

Question Presented: whether the right-of-way reserved over non-federally owned land for construction and operation of the railroad allows the Alaska Railroad Corporation to preclude use by the property owners.

Preliminary Answer: parcel-by-parcel assessment of rights, title and interests is necessary to determine the extent of the easement before any conveyance or assertion of fee or exclusive use is appropriate or lawful.

The Alaska Railroad Corporation claims the railroad right-of-way is required by statute to be an “exclusive use easement” and that it has the authority to preclude and condition any use or occupation by the underlying property owner(s). As the BLM conveys the right-of-way to the State of Alaska, pursuant to the transfer of rail properties, it supports this interpretation. If the right-of-way is not an “exclusive use easement,” the BLM is conveying a property interest the federal government does not own, without due process of law, and property owners are being unconstitutionally deprived of their property rights.

Act of 1914: Congress directs the President to own and operate a railroad in the Territory of Alaska. Rights-of-way “are hereby granted” in federal lands in the territory and there must be expressed in all patents for lands hereafter taken up, entered or located in the territory 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”

Example of patent language (from a 1950 homestead grant of 120 acres with an operating federal railway through it): There is granted “by the UNITED STATES unto the said claimant the tract of Land above described; . . . and there is also, reserved to the United States a right of way for the construction of railroads, telegraph and telephone lines in accordance with the Act of March 12, 1914 (38 Stat. 305).”

Alaska Railroad Transfer Act of 1982: Congress directs the Secretary of the Interior to deliver to the State of Alaska an interim conveyance of all interests in real property not subject to unresolved claims of valid existing rights. Real property owned pursuant to a federal patent would not be subject to any unresolved claims, which (at least primarily) related to aboriginal and other claims made to federal lands, so the real property interest subject to the interim conveyance would be the right-of-way and any other interest owned by the federal government.

Congress also requires the Secretary convey a deed to the State for an “exclusive use easement” for the portion of the right-of-way within Denali National Park and Preserve. No “exclusive use easement” is granted in any other section of the Act. The Act also defines rights under this “exclusive use easement” as including “the exclusive right to use, possess, and enjoy the surface estate of the land” for particular purposes and “to exclude other persons from all or part of such lands.” A right of reversion and authority to concur in the construction of a fence is retained by the federal government, and use of the easement remains subject to the application of all laws and regulations for the protection of park values.

In providing the State with an “exclusive use easement” through Denali National Park and Preserve, the federal government was granting something it owned outright. In all other parcels not federally owned at the time of transfer, the interim conveyance to the State could only include what the federal government reserved when it initially disposed of the property.

For parcels with unresolved claims of valid existing rights, the Act directs the Secretary to convey an “exclusive license,” which is not the same thing as an “exclusive use easement.” That license would be valid pending the expedited adjudication of claims to valid existing rights. If the claims were not settled, the entire federal interest in the right-of-way would be conveyed free and clear of those claims.

Some confusion comes from the Act’s requirement to “grant not less than an exclusive-use easement” in conveying rail properties to the State. As defined under the Act, however, “rail properties of the Alaska Railroad” only includes the right, title and interest of the United States to real and personal property, including the “exclusive-use easement” within the Denali National Park and Preserve. The federal government could not convey, and the State was not entitled to, anything not owned by the federal government at the time of transfer.