

FAQ GENERAL

Q. What's this all about?

A. The Alaska RR changed the fundamental legal nature of Alaskan private and public property from Seward to Fairbanks without adhering to the constitutionally mandated due process of law.

Q. Why is this website here?

A. Because there are over 1100 Alaskan home and property owners who have had a serious crime committed against them, and haven't the slightest idea what happened. They need to know so they can add their voice to the effort to make it right and return what was stolen.

Q. Sounds like a “not in my backyard issue”. Why should I care?

A. Because access for traditional use activities enjoyed for over 100 years by generations of Alaskans are now in serious jeopardy. Things like snow machining, xc skiing, hiking, hunting, fishing, rock climbing, wind surfing, stand up paddleboarding, and berry picking.

Q. How are all these traditional Alaskan activities threatened?

A. It says in clear language in each of 46 new Federal land patents which were recorded over most of the RR right of way lands that the RR can legally fence the public, municipal, and private property owners out anytime.

Q. I'm still skeptical and I live in Nome so again really, why should I care?

A. Because it's a constitutional issue just like guns and abortion. Private property rights are sacred to Alaskans and every Alaskan should be greatly alarmed by this blatant back room attack by our state government owned entity on their constitution. The Alaska RR is “OUR” Railroad. The next attack might directly effect you instead of your fellow Alaskans. We must stand up for each other.

Q. How did the RR do this?

A. The RR and BLM had new surveys completed and new Federal land Patents recorded which became the new legal patent on public and private property. This was all done in private, with zero public process, and without any input or notification to the 1100+ property owners who were about to lose their constitutionally protected property rights.

Q. Why is this a problem for Alaskans who live along the ROW?

A. Because most of these Alaskan private property owners already had valid existing legal land patents given to them by the federal government. Like Homestead Patents. It placed a “legal cloud” on title.

Q. How can there be 2 valid Federal patents over the same private property?

A. There can't be... thus, the “legal cloud” on title.

Q. Then how can the Alaska RR say that the new patent is the law and gives them all kinds of rights that they didn't have before - like fencing out the public or adjacent property owner?

A. They can't. The constitution protects private property from being attacked this way by providing a very extensive "public" process called condemnation and eminent domain. It's called the 5th amendment.

Q. Why didn't the Alaska RR adhere to the constitution?

A. Good question. Call Congressman Don Young – He Was There when Alaska took ownership of the RR and says he never would have signed off on this. He's supposedly a strong advocate for the private property rights of Alaskans. Give him a call **(907) 271-5978**. Ask your friends, neighbors, and your representatives. Call the governors office. Post on FB and Twitter.

Q. No really, why didn't the RR follow the Constitution and due process of law?

A. Because that would have required the public "taking" of Homesteaded lands and other private property which had already been conveyed to Alaskans by our government.

Q. I asked the RR and they started talking about language in something called ARTA. What's ARTA?

A. ARTA stands for the Alaska Railroad Transfer Act. This was the congressional act that moved the RR from the Feds to the state in 1983.

Q. The RR said ARTA told them they could make major legal changes to private property rights.

A. Even if this was true, which its not, the RR would have had to follow a very specific constitutionally mandated process of law to execute on that claim. If ARTA language had even hinted that the private property rights of Alaskans were going to be affected, Alaskans and politicians would have demanded that the process be spelled out and an entire additional section would have been added to ARTA on just how there would be a Constitutional “taking” of private property all along the rail belt.

Q. But isn't what ARTA says the law? It was an act of congress right?

A. Late night 11th hour poorly written ARTA language taken 100% out of context doesn't replace the constitution and the constitutionally mandated due process of law.

Q. But still, it's an act of congress. Doesn't that mean it's now the law?

A. If the language in the transfer Act said that the RR could enter the homes of all the Alaskans who live along the right of way, and take legal possession of their TVs, is that legal and “now the law?” Should the RR just come in to each home and steal the TV because they'd managed to falsely manipulate some language in a congressional act, and then worry about the law and the constitution later?

Q. Sorry this is really confusing. The RR keeps telling everyone over and over that ARTA language "says" that the RR now has "exclusive use" which replaces the long held legal rights of Alaskans.

A. Anything which ARTA language says, which involves the "taking" of uncontested previously conveyed property rights doesn't give the RR or the BLM anything. We're talking property rights protected under the 5th amendment to our United States Constitution. Nobody just “takes” those rights without due process of law via congressional act or otherwise.

Q. What's Exclusive Use?

A. As defined by the RR's own legal council, Exclusive Use is “an exclusive-use easement; that was a term concocted for the transfer that she doesn't believe exists elsewhere in real property law.”

Q. What does Exclusive Use do?

A. It removes legal and previously uncontested private property rights from property owners, and removes traditional public access rights from the general Alaska public, and gives them to the RR, without any public vetting, oversight, or due process of law.

Q. How does Exclusive Use do this?

A. In each of the 46 new illegal land patents, under the “Definitions” section #2a(4) it says: “the right (in the easement holder's discretion) to fence all or part of the lands subject to this easement and.....to exclude other persons from all or part of such lands”.

Q. How can the Alaska RR fence private property owners from their own land?

A. Yes according to the new Exclusive Use easement as defined in the new illegal patents, the RR, who previously “owned” a surface easement across someone's private property, now can fence a property owner from their own private property.

Q. Can the RR also fence off Municipal lands and parks and public right-of-way lands?

A. Yes, almost the entire right-of-way, from Seward to Fairbanks has been legally changed so that the RR can fence out the public at any time.

Q. What else does Exclusive Use give to the RR?

A. In the “Resources” section of the website you can see and read one of the 46 new illegal patents.

Q. How was the right of way defined before it was transferred to the State of Alaska?

A. It was typical to most RRs in the US. Described in the Homestead patent as “also reserved for the United States a right-of-way for the construction of railroad’s, telegraphs, and telephone lines in accordance with the Act of March 12, 1914, 38 Stat. 305.”

Q. In the 1914 right-of-way, could the private property owner be fenced out of the easement?

A. Absolutely not. The RR right-of-way is a surface easement across private property. The property owner is legally able to use that portion of the right-of-way which the RR doesn't need to safely operate the train, as long as the property owner doesn't do anything which could negatively affect the safe operation of the train.

Q. Are you just saying that or is that the “law”?

A. In the 2018 Reeves v. Godspeed case the Alaska Supreme court said: “The {property owner} has a right to use the area in question to the extent that such use does not unreasonably interfere with the easement holder's rights.” This allows for maximum value to come from the easement.”

Q. What's an “uncontested previously conveyed property right”?

A. Alaskans were already given a Homestead patent by the Federal government BEFORE the state took over the RR. That patent already conveyed is the supreme title of the land and is irrefutable. The 1914 Right of Way, with all its related legal property rights in tact, was also included in the original Homestead patent.

Q. Where did the original patent come from?

A. An official land patent is the highest evidence of right, title, and interest to a defined area (property). Homestead patents were conveyed by the Federal Government. The Government documented these patents, securely signed and sealed the documents (patents), and openly published these patents for the public to see.

Q. So just what does the ARTA language “give” to the RR?

A. It gives them the right to pursue a constitutional challenge to each and every individual property along the rail belt, in court, adhering to due process of law. That is all that ARTA language "gave" to the Alaska RR.

Q. Why would Senator Stevens, Murkowski, Congressman Young, and Governor Hammond allow the transfer of the RR from the Feds to the state to do so much harm to Alaskans?

A. They didn't. They NEVER intended this to happen and NEVER would have allowed ARTA to go forward if they'd had any idea that private property rights were going to be adversely affected. Congressman Young has admitted this exact sentiment directly to several members of AASPR, but so far hasn't taken any meaningful action to back up what he says and actually advocate for the stolen property rights of over 1100 of his Alaska constituents. Help him actually represent and do what's right **(907) 271-5978.**

Q. If this was so wrong and against the constitution, then how did the RR make new patents and have them recorded?

A. Because when the RR was incorporated, they were set up "as a completely separate legal entity from the state of Alaska"

Q. What does that mean?

A. "A separate legal entity" removed the RR from the state's Administrative procedures act which is the normal system of oversight and checks and balances which is designed to prevent exactly this type of thing from ever happening in the first place.

Q. So no oversight except from the RR's board of directors which includes some of their best customers... what could go wrong?

A. No public vetting. No external legal review. No notification or opportunity for Alaskans to defend themselves against the blatant theft of valuable property rights protected under the constitution.

Q. If there are 46 new federal land patents from Seward to Fairbanks which were just "overwritten" over original valid Homestead patents, how come Alaskans didn't find out about the new patents when properties were bought and sold?

A. Because of something called "indexing", the new patents don't show up when a title search is done when properties are bought and sold. Something is very wrong and this is one of numerous other serious issues running in the background on this matter. They should most definitely show up. Why else would someone spend so much \$ on title insurance?

Q. Wait what? How can that be legal?

A. Good question. The new surveys and illegal patents are recorded on the MTP or master title plat. Anyone can see them online or at the BLM, but a normal title search won't show them.

Q. How can the federal patent which completely changes the fundamental legal nature of someone's private property not show up on a title search so a prospective buyer knows what they're getting in to?

A. It's a very serious issue and creates all kinds of questions about the potential liability of a seller and a host of other legal concerns.

Q. Can you provide an example of how this could be a problem?

A. Let's say you purchase a home in Talkeetna which backs up to the RR tracks. One of the reasons you purchased this home at the high asking price you did was because of the amazing access you would have to Alaska through the backyard.

Q. Yes go on.

A. When you purchase the home you do your homework and understand that the 1914 row allows the train to operate across your private property. You have every legal right continue to use and enjoy the property (your property) as long as you don't do anything that would affect the safe operation of the train.

Q. Ok continue please.

A. Well all those valuable rights which you thought you had when you purchased the home are now gone and the RR can legally come in and fence you from your backyard "Alaska" access anytime they want. All these changes happened behind closed doors without the Constitutionally mandated Due Process of Law. New surveys completed and new federal patents recorded with not one shred of public process, notification to adjacent property owners, nothing....

Q. What would happen if the RR came in and put up a fence? Would I have to sue the person I bought the property from?

A. You can see the seriousness of the problem. A legal nightmare and now you're the proud owner of property which has had it's real market value gutted due to the loss of traditional access. What did the original property owner know? The new patent is clearly shown on the Master Title Plat at the BLM?

Q. Would I have to sue the Railroad?

A. Do you have a million dollars to throw away? I'm sure the RR would welcome being sued because they know quite well that you could neither afford to sue them nor live long enough to see it through. Whats right or wrong likely wouldn't even enter the conversation.

Q. Who's been directly affected by this?

A. Over 1100 Alaskan private property owners and the thousands of Alaskans who use the right of way for traditional access to recreational lands for hunting, fishing, snowmobiling, windsurfing, stand up paddle boarding, and numerous other Alaskan activities.

Q. What's at stake for the 1100+ Alaskans who live along the right of way?

A. An illegal cloud on title to their property. Loss of access to some of their property. Loss in value of their property (in some cases severe loss).

Q. What's at stake for Alaskans who have traditionally used the right of way for recreational activities?

A. Loss of traditional access by being fenced out. It's already happening in some areas. Everyone thinks the RR "owns" fee simple title to the entire 200' right of way - so nobody questions them.

Q. Why does everyone think the RR owns the right-of-way?

A. Because right-of-way law is confusing. The RR has been feeding everyone bad information, including private and commercial entities, utilities, state and local governments, municipalities, politicians..... The misinformation campaign has been going on for decades. Because there is no public scrutiny or legal oversight to validate or question the railroad's claims, eventually everyone just believes what clearly isn't true.

Q. What is the access issue about?

A. The new patent, along with all kinds of onerous new language, gives the RR the legal right to fence Alaskans from their own property, and the public from traditional use.

Q. Didn't the RR already have the right to fence off the ROW?

A. No they did not. The original 1914 ROW, the one which was legally transferred to Alaska from the Federal Government in the transfer act, is a surface easement only across private property.

Q. What does the 1914 ROW allow the RR to do?

A. It allows the RR to run the railroad, telegraph, and telephone across someone's property. It's a surface easement. The RR doesn't "own" the dirt under the tracks.

Q. What about the majority of that 200 foot ROW land which the RR doesn't need to safely run the train?

A. The adjacent property owner is legally required to allow the RR access to the land it needs to safely run the train, and should act on behalf of the RR as an advocate promoting safety in the ROW.

Q. Yes but in my backyard there's a fence which is about 40 feet out from the tracks which has been there for many decades. What about the other 60 feet?

A. That 60 feet is shared ROW land across your private property. As long as the adjacent property owner doesn't interfere with the safe operation of the train, and doesn't place obstacles like permanent buildings in the ROW, then it remains a shared space and the landowner has every legal right to use the land as long as safety in the ROW is maintained as the #1 priority.

Q. What if there is a dispute about something which is located in "the shared row" by the property owner?

A. The Alaska RR, like most all railroads, has the same extensive legal ability with the 1914 right-of-way to challenge anything they feel isn't safe. If the 2 parties can't work it out, the RR has every right to seek an injunction from a judge and take any and all legal measures necessary to insure the safe operation of the train.

Q. Does the RR have to have "Exclusive Use" to exercise their legal options in keeping the right-of-way safe?

A. That supposition is nothing short of preposterous. AASPR is a strong advocate for safety in the right of way. However, trying to correlate "safety" as justification for a major backroom attack on our state and federal constitution is an impossible leap. No other railroad in the country has "Exclusive Use".

Q. The RR says the ROW is "exclusive" and that they own it.

A. The RR loves to confuse the term "Exclusive" or "Exclusive Use". Of course the RR has "Exclusive Use" over that portion of the ROW where the tracks are laid and which they need to take care of the business of safely operating the train. That definition of "Exclusive Use" was never in question, nor should it be.

Q. Then what's all the talk about "Exclusive Use?" (EU)

A. EU in completely different context is written right in to the 46 new illegal patents and is what takes the property rights already owned by Alaskans and gives them to the RR, including the right to fence Alaskans out of there own private property, and the public from their traditional access and use.

Q. I'm still confused about EU.

A. Remember that 60 feet we mentioned above? The new patent says the RR can now fence off that 60 feet whether they need it or not for their lawful surface easement purpose. Alaskans had a very valuable, clearly defined Constitutionally protected legal right of access there - and now it's gone...

Q. What do you mean "it's gone?" How can a valuable property right protected by the constitution just "be gone".

A. Great question. The short answer is of course it can't be "just gone". There is only ONE path to making a constitutionally protected right disappear. The extensive public, highly vetted, Constitutionally mandated due process of law MUST be followed. Then, and only then, can a constitutionally protected right be "just gone".

Q. OK then the obvious question. Why did the RR and the BLM do this behind closed doors outside of the law?

A. One can only speculate here, but if the hugely unpopular and recently rescinded RRUP (Residential ROW Use Permit) program is any indication, then it's an easy leap to suggest that it was all about \$.

Q. I've heard about RRUP. What was that?

A. RRUP was an effort by the RR to monetize the ROW by charging Alaskans by the square foot and other permit fees for the use of their own backyards, all under the guise of "safety". It was rolled out in South Anchorage and was planned along the entire rail belt.

Q. Wait what? The RR was trying to make Alaskans pay to use their own land?

A. Remember that 60 feet that wasn't needed to safely operate the train? The RR started charging Alaskans by the square foot along with other permit fees if they wanted to keep using that part of their own property which the RR had clearly shown that they didn't need to safely run the train. Homeowners had been using this same private property portion of the row safely and unencumbered in many cases since before statehood.

Q. You must be mistaken how could the RR possibly justify making Alaskans pay for use of their own private property?

A. Yes "how can you justify charging Alaskans to use their own private property?" The RRUP roll out opened Pandora's box and started the process which uncovered the illegal new patents, has led to this website and FB page, and is now asking for your help by spreading the word and adding your voice so that all Alaskans can have what was stolen returned. The RR has rescinded the RRUP program, but that was only the beginning and has very little to do with the attack on our constitution and theft of our property rights.