properties that could be drawn from ANILCA amendments to ANCSA for Chugach Natives, Inc. and the Eklutna Village Corporation are extinguished in this legislation. The intent of the language in this subsection is to keep all railroad properties out of the pool of selection established for CIRI in a January 2, 1976 amendment to ANCSA.

Since the passage of Public Law 94-204 in 1976, incorporating the Cook Inlet Land Exchange Agreement (exchange agreement), the Secretary of Interior and the State of Alaska have been attempting to ensure that the land entitlement of CIRI under that complex provision is fulfilled in a manner consistent with the interests of the State, environmental concerns and concerns of other public and private entities.

In one of the integral parts of the exchange agreement, the "in-region pool" provision, the Secretary of Interior, in conjunction with the General Services Administrator, was charged with promptly identifying and creating a selection pool of federal lands within Cook Inlet Region. The transfer of the Alaska Railroad through this legislation would remove the properties from possible placement in the "in-region pool".

The Committee finds that the transfer of the railroad to the State can be made so that the equities remain for each of the parties to the exchange agreement. In order to accomplish this, the provisions in this section are necessary.

Transfer of the Alaska Railroad to the State potentially increases pressure on all participants to fulfill the entitlement embodied in the exchange agreement.

ANILCA amended ANCSA to allow for "in-region pool" selections to occur out of state. Since the existing exchange agreement already allows the Secretary of Interior the discretion to enlarge the "in-region pool" using out-of-region entitlement, the objective of this section is to reaffirm this secretarial discretion and make clear that out-of-state properties can be placed into the "in-region pool" as stated in the existing ANILCA amendments. Placement in the pool allows CIRC to negotiate with local governments to obtain the properties being surplus.

Utilization of CIRC's current statutory rights to obtain federal surplus property wherever located will be essential for fulfillment of its entitlement. Therefore, a more detailed provision is needed to ensure that properties will be made available. This section adjusts CIRC's current statutory right by specifically requiring that both the Secretary of Interior and CIRC obtain early notice of potentially available properties. Without such sections, properties are presently almost through with the General Service Administration's disposal process before CIRC even becomes aware of their existence for possible negotiation. The amendments also clarify the Secretary of Interior's authority to offer properties under his jurisdiction to CIRC as partial fulfillment of CIRC's entitlements.

Additionally, the amount of property within the "in-region pool" has been for various reasons far less than the agreed upon minimum amount required. On three separate occasions, the original deadline of January 15, 1978 has had to be extended to recognize this fact. To ensure fulfillment, section 6 lifts the deadline until the pool is complete but in no event later than July 15, 1987. This section recognizes the possibility that removal of the Alaska Railroad could slow completion of the pool on time.

Also, to increase the properties within Alaska that can be placed into "in-region pool", section 6 extends CIRC's present in-region surplus property priority statewide. The State and Federal interests here are protected by conclusive objection if an out-of-region property represents a demonstratable public purpose.

CIRC's out-of-region selection provision of the agreement prohibited CIRC's nominations of areas that in 1976 were the best estimate of those lands which were in the national interest to retain in public

ownership either under Federal or State control. Since that time, ANILCA has been enacted designating the national interest lands, and state selection interests areas have changed. This section would remove these outdated proscriptions for nominations and replace them with a prohibition for nomination with the four-systems areas described in ANILCA. Veto rights of the Secretary and the State embodied in the exchange agreement would remain unchanged.

Furthermore, the Committee finds CIRC has been working closely with the State and Federal government fulfilling its out-of-region entitlement. Eventual fulfillment will probably involve an exchange whereby the State would convey title back to the Federal Government for reconveyance to CIRC. This section gives the Secretary authority to accept State title, reconvey it to CIRC, and to credit Alaska's statehood entitlement with an equivalent acreage total.

Finally, this section in subsection (e) provides that there shall be no claim to compensation for use of lands among those rail properties either ultimately conveyed by the United States to any person received by the State and later reconveyed in satisfaction of valid existing rights. This provision is not designed to prevent any administrative or judicial action necessary to protect pending claims for waste during adjudication but prior to reconveyance of the lands.

SECTION 7.—EMPLOYEES OF THE ALASKA RAILROAD

Subsection (a) of this section provides that those employees who transfer to the State-owned railroad and who presently participate in the Federal Civil Service System, may continue to participate in this system so long as they continue to work for the State-owned railroad. However, as an alternative, the State-owned railroad may provide such employees with retirement benefits either in, or substantially equivalent to those benefits the State provides its employees under, the State retirement system. The reason for the alternative is to permit the State-owned railroad to avoid having to administer two separate retirement systems. At the same time, it ensures that employees will continue to have benefits equivalent to or better than what they are entitled to now. The section provides an exception to the state alternative program for those transferred employees who are entitled to retire under the federal retirement system within five years of the date of the transfer. These employees may elect to remain participants in the Federal system, even if the State chooses to provide other benefits.

Subsection (b) of this section provides that those Federal employees who choose not to transfer to the State-owned railroad at the time the railroad is transferred from the United States to the State shall be entitled to all of the normal rights and benefits under Federal law for discontinued employees.

Subsection (c) provides for similar protections for transferred employees whose employment with the State-owned railroad is involuntarily terminated during the 2-year period following the transfer. However, these employees are to look to the State at the time of such termination to cover the benefits that these employees

would have had under Federal law had they elected not to transfer to the State-owned railroad.

SECTION 8.—STATE OPERATION

Subsection (a) of this section provides that after the transfer, the State-owned railroad shall be subject to the same Federal laws, with some limited exceptions, as are other railroads, including the Interstate Commerce Act, the Federal antitrust laws, and the railroad safety laws. The limited exemptions are the Railroad Retirement Act, the Railway Labor Act, the Federal Employers' Liability Act, and the Railroad Unemployment Insurance Act. The reason for excluding the railroad from the application of these latter acts is that the Alaska Railroad is not now subject to them, and the State has in place similar statutes that would appropriately apply to the State-owned railroad. All FRA memoranda which sanction non-compliance with Federal railroad safety regulations in effect on the date of transfer shall continue in effect according to their terms as "waivers of compliance."

In addition, subsection (a) exempts the State-owned railroad from any State or local statute specifying a minimum number of crew members that must be employed in connection with the operation of its trains.

Subsection (a) specifies that the state-owned railroad shall retain and manage its own revenues. The purpose of this provision is to avoid the need for annual appropriations by the State for the railroad.

Subsection (b) of this section requires the ICC to promulgate an expedited, modified procedure for providing the State-owned railroad a certificate of public convenience and necessity. The Committee expects the ICC to employ as a model the procedure used in granting certificates to publicly owned railroads created out of the Milwaukee and Rock Island railroad abandonments. The circumstances there were substantially the same as the case here with respect to the proposed disposition of the Alaska Railroad. This subsection also exempts ICC actions under this subsection from the National Environmental Policy Act and the Energy Policy and Conservation Act in order to ensure an expeditious process.

Subsection (c) of this section provides that the State-owned railroad shall be eligible to participate in Federal assistance programs on the same basis as other railroads, including that provided for by the Railroad Revitalization and Regulatory Reform Act (4-R Act).

Subsection (d) of this section provides that the railroad properties within the Denali National Park and Preserve shall as determined by the Secretary of the Interior be subject to Federal laws and regulations established for the protection of fish and wildlife and other park values. In making this determination, the Secretary is to consult with the Governor of Alaska. Moreover, any determination by the Secretary must be designed to avoid substantial interference with railroad operations. The Committee believes the Secretary must fully exercise his duty to preserve the resource values of Denali, and that this can be achieved without significant detriment to the State-owned railroad's use of its right-of-way through the Park and Preserve.

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SECTION 9.—FUTURE RIGHTS-OF-WAY

This section contemplates future rights-of-way for expansion of the railroad. The Committee believes that expansion is important if the State is to develop the railroad into a transportation system fully responsive to the needs of its growing economy. The Committee strongly encourages the Secretaries of Transportation, Interior and Agriculture to facilitate expansion of the State-owned railroad to the greatest extent possible.

Subsection (a) provides that the State or State-owned railroad may request, pursuant to existing law, a right-of-way over Federal lands from the Secretary of Interior or the Secretary of Agriculture, as appropriate, in consultation with the Secretary of Transportation. The Committee intends that the Secretary of Transportation will provide the State with assistance in this endeavor.

Notwithstanding the requirements of existing law, rights-of-way must be granted pursuant to the conditions specified in this subsection relating to size, use, and payment. These specifications are derived from the historical characteristics of rights-of-way and incidental rights authorized under the 1914 Alaska Railroad Act. Thus, future rights-of-way are thereby made equivalent to the pretransfer rights-of-way of the Alaska Railroad. The Committee notes that the authority herein granted is not to be construed as foreclosing the State from establishing that easements by necessity or rights of access across Federal lands have been implicitly granted with the transfer of lands under this legislation.

Subsection (b) specifies that any rights-of-way granted under this section is subject to reversion as are the other transferred rail properties in the event that it is converted to a use preventing continued operation of the railroad within 5 years of the grant of such right-of-way.

SECTION 10.—REVERSION

This section provides for the reversion to the United States of the properties of the Alaska Railroad, if within 5 years of transfer such properties are converted to a use that would prevent the State-owned railroad from continuing to operate. As an alternative to the actual reversion of the properties, the State at its option may pay the United States an amount determined to be the value of the properties at the time they were converted to a use preventing the railroad from operating. If the State-owned railroad abandons rail service over those rail properties located within the boundaries of Denali National Park, these properties shall become part of the National Park.

The purpose of this section is to protect the Federal Government's financial investment in the Alaska Railroad, and its interest in the continued operation of the railroad in the future.

SECTION 11.—OTHER DISPOSITION

To ensure that the railroad is transferred from Federal ownership, this section authorizes the Secretary of Transportation to otherwise dispose of the railroad if satisfaction by the State of the four conditions under section 4 cannot be certified within a year of the delivery of the report mandated under section 5. Consistent with the concern

SECTION 12 OF THAT ACT

Sec. 12. (a) * * *
 (b) (1)-(6) * * *

(7) (i) Until the obligations of the Secretary and the Administrator of General Services under [subsection 12(b)(6)] section 12(b) of this Act are otherwise fulfilled: (a) Cook Inlet Region, Incorporated, may, by crediting the amount established in subsection 12(b)(7)(ii), bid, as any other bidder for surplus property, wherever located, in accordance with the Federal Property and Administrative Services Act of 1949 (40 U.S.C. sec. 484), as amended. No preference right of any type will be offered to Cook Inlet Region Incorporated, for bidding for General Services Administration surplus property under this subparagraph and no additional advertising shall be required other than that prescribed in title 40, United States Code, section 484(e)(2) of the Federal Property and Administrative Services Act; (b) the Administrator of General Services may, at the discretion of the Administrator, tender to the Secretary any surplus property otherwise to be disposed of pursuant to 40 U.S.C. 484(e)(3) to be offered Cook Inlet Region, Incorporated for a period of 90 days so as to aid in the fulfillment of the Secretary's program purposes under the Alaska Native Claims Settlement Act: *Provided*, That nothing in this subsection 12(b)(7)(i)(b) shall be construed to establish, enlarge or diminish authority of the Administrator or the Secretary within the State of Alaska. If the Region accepts such property, it shall be in exchange for acres or acre-equivalents as provided in subparagraph 1(C)(2)(e) of the document, referred to in subsection (b) of this section. Prior to any disposition under subsection 12(b)(7)(i)(b), the Administrator shall notify the governing body of the locality where such property is located and any appropriate State agency, and no such disposition shall be made if such governing body or State agency, within ninety days of such notification formally advises the Administrator that it objects to the proposed disposition.

(ii) *Notwithstanding subsection (i) of this paragraph and any other provision of law or any implementing regulation inconsistent with this subsection, until the obligations of the Secretary and the Administrator of General Services under this subsection are otherwise fulfilled:*

(A) *Before reporting any real property, wherever located, under his control to be excess to the needs of the Department of the Interior, the Secretary shall notify Cook Inlet Region, Incorporated, that such property is available at such time for conveyance to Cook Inlet Region, Incorporated, upon negotiated sale or change, and the Secretary is authorized to convey such property;*

(B) *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 Secretary and Cook Inlet Region, Incorporated, that such property is available for conveyance to Cook Inlet Region, Incorporated, upon negotiated sale or exchange pursuant to this subsection. Within thirty days of the date of such notice, Cook In-*

for continued rail service, this section directs the Secretary to give preference to a prospective owner who will continue to operate rail service.

SECTION 12.—MCKINLEY PARK STATION LANDS

This section deals with the disposition, upon transfer, of certain rail lands currently used in the administration of the Denali National Park and Preserve. Under subsection (a), certain specified land close to the McKinley Park Station is to be transferred to the Department of the Interior for administration of the Park. However, subsection (b) provides that certain land on either side of the track near the station shall not be so transferred as it is needed to continue certain rail-related operations.

SECTION 13.—APPLICABILITY OF OTHER LAWS

This section exempts actions taken under the legislation from the requirements of a number of Federal statutes, including the National Environmental Policy Act and those provisions of the Administrative Procedure Act not pertaining to judicial review. The reason for these exemptions is to ensure that the transfer process is not delayed.

This section also clarifies that actions taken under this legislation do not constitute a disposal of surplus Federal property or a revocation of withdrawals made from or confirmed for the Alaska Railroad under a number of specifically named and generally referenced land laws, including the Federal Land Policy and Management Act. These clarifications are necessary in order to ensure that the rail properties do not become available for entry or selection by third parties as a result of actions taken under the legislation.

SECTION 14.—CONFLICT WITH OTHER LAWS

This section provides that the provisions of this legislation shall govern in the event of any conflict between this legislation and any other law.

SECTION 10.—REPEAL AND AMENDMENT OF EXISTING

This section repeals the Alaska Railroad Enabling Act and other related laws, and makes conforming changes to other federal laws that mention the Alaska Railroad. These changes would become effective at the time of the transfer or at the time of any other disposition of the railroad pursuant to section 11 of this legislation.

SECTION 10.—SEPARABILITY

This section provides that if any section is held invalid, other sections shall not be affected.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in *italic*, existing law in which a change is proposed is shown in roman):

Exhibit "C"

let Region, Incorporated, may advise the Secretary, and the Secretary may advise the Administrator, that there is a tentative need for the property to fulfill the obligations established under this subsection. Upon receipt of such notice from the Secretary, the Administrator shall suspend any disposition of the property for 60 days, to permit the Secretary and Cook Inlet Region, Incorporated, to negotiate terms of sale of the property to Cook Inlet Region, Incorporated. If such terms are agreed upon, the Secretary shall promptly request that the Administrator of General Services transfer the property to the Secretary for such disposition. Such request shall be considered by the Administrator, along with any other requests by Federal agencies. If the Administrator determines that the property should be so disposed of, the Administrator shall promptly transfer the property to the Secretary for such disposition.

(C) No disposition or conveyance of property under this subsection to Cook Inlet Region, Incorporated, shall be made unless the Administrator, after such consultation with State and local officials as is customary in the disposition of excess property, shall determine that there is no State and local priority for such property recognized by law.

(D) 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.

(E) If Cook Inlet Region, Incorporated, accepts any conveyances under subclauses (A) or (B) of this subsection, it shall be in exchange for acres or acre-equivalents as provided in subparagraph 1(C)(2)(e) of the document referred to in this section.

(ii) (iii) The Secretary of the Treasury shall establish a Cook Inlet Region, Incorporated [surplus] property account, which shall be available for the purpose of bidding on Federal surplus property paying for the conveyance of property pursuant to subsection (i) and (ii). The balance of the account shall be the sum of (1) the acre-equivalent exchange value established by paragraph 1(C)(2)(e) of section 7(e)(iii)(A) of the document referred to in this subsection, the unfulfilled entitlement of Cook Inlet Region, Incorporated, the active date of this subsection to acre or acre-equivalents under paragraph 1(C)(2)(g) 1(C) of the document referred to in this subsection [and shall be] and (2) 1/2 the acre or acre-equivalent exchange value under such paragraph of the unfulfilled entitlement of Cook Inlet Region, Incorporated, on the same date to acres to be conveyed under paragraph (5) of this subsection adjusted to reflect transfers or successful bids under [subsection 12(b)(6)] section 12(b) of this section.

(iii) (iv) The amount charged against the Treasury account established under [subsection (ii)] subsection (iii) shall be treated as excess of dispositions of surplus property for the purpose of determining the basis for calculating direct expenses pursuant to 30 U.S.C. (b), as amended.

1(iv) (v) The basis for computing gain or loss on subsequent sale or other disposition of lands or interests in land conveyed to Cook Inlet Region, Incorporated, under this subsection, for purposes of any Federal, State or local tax imposed on or measured by income, shall be the fair value of such land or interest in land at the time of receipt. The amount charged against Cook Inlet's entitlement under 1(C)(2)(e) of the document referred to in subsection (b) of this section shall be prima facie evidence of such fair value.

1(8) Cook Inlet Region, Incorporated, the Secretary and/or the Administrator shall have until July 15, 1982, to complete the nomination of lands for the pool described in subsection 112(b)(6); Provided, however, That the Secretary shall report to Congress on January 15, 1982, as to:

1(i) 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, within the exterior boundaries of the Cook Inlet Region, or elsewhere can be made available to the Cook Inlet Region, Incorporated, to the extent of its entitlement;

1(ii) The feasibility and appropriate nature of reimbursement to Cook Inlet Region, Incorporated, for its unfulfilled entitlement as valued in paragraph 1(C)(2)(e) of the document referred to in this subsection;

1(iii) The extent to which implementation to the mechanisms established in subsection 12(b)(7) promise to meet said unfulfilled commitment; and

1(iv) Such other remedial legislation or administrative action as may be needed.

Any provision of law to the contrary notwithstanding, if the Region, the Secretary, and/or the Administrator of General Services do not complete the nomination of lands referred to in subparagraphs (5) and (6) of this subsection by the dates set in subparagraphs 1(C)(1)(b) and 1(C)(2)(a) of the document referred to in this subsection, then, and in that event, these dates shall hereby automatically be extended by operation of this subsection for thirty-six months beyond the period set in section 3(a) of Public Law 95-178.]

(8) Notwithstanding any provisions of law or implementing regulation inconsistent with this section:

(i) The deadlines in subparagraphs 1(C)(2)(a) and (g) of the document referred to in this section shall be extended until the Secretary's obligations under this section are fulfilled: Provided, That: (A) the obligation of the Secretary under subparagraph 1(C)(2)(a) of such document shall terminate on such date, after July 15, 1984, as the Secretary has fulfilled his obligation under subparagraph 1(C)(2)(g) of that document; and (B) the authority of the Secretary under subparagraph 1(C)(2)(b) of such document to contribute to the pool created under subparagraph 1(C)(2)(a) of such document shall terminate: (a) on July 15, 1984, if, by that date, the Secretary has fulfilled his obligation under subparagraph 1(C)(2)(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. Nothing in this sub-

section shall affect such obligation as the Secretary may have under subparagraph 1 (C) (2) (a) of such document with respect to any military reservation within the boundaries of Cook Inlet Region, Incorporated, and such obligation shall continue until the Secretary's obligations under this section are fulfilled: Provided, however, That the Secretary may not include any property of the Alaska Railroad in the pool of lands made available for selection as a result of the extension unless and until such inclusion is agreed to by the State of Alaska or the State-owned railroad.

(ii) In addition to such other reviews of Federal installations as may be required under existing law, the Secretary shall identify for inclusion in the pool all public lands, 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 Cook Inlet Region, Incorporated, whether within or without the areas withdrawn pursuant to section 11 of the Alaska Native Claims Settlement Act or by the Secretary acting under authority contained in that section: Provided, That no such additional review under such subparagraph shall be required of the property of the Alaska Railroad, of military installations, or of such other installations as may be mutually excluded from review by Cook Inlet Region, Incorporated, and the Secretary.

(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 provides the Secretary and Cook Inlet Region, Incorporated, within 90 days of the date of notice a written finding that the parcel is required by the State for a public purpose.

(iv) On or before January 15, 1984, the Secretary shall report to Congress with respect to:

(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, within the exterior boundaries of the Cook Inlet Region, Incorporated, whether within or without an area ever withdrawn pursuant to section 11 of the Alaska Native Claims Settlement Act or by the Secretary acting under authority contained in that section, or elsewhere can be made available to the Cook Inlet Region, Incorporated, to the extent of its entitlement;

(B) The feasibility and appropriate nature of reimbursement to Cook Inlet Region, Incorporated, for its unfulfilled entitlement as valued in subparagraph 1 (C) (2) (c) of the document referred to in this section;

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

(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 Cook Inlet Region, Incorporated, may be completed.

(9) No conveyance resulting from any sale or exchange pursuant to this section shall be considered to result in any revenues for any purpose set out in this Act.

(10) For the purpose of its incorporation into this section, paragraph 1 (C) (1) of the document referred to in this section is amended as follows: (1) by striking "withdrawn under sections 11 (a) (1), 11 (w) (3), or 17 (d) (1)"; (2) by adding after the first period the following: "Federal public lands, as used herein, shall include lands tentatively approved for patent or patented to the State under the Alaska Statehood Act or the Mental Health Enabling Act of 1956 if such lands are reconveyed to the United States. Land selected by the State not otherwise eligible for inclusion in the pool under the document referred to in this section may be nominated by Cook Inlet Region, Incorporated, for inclusion in the pool, and may be conveyed to Cook Inlet Region, Incorporated, upon relinquishment of the selection by the State."; and (3) by striking the last sentence of subparagraph 1 (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 or defense withdrawal. Any lands nominated by Cook Inlet Region, Incorporated, that were made available to the State for selection pursuant to sections 2 and 5 of the State-Federal Agreement of September 1, 1972 cannot be conveyed to Cook Inlet Region, Incorporated, without the consent of the State."

(11) Notwithstanding the provisions of section 906 of this Act, the State is hereby authorized to convey to the United States for reconveyance to Cook Inlet Region, Incorporated, and the Secretary is directed to accept (i) lands tentatively approved for patent or patented to the State, or (ii) relinquished State selections of lands selected prior to July 18, 1975, if either such category of lands are nominated by Cook Inlet Region, Incorporated, under paragraph 1 (C) (1) of the document referred to in this section. 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 (Public Law 86-508).

On the date of transfer of rail properties or other disposition pursuant to the provisions of the bill, the following changes to existing law will occur:

THE ACT OF MARCH 12, 1914

That the President of the United States is empowered, authorized, and directed to adopt and use a name by which to designate the railroad or railroads and properties to be located, owned, acquired, or operated under the authority of this Act; to employ such officers, agents, or agencies, in his discretion, as may be necessary to enable him to carry out the purposes of this Act; to authorize and require such officers, agents, or agencies to perform any or all of the duties imposed upon him by the terms of this Act; to detail and require any officer or officers in the Engineer Corps in the Army or Navy to perform service under this Act; to fix the compensation of all officers, agents, or em-

ployees appointed or designated by him; and, notwithstanding any other provision of law or regulation, to fix relocation, travel and transportation expenses for the General Manager of the railroad designated under this Act to designate and cause to be located a route or routes for a line or lines of railroad in the Territory of Alaska not to exceed in the aggregate one thousand miles, to be so located as to connect one or more of the open Pacific Ocean harbors on the southern coast of Alaska with the navigable waters in the interior of Alaska, and with a coal field or fields so as best to aid in the development of the agricultural and mineral or other resources of Alaska, and the settlement of the public lands therein, and so as to provide transportation of coal for the Army and Navy, transportation of troops, arms, munitions of war, the mails, and for other governmental and public uses and for the transportation of passengers and property; to construct and build a railroad or railroads along such route or routes as he may so designate and locate, with the necessary branch lines, feeders, sidings, switches, and spurs; to purchase or otherwise acquire all real and personal property necessary to carry out the purposes of this Act; to exercise the power of eminent domain in acquiring property for such use, which use is declared to be a public use, by condemnation in the courts of Alaska in accordance with the laws now or hereafter in force there; to acquire rights of way, terminal grounds, and all other rights; to purchase or otherwise acquire all necessary equipment for the construction and operation of such railroad or railroads; to build or otherwise acquire docks, wharves, terminal facilities, and all structures needed for the equipment and operation of such railroad or railroads; to fix, change, or modify rates for the transportation of passengers and property, which rates shall be equal and uniform, but no free transportation or passes shall be permitted except that the provisions of the interstate commerce laws relating to the transportation of employees and their families shall be in force as to the lines constructed under this Act; and except also that the issuance of passes to ministers of religion, traveling secretaries of Railroad Young Men's Christian Associations, and persons exclusively engaged in charitable and eleemosynary work when engaged in their work in Alaska; to indigent, destitute, and homeless persons, inmates of hospitals and charitable and eleemosynary institutions, and to such persons when transported by charitable societies or hospitals, and the necessary agents employed in such transportations; to newsboys on trains, persons injured in wrecks and physicians and nurses attending such persons; the interchange of passes for the officers, agents, and employees of common carriers, and their families; and the carrying of passengers free with the object of providing relief in cases of general epidemic, pestilence, or other calamitous visitation is permitted; to receive compensation for the transportation of passengers and property, and to perform generally all the usual duties of a common carrier by railroad; to make and establish rules and regulations for the control and operation of said railroad or railroads; in his discretion, to lease the said railroad or railroads, or any portion thereof, including telegraph and telephone lines, after completion under such terms as he may deem proper, but no lease of said railroad or railroads shall be for a longer period than twenty years, and no other lease authorized in this act shall be for a

longer period than fifty-five years or in the event of failure to lease, to operate the same until the further action of Congress: Provided, if said railroad or railroads, including telegraph and telephone lines, are leased under the authority given then and in that event they shall be operated under the jurisdiction and control of the provisions of the interstate commerce laws; to purchase, condemn, or otherwise acquire upon such terms as he may deem proper any other line or lines of railroad in Alaska which may be necessary to complete the construction of the line or lines of railroad designated or local by him: Provided, The price to be paid in case of purchase shall in no case exceed the actual physical value of the railroad; to make contracts or agreements with any railroad or steamship company or vessel owner for joint transportation of passengers or property over the road or roads herein provided for, and such railroad or steamship line or by such vessel, and to make such other contracts as may be necessary to carry out any of the purposes of this Act; to utilize in carrying on the work herein provided for any and all machinery, equipment, instruments, material, and other property of any sort whatsoever used or acquired in connection with the construction of the Panama Canal, so far and as rapidly as the same is no longer needed at Panama, and the Isthmian Canal Commission is hereby authorized to deliver said property to such officers or persons as the President may designate, and to take credit therefor at such percentage of its original cost as the President may approve, but this amount shall not be charged against the fund provided for in this Act.

Any security officer employed to protect life and property on the railroad is authorized to maintain law and order, to carry firearms, and to make arrests on railroad property with a warrant for any offense committed against the laws of the United States, and to make arrests without a warrant for any offense committed upon property of the railroad if there is reasonable ground to believe that the offense constitutes a felony under the laws of the United States and the person to be arrested has committed or is committing the felony.

The authority herein granted shall include the power to construct, maintain, and operate telegraph and telephone lines so far as they may be necessary or convenient in the construction and operation of the railroad or railroads as herein authorized and they shall perform generally all the usual duties of telegraph and telephone lines for hire.

Terminal and station grounds and rights of way through the lands of the United States in the Territory of Alaska are granted for the construction of railroads, telegraph and telephone lines authorized by this Act [43 USCS §§ 975-975g], and the President may, in such manner as he deems advisable, make reservation of such lands as are or may be useful for furnishing materials for construction and for stations, terminals, docks, and for such other purposes in connection with the construction and operation of such railroad lines as he may deem necessary and desirable.

In all patents for lands taken up, entered, or located in Alaska hereafter taken up, 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.

¶ All moneys derived from lito lease, sale, or disposal of any of the public lands, including townsites, in Alaska, or the coal or mineral therein contained, or the timber thereon, and the earnings of said railroad or railroads, together with the earnings of the telegraph and telephone lines constructed under authority of this Act, above maintenance charges and operating expenses, shall be paid into the Treasury of the United States as other miscellaneous receipts are paid, and a separate account thereof shall be kept and annually reported to Congress.

¶ It is the intent and purpose of Congress through this Act to authorize and empower the President of the United States, and he is fully authorized and empowered through such officers, or agencies as he may appoint or employ, to do all necessary acts and things in addition to those specially authorized in this Act to enable him to accomplish the purposes and objects of this Act.

¶ The officers, agents, or agencies placed in charge of the work by the President shall make to the President annually, and at such other periods as may be required by the President or by either House of Congress, full and complete reports of all their acts and doings and of all moneys received and expended in the construction of said work and in the operation of said work or works and in the performance of their duties in connection therewith. The annual reports herein provided shall be by the President transmitted to Congress.¶

THE ACT OF JUNE 24, 1946

¶ That funds available for the operation of the Alaska Railroad shall be available for maintenance and operation of river steamers and other boats on the Yukon River and its tributaries in Alaska; for purchase of stores for resale; and for payment of claims for losses and damages arising from operations, including claims of employees of the railroad for loss and damage resulting from wreck or accident on said railroad, not due to negligence of the claimant, limited to clothing and other necessary personal effects used in connection with his duties and not exceeding \$100 in value.¶

THE ACT OF JULY 19, 1932

¶ That in order to prevent monopoly and to insure the continuance of two or more operating coal mines in the Territory of Alaska adjacent to the Alaska Railroad, the general manager of the Alaska Railroad with the approval of the Secretary of the Interior is hereby authorized to purchase coal annually for the railroad from two or more operating companies in that area at such reasonable price or prices as may be fixed and determined by said Secretary.¶

THE DEPARTMENT OF TRANSPORTATION ACT

SECTION 6 OF THAT ACT

SEC. 6. (a)-(h) * * *

¶ (i) The administration of the Alaska Railroad, established pursuant to the Act of March 12, 1914, as amended (38 Stat. 308), and all of the functions authorized to be carried out by the Secretary of

Exhibit "C"

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the Interior pursuant to Executive Order Numbered 11107, April 25, 1963 (28 F.R. 4225), relative to the operation of said Railroad, are hereby transferred to and vested in the Secretary of Transportation who shall exercise the same authority with respect thereto as is now exercised by the Secretary of the Interior pursuant to said Executive order.¶

TITLE 5, UNITED STATES CODE

SECTION 305 OF THAT TITLE

§ 305. Systematic agency review of operations

(a) For the purpose of this section, "agency" means an Executive agency, but does not include—

- (1) a Government controlled corporation;
- (2) the Tennessee Valley Authority;
- ¶ (3) The Alaska Railroad;¶
- ¶ (4) ¶ (3) the Virgin Islands Corporation;
- ¶ (5) ¶ (4) Atomic Energy Commission;
- ¶ (6) ¶ (5) the Central Intelligence Agency;
- ¶ (7) ¶ (6) the Panama Canal Commission; or
- ¶ (8) ¶ (7) the National Security Agency, Department of Defense.

(b)-(c) * * *

SECTION 5102 OF THAT TITLE

§ 5102. Definitions; application

(a) For the purpose of this chapter—

(1) "agency" means—

- (A) an Executive agency;
 - (B) the Administrative Office of the United States Court;
 - (C) the Library of Congress;
 - (D) the Botanic Garden;
 - (E) the Government Printing Office;
 - (F) the Office of the Architect of the Capitol; and
 - (G) the government of the District of Columbia;
- but does not include—

- (i) a government controlled corporation;
- (ii) the Tennessee Valley Authority;

¶ (iii) The Alaska Railroad;¶

¶ (iv) ¶ (ii) the Virgin Islands Corporation;

¶ (v) ¶ (iv) the Atomic Energy Commission;

¶ (vi) ¶ (v) the Central Intelligence Agency;

¶ (vii) ¶ (vi) the Panama Canal Commission;

¶ (viii) ¶ (vii) the National Security Agency, Department of Defense, or

¶ (ix) ¶ (viii) the General Accounting Office;

(2) "employee" means an individual employed in or under an agency;

(3) "position" means the work, consisting of the duties and responsibilities, assignable to an employee;

(4) "class" or "class of positions" includes all positions which are sufficiently similar, as to—

- (A) kind or subject-matter of work;
 - (B) level of difficulty and responsibility; and
 - (C) the qualification requirements of the work;
- to warrant similar treatment in personnel and pay administration; and
- (5) "grade" includes all classes of positions which, although different with respect to kind or subject-matter of work, are sufficiently equivalent as to—
 - (A) level of difficulty and responsibility; and
 - (B) level of qualification requirements of the work;
- to warrant their inclusion within one range of rates of basic pay in the General Schedule.
- (b)-(d) * * *

SECTION 3401 OF THAT TITLE

§ 3401. Definitions

For the purpose of this chapter—

- (1) "agency" means—
 - (A) an Executive agency;
 - (B) a military department;
 - (C) an agency in the judicial branch;
 - (D) the Library of Congress;
 - (E) the Botanic Garden; and
 - (F) the Office of the Architect of the Capitol; but does not include—
 - (i) a Government controlled corporation;
 - (ii) the Tennessee Valley Authority;
 - (iii) the Alaska Railroad;
 - (iv) (iii) the Virgin Island Corporation;
 - (v) (iv) the Panama Canal Company;
 - (vi) (v) the Federal Bureau of Investigation, Department of Justice;
 - (vii) (vi) the Central Intelligence Agency; and
 - (viii) (vii) the National Security Agency, Department of Defense; and

- (2) "part-time career employment" means part-time employment of 16 to 32 hours a week under a schedule consisting of an equal or varied number of hours per day, whether in a position which would be part-time without regard to this section or one established to allow job-sharing or comparable arrangements, but does not include employment on a temporary or intermittent basis.

SECTION 5342 OF THAT TITLE

§ 5342. Definitions; application

- (a) For the purpose of this subchapter—
 - (1) "agency" means an Executive agency; but does not include—
 - (A) a Government controlled corporation;
 - (B) the Tennessee Valley Authority;
 - (C) the Alaska Railroad;

- (D) (C) the Virgin Islands Corporation;
- (E) (D) the Atomic Energy Commission;
- (F) (E) the Central Intelligence Agency;
- (G) (F) the Panama Canal Commission;
- (H) (G) the National Security Agency, Department of Defense;
- (I) (H) the Bureau of Engraving and Printing, except for the purposes of section 5349 of this title; or
- (J) (I) the General Accounting Office;
- (2)-(3) * * *
- (b)-(c) * * *

SECTION 7327 OF THAT TITLE

§ 7327. Political activity permitted; employees residing in certain municipalities

(a) Section 7324 (a) (2) of this title does not apply to an employee of the Alaska Railroad who resides in a municipality on the line of the railroad in respect to political activities involving that municipality.

(b) The Civil Service Commission may prescribe regulations permitting employees and individuals to whom section 7324 of this title applies to take an active part in political management and political campaigns involving the municipality or other political subdivision in which they reside, to the extent the Commission considers it to be in their domestic interest, when—

(1) the municipality or political subdivision is in Maryland or Virginia and in the immediate vicinity of the District of Columbia, or is a municipality in which the majority of voters are employed by the Government of the United States; and

(2) the Commission determines that because of special or unusual circumstances which exist in the municipality or political subdivision it is in the domestic interest of the employees and individuals to permit that political participation.

THE RAILROAD REVITALIZATION AND REGULATORY REFORM ACT OF 1976

SECTION 102 OF THAT ACT

DEFINITIONS

SEC. 102. As used in this Act, unless the context otherwise indicates, the term—

- (1) "Association" means the United States Railway Association;
- (2) "Commission" means the Interstate Commerce Commission;
- (3) "Corporation" means the Consolidated Rail Corporation;
- (4) "final system plan" means the final system plan and any additions thereto adopted by the Association pursuant to the Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.);
- (5) "includes" and variants thereof should be read as if the phrase "but is not limited to" were also set forth;

(6) "Office" means the Rail Services Planning Office of the Commission;

(7) "railroad" means a common carrier by railroad or express, as defined in section 1(3) of the Interstate Commerce Act (49 U.S.C. 1(3)), and includes the National Railroad Passenger Corporation [and the Alaska Railroad]; and

(8) "Secretary" means the Secretary of Transportation or his designated representative.

TITLE 49, UNITED STATES CODE

SECTION 10749 OF THAT TITLE

§ 10749. Exchange of services and limitation on use of common carriers by freight forwarders

(a) * * *

(b) A freight forwarder providing service subject to the jurisdiction of the Commission under subchapter IV of chapter 105 of this title may use a carrier, including a carrier referred to in this subsection, to transfer, collect, or deliver in a terminal area. However, to provide other services, a freight forwarder may only use—

(1) a rail, express, motor, or water common carrier, or motor contract carrier of property, providing transportation subject to the jurisdiction of the Commission under chapter 105 of this title including—

(A) a motor common carrier providing exempt transportation under section 10525 or 10526(a) (8) of this title; or

(B) a water common carrier, or motor contract carrier of property, providing exempt transportation under section 10542(a) of this title or transportation between places in Alaska or Hawaii and between those places and other places in the United States; or

(2) an air carrier subject to the jurisdiction of the Civil Aeronautics Board under chapter 20 of this title [; or].

[(3) the Alaska Railroad.]

THE PUBLIC HEALTH SERVICE ACT

SECTION 324 OF THAT ACT

SEC. 324. (a) The Surgeon General is authorized to provide at institutions, hospitals, and stations of the Service medical, surgical, and hospital services and supplies for persons entitled to treatment under the United States Employees' Compensation Act and extensions thereof. The Surgeon General may also provide for making medical examinations of—

(1) Employees of the Alaska Railroad and employees of the Federal Government for retirement purposes;

(2) employees in the Federal classified service, and applicants for appointment, as requested by the Civil Service Commission for the purpose of promoting health and efficiency;

(3) seamen for purposes of qualifying for certificates of service; and

(4) employees eligible for benefits under the Longshoremen's and Harbor Workers' Compensation Act, as amended (U.S.C., 1940 edition, title 33, chapter 18), as requested by any deputy commissioner thereunder.

(b) * * *

THE ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT

SECTION 202 OF THAT ACT

SEC. 202. The following units of the National Park System are hereby expanded:

(1) * * *

(2) * * *

(3) Denali National Park. (u) Mount McKinley National Park, by the addition of an area containing approximately two million four hundred and twenty-six thousand acres of public land and approximately one million three hundred and thirty thousand acres of additional public land is hereby established as Denali National Preserve, both as generally depicted on map numbered DENA-90,007, and dated July 1980 and the whole is hereby redesignated as Denali National Park and Preserve. The park additions and preserve shall be managed for the following purposes, among others: To protect and interpret the entire mountain massif, and additional scenic mountain peaks and formations; and to protect habitat for, and populations of fish and wildlife including, but not limited to, brown/grizzly bears, moose, caribou, Dall sheep, wolves, swans and other waterfowl; and to provide continued opportunities, including reasonable access, for mountain climbing, mountaineering and other wilderness recreational activities. [That portion of the Alaska Railroad right-of-way within the park shall be subject to such laws and regulations applicable to the protection of fish and wildlife and other park values as the Secretary, with the concurrence of the Secretary of Transportation, may determine.] Subsistence uses by local residents shall be permitted in the additions to the park where such uses are traditional in accordance with the provisions in title VIII.

(b)-(c) * * *

The problem that arises when the poorest land is taken out of production and receives Government payments must be alleviated by making the payment only on the basis of what the crop yields would be if it were farmed. The average yield for the entire farm would be higher than on the poorest land on that farm. The payment on the poorer land on a farm must be adjusted to the actual rate of the production from the land that is idled.

PIK can be used to subsidize foreign sales in agricultural products. Actual stocks of grain or other agricultural products produced in this country and owned by the Government in the Commodity Credit Corporation could be a method of encouraging and expediting foreign sales.

Bonus payments to exporters of U.S. grain or other commodities could be made available free to make U.S. products at prices competitive in the world market with countries who are already subsidizing their agricultural exports.

This is a policy that must be determined by Congress itself. It is a policy that deviates from the present U.S. practice and it deserves adequate and thorough consideration by all of the people and then action by Congress if we implement such a policy.

On these points that I raise, there has not been sufficient attention allowed for this quickly-conceived legislation. There certainly has not been evidence of general agreement here in the Senate on all of these points and perhaps some will never receive a majority vote in the Senate or in the House, but they are certainly legitimate considerations in the legislative process of enacting the PIK bill. They are certainly legitimate considerations for the agricultural community and for the public at large. I hope that we can have prompt action over the next 6 to 8 weeks with input, with advice, and with suggestions from the millions of Americans who are affected directly by a major shift in U.S. agricultural policies. Beyond that, all Americans are impacted by success or failure of our agricultural economy.

The recession has been aggravated by the decline in agricultural prices followed by the decline in purchasing power by agricultural producers. If the Department of Agriculture and the administration can quickly formulate their proposals to fill the gaps that I have mentioned or other gaps that others find in the PIK proposal, I believe we can act promptly next year for passage of the program into law and make it available for farmers for their 1983 crops.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. WARNER. Mr. President, I ask unanimous consent that the order for the quorum called be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

EXPRESSION OF APPRECIATION TO THOSE WHO WORK ON CAPITOL HILL

Mr. WARNER. Mr. President, there is a strong likelihood that the Congress will recess sine die before the close of this day, and each year it is my privilege to say a few words as one Member of the Senate in heartfelt appreciation to all of those who work on Capitol Hill and make our life more comfortable and more safe. That ranges from the guards, to the cafeteria workers, to the elevator operators, and, of course, the Senate staffs, plus many others.

I wish to express my heartfelt appreciation to these many people and wish them a Merry Christmas and a Happy New Year. I look forward to resuming our activities the beginning of the new year.

RECESS UNTIL 6:30 P.M.

Mr. BAKER. Mr. President, it does not appear that there is any business that can be transacted at this time that has been cleared on both sides. The conferees on the highway bill are still in conference. As long as that is so, I think we should wait and find the result of that effort.

I ask unanimous consent, therefore, that the Senate now stand in recess until the hour of 6:30 p.m., this evening.

There being no objection, the Senate, at 5:28 p.m., recessed until 6:30 p.m., whereupon the Senate reconvened when called to order by the Presiding Officer (Mr. RUDMAN).

The PRESIDING OFFICER. The majority leader.

Mr. BAKER. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. WARNER). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. NUNN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. BRADY). Without objection, it is so ordered.

DR. MARTIN LUTHER KING, JR.

Mr. NUNN. Mr. President, I am pleased that the Senate has approved legislation providing for the placement of a bust or statue of the late Dr. Martin Luther King, Jr., in the Capitol Building.

Dr. King's lifelong devotion to the civil rights movement made an indelible imprint upon our Nation and the world. This Georgian's courageous leadership broke down legal barriers which separated our Nation's citizens. His principles of nonviolence set a clear example for all those who wish to bring about change through nonvio-

lent means and earned for Dr. King a Nobel Prize for Peace.

I hope that the placement of a bust or statue in the Capitol will recall for all Americans Dr. King's dreams for an equal, just and peaceful society.

When the history of this century is written, Dr. King will be recorded as a great leader of our people. It is fitting that his image stand in our Capitol along with other great Americans who, throughout history, have shared this man's courage, wisdom, and commitment to equal justice for all.

PIPELINE SAFETY ACT

Mr. BAKER. Mr. President, I have a stunning announcement to make. I do not believe my colleagues will believe it on first reading, so I may have to repeat it. I wish to say that it gives me a great deal of pleasure to say—and it gives me a great deal of pleasure to say it—that apparently, the differences between my friend, the assistant majority leader, TED STEVENS, and my friend, the Senator from Ohio, HOWARD METZENBAUM, with respect to the Alaskan railroad have been worked out. I have to confess that I shall believe that when I see it. But hoping that that will be the case—

Mr. ROBERT C. BYRD. Will the Senator pause for a moment?

Mr. BAKER. Yes.

Mr. ROBERT C. BYRD. Mr. President, so do we take a deep, deep breath.

Mr. BAKER. Now, Mr. President, before anything else happens, I ask that the Chair lay before the Senate a message from the House on H.R. 3420, the Pipeline Safety Authorization Act of 1982.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the House agree to the amendments of the Senate to the bill (H.R. 3420) entitled "An Act to authorize appropriations for fiscal year 1982 for carrying out the Natural Gas Pipeline Safety Act of 1968 and the Hazardous Liquid Pipeline Safety Act of 1979, and for other purposes", with an amendment; it insists upon its amendments to the amendments of the Senate to the bill (H.R. 3420) entitled "An Act to authorize appropriations for fiscal year 1982 for carrying out the Natural Gas Pipeline Safety Act of 1968 and the Hazardous Liquid Pipeline Safety Act of 1979, and for other purposes", asks a conference with the Senate on the disagreeing votes of the two Houses thereon, and appoints the following as managers of the conference.

Ordered, That Mr. JONES of North Carolina, Mr. BIAGI, Mr. RODINO, Mr. SNYDER, and Mr. McCLOSKEY be the managers of the conference on the part of the House for title I of the amendment of the House to the text of the bill.

Ordered, That Mr. DINGELL, Mr. FLORIO, and Mr. LEWT be the managers of the conference on the part of the House for titles II through VIII of the amendment of the House to the text of the bill and modifications committed to conference.

(The amendment of the House is printed in part II of the RECORD of December 20, 1982.)

Mr. BAKER. Mr. President, I move that the Senate concur in the House amendment with the further Senate amendment.

I yield to the Senator from Ohio that he may offer that amendment.

Mr. METZENBAUM. Mr. President, the amendment that I send to the desk is the result of untold number of hours of work on behalf of the Senator from Alaska, as well as the junior Senator from Alaska, and my own staff.

OF AMENDMENT NO. 1586

Mr. President, I send an amendment to the desk in the nature of a substitute.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows: The Senator from Ohio (Mr. METZENBAUM) proposes an unprinted amendment numbered 1586.

Mr. METZENBAUM. I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

In lieu of the matter proposed to be inserted by the House engrossed amendment to the Senate engrossed amendment to the text of H.R. 3420, insert the following: That titles II through VII of this Act may be cited as the "Rail Safety and Service Improvement Act of 1982".

Mr. METZENBAUM. The issue has had to do with the question of the State of Alaska purchasing the Alaska Railroad and the question of what price would be paid for it. The amendment that I sent to the desk will provide a means of determining what that value is, based on fair market value. Thereafter, the parties in the State of Alaska and the Federal Government would be in a position to conclude a transaction on the basis of that price.

The determination of the value would be made by the U.S. Railway Association and I think that it is a move that satisfies the concerns of the Senator from Ohio and, I believe, satisfies the concerns of the Senator from Alaska.

I should further point out that this is the same measure that was pending at the desk. That language having to do with the exemption of the shipping industry from the Antitrust Act would be deleted in its entirety.

There are a number of other provisions in the measure having to do with benefits for approximately 10,000 railroaders. Without this legislation, those 10,000 railroaders would be unemployed, and this will preserve their rights. Therefore, I am pleased to join with the Senator from Alaska, whose staff has worked zealously in an effort to bring this about, in offering this amendment, and I think that the Senator from Alaska and I are in accord on it.

Mr. STEVENS addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. I want to thank the Senator, and I know that he has returned from dinner, once our respective staffs and the staff of the Commerce Committee worked this bill out, in order that the matter could be handled expeditiously and sent to the House in time for action prior to sine die adjournment.

The Senator is correct that the Northeast corridor improvement project is included in the bill and affects some 10,000 people in New Jersey. It has been in the railroad bill all along, and it is quite important that it be passed before the end of the year.

I think that we are indebted to the people who have kept pressing us on all sides of that project in order to reach this point.

I am grateful to the Senator and his staff. I want to thank Doug Lowenstein, David Springer, Peter Harris, and Marge Baker, for working with our staff; the Commerce Committee staff: Kevin Curtin, Pamela Garvey, Linda Morgan, and Mary McAuliff, who have now been working for 2 years on this bill.

They have been working around the clock this last week with my staff: Bill Phillips, and Mark Schneider. In addition, Lynn Sutcliffe has added his able assistance to the State of Alaska along with a young man that many people have just gotten to know, Dave Walsh. He has been a friend of mine for years and he has had a distinguished record as a member of the Anchorage City Council. Dave has been here representing our new Governor, Bill Sheffield, and has been here working with the staff, in an attempt to insure passage of this legislation.

I have to say to the Senator that this is a matter of faith. Neither one of us has had time to make certain that the understandings that he and I expressed are in this document. I have absolute confidence in the staff that has worked on it, though, and I believe the statements made by the Senator are correct. The shipping act is not in this bill. It is in the position of a privileged matter when it returns to the House, so by virtue of the action that has been taken I am confident that we should be able, if the House stays in session long enough, to take care of the problem of the Northeast corridor improvement project, after this appraisal making the railroad available to my State on what seems to be a reasonable proposition. They will have no obligation to take it, of course, but, assuming the price is right, we may be in the railroad business soon.

Since this bill was reported by the committee, the committee has modified it in a number of important respects relating to the procedure used to convey the real property of the Alaska Railroad to the State and the nature of the interest the State is to receive in the Denali National Park and Preserve. In the committee-report-

ed bill, the State received, on the date of transfer, all right, title and interest to the rail properties of the Alaska Railroad, including the real property. Adjudication of pending claims of valid existing rights would follow with the State being required to reconvey interests adjudicated in favor of other parties. The substitute provides a different process which involves withholding fee title to lands subject to unresolved claims of valid existing rights pending expedited adjudication. On the date of the transfer, the State would be granted fee title to lands not subject to such claims and, with respect to lands so subject, an operating license to insure that operations of the railroad are not affected in any way by the new process.

The concept of an exclusive use easement also is introduced in the substitute. This defined interest represents the minimal interest the State is to receive in the Alaska Railroad right-of-way following completion of the expedited adjudication process. Of course, completion of the process may also result in the conveyance of more than just the easement. It also is the interest the State will receive through the Denali National Park and Preserve. In other areas, where the right-of-way crosses land owned in fee by the Federal Government, the full fee title to the right-of-way will be transferred to the State.

Because the exclusive use interest is a new concept, further description of its characteristics seems warranted. Essentially, it is defined to insure that the State-owned railroad will receive exclusive and complete control over land traversed by the right-of-way. Except as specifically qualified in provisions regarding the easement through the Denali Park, the exclusive use easement, at minimum, vests in the State-owned railroad the following rights:

First. To have complete freedom to add to or delete from the land any structures, roadbeds, adjacent rocks, or gravel or to recontour the land as necessary;

Second. To move track within the right-of-way or to add or delete track;

Third. To provide loading and unloading facilities for railroad customers or for railroad purposes;

Fourth. To add structures as may be necessary for operation;

Fifth. To remove any vegetation which may be required to operate or expand the railroad's services;

Sixth. To fence the right-of-way;

Seventh. To operate any and all trains over the right-of-way;

Eighth. To restrict or grant access to persons or vehicles as it sees fit;

Ninth. To construct and maintain any drainage facilities necessary to preserve the right-of-way;

Tenth. To make any provisions necessary to protect the operational capability of the right-of-way even if this requires access to and control of lands

beyond the normal right-of-way limits (for example, avalanche, flood control);

Eleventh. To take such action as may be necessary to safely operate in situations where conflicts with other transport modes may exist; and

Twelfth. To place all necessary communications and signal devices within the right-of-way or to maintain separate rights-of-way for these items where necessary.

Where appropriate the State may also use its police power to regulate activities on the right-of-way and other rail properties.

Other related changes have been made in the substitute which are self-explanatory. I note that a definition of right-of-way has been included to insure that the State receives at least the minimum width necessary to continue to operate the railroad. Modifications have been made in the future rights-of-way section to clarify that current law governs processing of applications for future rights-of-way subject to a description of the interest the State is to receive which is based on the act of March 12, 1914, the Alaska Railroad's organic statute and conforms, that a minimum, to the new definition of an exclusive use easement contained in this bill. As I mentioned, the rail properties within the Denali Park have been treated differently and although the State now receives an exclusive use easement rather than title, this interest is defined to be sufficient to sustain unimpaired, continued operation of the State-owned railroad through the park.

The reversion section also has been changed to provide for reversion in the event the State discontinues use of the railroad for a continuous 18-year period. "Use" is carefully described in the section to include any purpose authorized under the transfer legislation. In addition to special treatment of lands within the Denali Park, the substitute reversion section also specifically deals with lands in the Chugach National Forest. Another provision has been added to provide for Federal recapture of "profits" from the sale of all or substantially all of the State-owned railroad to an entity other than an instrumentality of the State. The proceeds of any such sale are to be reduced by liabilities and obligations assumed in the transfer of the railroad to the State and subsequent State investment in the railroad.

Mr. President, I ask unanimous consent to have printed in the RECORD, a pertinent table.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

Alaska Railroad—Estimated deferred maintenance and delayed capital projects	
Roadbed and track:	Millions*
Tie replacement (assuming 37 yr life cycle).....	\$12.0
Ballast.....	10.8
Subgrade.....	1.3

Bank widening.....	8.0
Turnout renewal.....	3.8
Rail replacement, repair.....	24.0
Block work.....	.5
Subtotal, roadbed and track.....	60.4
Structures:	
Tunnels.....	2.7
Bridges, culverts.....	6.8
Yards.....	7.9
Healy Canyon reroute.....	50.4
Subtotal, structures.....	67.8
Total.....	128.2

* 1982 dollars.
Source: ARR general manager.

Mr. STEVENS. I would like to clarify the basic intent of the new provision requiring a value determination of the Alaska Railroad by the United States Railway Association that my staff has worked out with the Senator from Ohio.

It is my understanding that the USPA will perform an independent determination of the fair market value of the Alaska Railroad as an operating railroad, including full consideration of the terms and conditions of the transfer legislation. The relevant standard is a determination of what a prospective buyer would compensate the United States, if at all, were they to acquire the Alaska Railroad for purposes of continuing operations.

This provision specifically requires the USPA to include consideration of all obligations imposed by this title and other applicable law upon the operation and ownership of the Alaska Railroad. The outstanding claims against railroad, including those land entitlement selections filed by Alaskan Native Corporations, should very definitely be factored into any determination of fair market value. It is conceivable that a significant portion of the railroad's more valuable undeveloped holdings could be lost to these groups. Furthermore, the specific provisions contained in the reversion clause should be considered in any land appraisal since they greatly restrict the State's options with respect to using rail properties for nonrailroad related purposes.

It is my understanding this includes a complete accounting of all deferred maintenance, delayed capital reinvestment requirements, employment protection obligations, passenger service subsidies, OSHA compliance requirements, real value of fixed assets, and potential cash flows. There should also be some consideration of intangibles such as the railroad coming under full jurisdiction of the Interstate Commerce Commission, Federal antitrust statutes, and potential tax liabilities. The USRA should work closely with the Alaska Railroad, the Federal Railroad Administration, and the State in order to utilize the most accurate financial information on the railroad, much of which is to be generated during the concurrent 9-month period for preparation of the closing report. I would further point out that this

latter point is reflected within the amendment language.

I thank the Senator from Ohio, and I thank the leadership.

Mr. METZENBAUM. I should point out, Mr. President—and I think the Senator from Alaska has stated it well—neither of us has had a chance to read the language that our staffs have been working on. We both have an understanding that should there be in error in draftsmanship, we know the intent of what we are trying to do.

If it is necessary to provide some clarification or provide some correction in the next session, we will work together on that action.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Ohio.

The amendment (UP No. 1586) was agreed to.

The PRESIDING OFFICER. The question is on the motion to concur in the amendment of the House with a further amendment.

The motion was agreed to.

Mr. BAKER. I move to reconsider the vote by which the motion was agreed to, Mr. President.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BAKER. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BRADLEY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from New Jersey.

Mr. BRADLEY. Mr. President, I am very pleased, as is I am sure, the distinguished Senator who is presiding in the chair, with the resolution of the Alaskan railway issue, because, as the Senator knows, there is also in that provision a rail link between Philadelphia and Atlantic city. So on this eve of Christmas and in the depths of a recession, that railway offers hope to thousands who will travel to that mecca of the East, Atlantic City, expecting they will return across that causeway to the mainland of New Jersey a wealthy and successful tourist.

I appreciate the resolution of this issue. I thank the Senator from Ohio and the Senator from Alaska for opening the horizons again to thousands who in recent history had to leave the country or travel west to seek their fortune and who now have that opportunity just a short train ride away from Philadelphia. We all know what W. C. Fields said about Philadelphia.

Mr. President, let me again express appreciation to my colleagues and the Chair for presiding over this historic act for the Senate as an institution and for the State of New Jersey.

Mr. D'AMATO. Mr. President, I am very pleased that my very good friend from Alaska has been able to reach an accommodation with the Senator from Ohio, and I am hopeful that this accord will result in viable rail service in Alaska.

Let me only add that this measure also contains some funds—\$2 million—for the rehabilitation or relocation of the present Amtrak rail passenger station at Syracuse, N.Y. The Syracuse station served over 79,000 passengers in the first 9 months of fiscal year 1982 and in fiscal year 1983, Syracuse expects a 9.3-percent increase over the previous year. The funds in this bill will be used to improve this station, which serves as a vital link in the upper New York State Empire Service.

Mr. President, I commend the Senate Commerce Committee members and staff who have worked so tirelessly on this measure.

Mr. WEICKER. Mr. President, included in this bill is \$75 million in new authorization for Conrail Commuter Transition Assistance. I commend Senator PACKWOOD and the Commerce Committee staff for their efforts on this important matter. This new authority will provide the necessary funding to effect a smooth and effective transition of Conrail's Commuter Rail obligations to the Northeastern Commuter Rail Authorities. This provision is particularly appropriate in light of recent action by the Senate Appropriations Committee to provide \$75 million in fiscal year 1983 Transportation Appropriations for the Conrail Commuter Transition. This additional funding, which I had requested, has been approved by the committee and the administration and is now included in H.R. 7019, a bill making appropriations for the Department of Transportation and Related Agencies for fiscal year 1983.

In an effort to make Conrail an efficient rail freight system, Congress in the Northeast Rail Service Act (NERSA) directed that Conrail be relieved of its commuter rail operations by January 1, 1983. Congress provided assistance to insure that either commuter agencies or the Northeast Commuter Services Corporation (NCSC), formerly Amtrak Commuter Services Corporation, could take over existing operations without disrupting service to the many communities and cities in the Northeast that depend on commuter operations. To effect this transition, Congress authorized \$50 million in transition assistance for costs incurred by either the commuter agencies or NCSC. However, earlier this year, the Connecticut Department of Transportation (ConnDOT) and the Metropolitan Transportation Authority (MTA) as well as other authorities expressed their grave concern that funding made available under the Northeast Rail Service Act would be insufficient to meet the many administrative costs of the transition. MTA and ConnDOT also have a unique con-

tract agreement under which ConnDOT and MTA currently lease service from Conrail. Congress made special recognition of this contract with Conrail in stating under section 1139(b) of NERSA.

In providing for the distribution of such funds, the Secretary shall consider any particular adverse financial impact upon any commuter authority that results from the termination of any lease or agreement between such commuter authority and Conrail.

In addition to costs associated with Connecticut's contract with Conrail, commuter agencies must also purchase inventories, supplies, equipment, and certain facilities currently owned by Conrail, as well as computer systems to handle payroll, materials, and service contracts. Total costs alone for Connecticut and MTA's takeover of service from Conrail is about \$70 million. The Federal Government should provide the \$75 million in addition to \$50 million already made available thus far to insure that these mandated costs to Connecticut and New York, as well as the other three States, will be adequately met.

Mr. President, insuring a smooth transition of Conrail's commuter activities to the respective commuter agencies is vitally important to my State of Connecticut; 40,000 commuters daily rely on commuter rail service on the New Haven line between New Haven, Conn., and New York City. This translates into an annual ridership of 23 million—more than the entire Amtrak System! Although no disruption in service is anticipated during the transition process, this continual shifting of rail service in this country between the private and public sector cannot help but create uncertainty in the minds of commuters. For the last two decades Connecticut commuters have seen commuter service vacillate between Penn Central, Conrail, and now the authorities themselves. ConnDOT Commissioner William Burns, in testimony before the House Energy and Commerce Committee, summarized the instability of commuter rail operations in saying:

During the late 1960's, the Connecticut Department of Transportation worked very closely with the Metropolitan Transportation Authority (MTA) to develop a plan to save the Commuter Rail Service on the New Haven, Harlem, and Hudson lines. The service agreement was developed with the Trustees of the Penn Central Corporation to assure the viability of the service for the long term. Not only was the right-of-way in Connecticut leased by the Department for 60 years, but a service agreement was developed which was renewable each five years for the 60 year term. This assured the stability of this vital commuter service in the long term. When the Penn Central properties were merged with other Northeastern Railroads to form Conrail in 1976, a smooth transition occurred because the railroads were being merged. Today we see that organization being torn apart requiring new relationships to be developed.

Establishing new relationships does not happen overnight. ConnDOT and

MTA have chosen to take over this service, but must complete labor negotiations, administrative transitions, and implementing operations, like computer systems by January 1, 1983. All of this is supposed to happen on top of daily frustrations which commuters in Connecticut and New York currently experience: Equipment that does not always work, an antiquated generating power source, and other uncertainties that prevail in the commuter rail business. Therefore I will not accept any additional uncertainty placed on the backs of the commuters of my State. I hope this transfer of operations will be the beginning of dependable rail service provided by a stable authority.

Since Congress and the Federal Government are responsible for initiating this transfer of commuter rail's obligations, the Congress and the Federal Government are responsible for providing adequate funding to cover the costs of the transition. Therefore, I urge my colleagues to approve this essential authority for commuter rail transition costs, and I thank my colleagues on the Commerce Committee for addressing this important issue.

Mr. BRADLEY. I suggest the absence of a quorum.

The PRESIDING OFFICER. The Chair thanks the Senator from New Jersey for his kind words.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

(During the quorum call Mr. BRADY occupied the chair.)

Mr. NUNN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. (Mr. MATTINGLY). Without objection, it is so ordered.

Mr. NUNN. Mr. President, I ask unanimous consent that Randy Nuckolls of my staff be accorded the privileges of the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. NUNN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

REDUCTION, SUSPENSION, AND EXTENSION OF CERTAIN DUTIES

Mr. DOLE. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 4566.

The PRESIDING OFFICER. I lay before the Senate the following message from the House of Representatives:

Resolved, That the House insist upon its amendment to the amendment of the Senate to the bill (H.R. 4566) entitled "An Act to reduce certain duties, to suspend temporarily certain duties, to extend certain existing suspensions of duties, and for other purposes", and ask a conference with the Senate on the disagreeing votes of the two Houses thereon.

Ordered, That Mr. Rostenkowski, Mr. Gibbons, and Mr. Frenzel be the managers of the conference on the part of the House.

Mr. DOLE. Mr. President, I move that the Senate disagree to the House amendment to the Senate amendment and agree to the request for a conference with the House and that the Chair be authorized to appoint conferees on the part of the Senate.

Before the Chair makes the appointment, I want to respond to a question of the distinguished Senator from Mississippi.

Mr. COCHRAN. Mr. President, I appreciate the consideration of the chairman of the Finance Committee of a request for a conclusion of this legislation on a tariff relating to surgical gowns and drapes. It is very important in my State and I know the Senator from Georgia (Mr. NUNN) has a very keen interest in this matter as well.

We understand that, at this point, if this is correct, the tariff relating to those items is not included in this measure.

Mr. NUNN. Mr. President, could we have order? I am trying to listen to this. I cannot hear the Senator from Mississippi and this is a very important matter in my State and in the Senator's State.

The PRESIDING OFFICER. The Senator is correct. The Senate will be in order.

Mr. COCHRAN. Mr. President, I wonder if the chairman of the committee can assure us that in spite of the fact that this item may not be included in the report of the conferees and may not be acted upon in the Senate tonight, this could be the subject of early hearings and some action be the Senate Finance Committee or the House Ways and Means Committee so we do have this before the two bodies early next year.

Mr. DOLE. In response to the question of the Senator from Mississippi, I might say to both the Senator from Mississippi and the Senator from Georgia that we have had an informal meeting on this because there was an objection to appointment of Senate conferees. That particular amendment was discussed. Senator ROTH, who is on the other side of the issue, indicated that he would be willing to try to work out something early next year.

Representative GIBBONS, who is chairman of that subcommittee of the Ways and Means Committee, promised

it will be the first order of business in his subcommittee. It will come to the Senate, will come to the Finance Committee where it will be in the International Trade Subcommittee. I am going to do the best I can to promise that we will have hearings.

The tariff bill has about 49 provisions in it, affecting about 25 of our colleagues favorably. I know it affects two unfavorably, and also the Senator from Hawaii will want to ask questions when the conference report comes back concerning the tuna provision. I can give that assurance.

Mr. COCHRAN. Mr. President. I thank the Senator.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Kansas.

The motion was agreed to and the Chair appointed Mr. DOLE, Mr. ROTH, Mr. DANFORTH, Mr. LONG, and Mr. BENTSEN conferees on the part of the Senate.

Mr. DOLE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BAKER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

NOTICE

Incomplete record of Senate proceedings. Senate proceedings for today will be continued in the next issue of the Record.

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Recording Dist: 301 - Anchorage
8/18/2006 11:19 AM Pages: 1 of 4



The United States of America

To all to whom these presents shall come, Greeting:

Patent

AA-55129-9

This Patent is issued by the UNITED STATES, Department of Transportation, Federal Railroad Administration, 400 Seventh Street S.W., Washington D.C., 20590, as GRANTOR, to the Alaska Railroad Corporation, P.O. Box 107500, Anchorage, Alaska, 99510-7500, as GRANTEE, for lands in the Anchorage Recording District.

WHEREAS

Alaska Railroad Corporation

Pursuant to Sec. 604(b)(2) and Sec. 604(b)(3) of the Alaska Railroad Transfer Act of 1982, 45 U.S.C. 1201 et seq. (hereinafter referred to as ARTA), the Alaska Railroad Corporation is entitled to a patent for real property of the Alaska Railroad, including both the right-of-way of the Alaska Railroad (railroad right-of-way), and other railroad lands (railroad parcels). A portion of the lands are under the Exclusive License issued on January 5, 1985, and recorded in the Anchorage Recording District Book 1212, Pages 297-352. Title to the remaining lands was vested by Interim Conveyance on January 5, 1985, and recorded in the Anchorage Recording District, Book 1212, Pages 260-277. This patent is hereby issued for the real property described below:

Railroad Right-of-Way as defined by Section 603(11) of ARTA:

Lots 1 to 8, inclusive, U.S. Survey No. 9015, Alaska.

Containing 163.10 acres as shown on plat of survey officially filed December 14, 1994.

U. S. Survey No. 9016, Alaska.

Containing 74.45 acres as shown on plat of survey officially filed February 7, 1990.

Aggregating 237.55 acres.

Patent No. **50-2006-0363**

Page 1 of 4

Exhibit "E"
Page 1 of 4

NOW KNOW YE, that the UNITED STATES OF AMERICA, has given and granted, and by these presents in conformity with ARTA, does give, grant, and convey, unto the Alaska Railroad Corporation, its assigns and successors, the real property described above to have and to hold forever.

The right, title, and interest hereby granted and conveyed in and to the real property described above are the full and complete right, title, and interest of the United States in and to said real property, subject to the reservations and conditions set out below. Pursuant to Sec. 606(b)(4)(B) of ARTA, the right, title, and interest granted by the United States in the above-described real property that is located within the right-of-way of the Alaska Railroad shall be not less than an exclusive-use easement as defined in Sec. 603(6) of ARTA.

Reservations and Conditions:

1. The grant of the above-described real property is subject to the following rights and interests granted by the United States prior to this conveyance:

any interest in the Seward/Anchorage highway transferred to the State of Alaska by the quit claim deed dated June 30, 1959, executed by the Secretary of Commerce under the authority of the Alaska Omnibus Act, Public Law 86-70, 73 Stat. 141, as to Secs. 19, 20, 29, and 30, T. 12 N., R. 3 W., Seward Meridian.
2. Pursuant to Sec. 604(c)(1) of ARTA, there is excluded from this conveyance any unexercised right-of-way that may exist under 43 U.S.C. 975(d).
3. Subject to the right, title, and interest, if any, that has otherwise vested in the State of Alaska in any submerged lands among the above-described lands which are situated beneath nontidal navigable waters up to the ordinary high water mark or which are permanently or periodically covered by tidal waters up to the line of mean high tide.

Definitions:

1. "Real property", as used herein, means land and all of the appurtenances, hereditaments, improvements, facilities, trackwork, roadbed, buildings, franchises, ways, waters, minerals, rights, privileges, fixtures, licenses, leaseholds, reversions, easements, rights under operating, trackage and joint facilities agreements, rents, issues, profits and other interests and items belonging to or in any way appertaining to the above-described land.
2. All of the terms used in this instrument that are defined in Sec. 603(6) of ARTA have the same meaning herein as provided in said section including but not limited to the following terms:

Patent No. **50-2006-0363**

Page 2 of 4



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2006-056190-0

Exhibit "E"
Page 2 of 4

- a. "exclusive-use easement", as used herein, means as provided by Sec. 603(6) of ARTA an easement which affords to the easement holder the following:
1. the exclusive right to use, possess, and enjoy the surface estate of the land subject to this easement for transportation, communication, and transmission purposes and for support functions associated with such purposes;
 2. the right to use so much of the subsurface estate of the lands subject to this easement as is necessary for the transportation, communication, and transmission purposes and associated support functions for which the surface of such lands is used;
 3. subjacent and lateral support of the lands subject to the easement; and
 4. the right (in the easement holder's discretion) to fence all or part of the lands subject to this easement and to affix track, fixtures, and structures to such lands and to exclude other persons from all or part of such lands.
- b. "right-of-way", as used herein, means as provided in Sec. 603(11) of ARTA:
1. area extending not less than one hundred feet on both sides of the center line of any main line or branch line of the Alaska Railroad; or
 2. an area extending on both sides of the center line of any main line or branch line of the Alaska Railroad appropriated or retained by or for the Alaska Railroad that, as a result of military jurisdiction over, or non-federal ownership of, lands abutting the main line or branch line, is of a width less than that described in subparagraph (1) of this paragraph.

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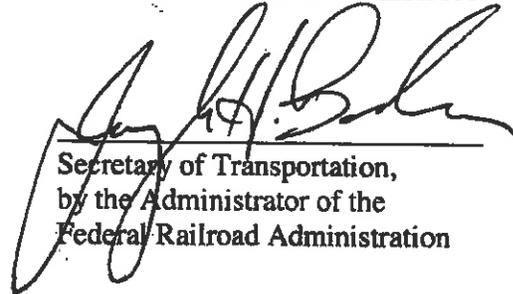
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IN WITNESS WHEREOF the undersigned authorized officer of the Department of Transportation has, in the name of the United States, set his/her hand and caused the seal of the Department to be hereunto affixed on this 9th day of August, 2006.

UNITED STATES OF AMERICA


Secretary of Transportation,
by the Administrator of the
Federal Railroad Administration

Accepted:

ALASKA RAILROAD CORPORATION

By: DK Gamble

Title: Pres / CEO

Dated: 8/14/06

District of Columbia

Subscribed and sworn to before me, in my presence,

this 9th day of August, 2006

by Eveline Kubbs

My Commission Expires 3-14-08 Notary Public

Location Index for Recording Information:

Lots 1 to 8, inclusive, USS 9015 located in Secs. 6, 7, 18, 19, 20, 29, 30, 32, 33, and 34, T. 12 N., Rs. 3 and 4 W., SM; USS 9016 located in Secs. 23, 25, 26, and 36, T. 13 N., R. 4 W., SM.

Return Recorded Document to:

Alaska Railroad Corporation
Mr. James Blasingame
Vice President, Corporate Affairs
P.O. Box 107500
Anchorage, Alaska 99510-7500



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