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DATE: 1981 OCT 30

DIST. BY: 1 of 10 MB Phillips

DEPARTMENT OF TRANSPORTATION
FEDERAL RAILROAD ADMINISTRATION

THE ALASKA RAILROAD
Pouch 7-2111
Anchorage, Alaska 99510

DRAFT

October 1, 1981

Mr. Wilson Condon
Attorney General
Pouch K
Juneau, Alaska 99811

Dear Mr. Condon:

The Railroad has a fee interest in its right-of-way. The Governor's letter is off the mark in two places. First, it doesn't take into account the interpretation of SB 1500. Section 2(b) could be interpreted to transfer to the State only that interest that the Railroad has, not all the interest owned by the Federal Government. This has not been determined. If that interpretation is correct, then it is important whether the State believes that the Railroad has a fee or an easement. Second, the Governor's argument fails to take into consideration our right-of-way which flows over private land. If it is an easement, the State will not receive a great deal. Most of our right-of-way passes over non-State land, so the Governor's argument really doesn't apply.

To clear up the "unlawfulness" point, please be clear that the Railroad has not exceeded its ownership interest. That's a cute argument, but again fails to address the issue. If the Railroad exceeded its ownership interest when we traded land with the State for State highway purposes, then the State gave the Railroad land for less than value and was in violation of its own laws. Also, the State of Alaska and other entities which have traded lands with the Railroad or taken permits from the Railroad have also exceeded their authority to contract or in the alternative have failed to get releases from fee owners on all land transfers in which the Railroad land was involved. The facts are that none of these things took place because the Railroad owns a fee in its right-of-way. The arguments were used so that the State would accept that concept in order to present a united front on this transfer bill.

But please lets not worry about cute arguments. Right now the Railroad needs to know whether or not the State is prepared to accept the Railroad's analysis that our Railroad right-of-way is in fact a fee interest. If the State is not prepared to do so, then the Federal Railroad Administration and the U. S. Department of Transportation wants to know just that prior to the passage of SB 1500.

Regarding Section 1425, some history is necessary. The Alaska Railroad in its letter dated April 9, 1981, to Governor Hammond requested that the State of Alaska not enter any agreement under Section 1425 of the Alaska National Interest Lands Conservation Act (Lands Act) where such agreement would affect Alaska Railroad lands within Eklutna's withdrawal townships.

In a letter dated August 3, 1981, to Mr. Michael Whitehead, the Railroad wrote to alert him that the State of Alaska was one of the parties with the authority under the Lands Act to enter into an agreement that could adversely burden Railroad lands within the Eklutna withdrawal townships.

In Governor Hammond's letter of September 18, 1981, he stated that:

> "...the agreement, if reached between the parties, merely obligates the United States to dispose of the federal properties covered by the agreement in the manner specified in that agreement, if such lands are first excessed by the United States, or if the withdrawal of such lands for federal purposes is terminated or revoked."

The Railroad worries that, if prior to the transfer of the Railroad the State enters into an agreement stating that Railroad properties in Eklutna's withdrawal townships are to go to Eklutna, then all Eklutna must do is claim that the transfer is an action excessing Railroad lands and also terminating or revoking Railroad withdrawals, and the Railroad would be in danger of losing essential lands to Eklutna. Frankly, the Railroad hopes that the analysis set forth in the Governor's letter is correct, but the Railroad believes the language of Section 1425 is so poorly drafted that, coupled with the litigious nature of Eklutna, this would needlessly result in prolonged litigation if Railroad lands are part of any Section 1425 agreement.

As regards the Governor's 3(e) discussion, the Railroad takes sharp exception to his analysis. A native village by filing on Federal land does not automatically prevail. His statement that "In other words, the fact that full legal title (in the form of a patent or interim conveyance) has not yet been issued to the selecting Native corporation, does not negate or lessen the prior vesting of equitable property rights in that corporation, if it filed an otherwise valid selection on land which met

the 3(e) criteria" implies that the natives get an interest in land upon filing. What about the land on which they filed, but which is in excess of their allotment? Do the natives have an equitable right to that land too?

As The Alaska Railroad understands 3(e) of ANCSA, the selection by the native corporations becomes "valid" only if the Federal agency which controlled the land cannot convince the Department of Interior that the involved Federal agency "actually used" the land. Obviously there are many definitions of "actually used" but the key to the matter is the time of vesting of a "right in the land" or a vesting of a "right" in the process of the determination of "actually used." The Railroad has not argued to BLM its "actual use" of land. How, therefore, can there be any rights created until one side or the other gets a chance to argue its case as set forth in ANCSA and the regulations?

To date the only part of the 3(e) determination which has taken place is the filing by Eklutna and Toghotthele villages on all Railroad land within their village withdrawal areas and the BLM request addressed to the Railroad that the Railroad now come forward and prove all land "actually used." Incidentally, the BLM has just announced to the Railroad that the BLM will no longer process the 3(e) requests addressed to Railroad land until the transfer to the State has either passed or failed in Congress. But again the problem is the vesting of a right in the native villages. To date the Railroad has seen no case law or statutory law which gives an inkling into the position of the State of Alaska as set forth in the Governor's letter. If the law is as he stated it, the Governor's analysis regarding BLM's expediting the Railroad 3(e) requests is correct, but if the law is incorrect and there are no vested rights, equitable or legal, in the native villages, then the BLM can establish rights not heretofore established. The BLM has ceased activity on Railroad 3(e) requests so that question is moot.

Sincerely,

David M. Roderick
Chief Counsel

Attachments

JAY S. HAMMOND
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

4 of 10

September 18, 1981

David M. Roderick, Esq.
Chief Counsel, Alaska Railroad
Pouch 7-2111
Anchorage, AK 99510

Dear Mr. Roderick:

Thank you for your letter of August 3, 1981 expressing concern about several pending issues involving the State and the Railroad. I would like to respond briefly to each area of concern which you raised.

The two state land selection appeals which you mentioned will, presumably, be determined in due course by the Interior Board of Land Appeals, unless transfer of the Railroad to the State is accomplished by federal legislation and is accepted by the State. We are aware of the Lost Slough appeal, but are not familiar with the Tanana Valley Railroad issue. I presume the legal question is the same, i.e., whether the Alaska Railroad owns the fee or merely an easement interest in its right-of-way.

If the transfer does take place, the question of whether the Railroad owns the fee in its right-of-way would appear to be made moot, since title to whatever interest the Railroad held and title to whatever land interest the State received under the Alaska Statehood Act, would be merged in a single owner, i.e., the State. To the extent that the Alaska Railroad has previously authorized compatible uses of its rights-of-way for utility lines, streets, et cetera, regardless of the extent of the Railroad's ownership interest in its right-of-way, the fact that both the right-of-way and the underlying land would be owned by the State would appear to obviate any "unlawfulness" which might be argued to, at least technically, exist if the Railroad had in the past granted authorizations which exceeded its ownership interest.

The State is actively participating in the Chugach Region Study, authorized pursuant to Section 1430 of the Alaska National Interest Lands Conservation Act. We are aware that Alaska Railroad properties in Seward, Whittier and Valdez have been suggested by the Native corporation as elements of a possible land settlement package which would meet the desires of Chugach Natives, Inc., for lands of reasonable economic potential, and which, at the same time, would be in the public interest and acceptable to each of the other study participants. At the present time, the State has not reached a firm position regarding the possibility of transfer of any Alaska Railroad lands to CNI, though it is likely that the State will insist that those lands remain as a part of the Railroad. Because these railroad properties are not within any Native village withdrawal area in the Chugach region, they are not subject to the 3(e) "smallest practicable tract" analysis required of federal properties which are within those village withdrawal areas.

For several reasons, we do not believe that the four participants in the Eklutna-State agreement provision (Section 1425 of ANILCA) have the unilateral authority to allocate and dispose of federal property as you indicate in your letter. First, the withdrawals from future disposition of the federal lands described in that section will expire on March 15, 1982, unless an agreement between the Eklutna Village Corporation, the Cook Inlet Region, Inc., the State of Alaska, and the Municipality of Anchorage is reached prior to March 15, 1982. To date, no substantive work has been undertaken to negotiate that agreement, though we anticipate that efforts to do so will commence in the near future, if an extension of the March 15, 1982, deadline is not first obtained. Second, the agreement, if reached between the parties, merely obligates the United States to dispose of the federal properties covered by the agreement in the manner specified in that agreement, if such lands are first excessed by the United States, or if the withdrawal of such lands for federal purposes is terminated or revoked. These actions to dispose of federal property are entirely within the discretion of the United States, and neither the agreement nor the parties to the agreement can compel the United States to excess property or revoke or terminate withdrawal orders, if it is not in the interest of the United States to do so.

The agreement between the four participants, and the adoption of the agreement mechanism by Congress in Section 1425, merely obligates the United States, if it chooses to dispose of property covered by the agreement, to dispose of it to the recipient (State, local government, or Native corpor-

ation) specified by the agreement. In our view, no change in status of the land by any of the parties to the agreement can occur without there having first been a determination by the United States that the land covered by the agreement is no longer needed for federal purposes. In the case of the Railroad, the use of such lands by the Railroad for direct railroad purposes, or for purposes beneficial to the Railroad, would appear to be sufficient guarantee that the United States would retain those lands necessary to support ongoing federal and public functions.

The issue of the Section 3(e) "smallest practicable tract" determinations under the Alaska Native Claims Settlement Act is of serious concern to the State in relation to the proposed legislative transfer of the Alaska Railroad to state ownership. We are aware of the opinion of the Legislative Affairs Office of the U.S. Department of Justice to the effect that, because full legal title to selected railroad tracts has not yet passed to selecting Native corporations, those selections may be revoked by legislation, as has been proposed in Section 5 of S.1500. We have requested that our Office of the Attorney General review this legal interpretation. Their initial conclusion is that the opinion of the Department of Justice is not based upon recognized public land law principles. In other words, the fact that full legal title (in the form of a patent or interim conveyance) has not yet been issued to the selecting Native corporation, does not negate or lessen the prior vesting of equitable property rights in that corporation, if it filed an otherwise valid selection on land which met the 3(e) criteria. This conclusion is applicable whether or not the Department of the Interior has yet made final 3(e) determinations. Under this analysis, by filing valid selections on land subject to 3(e) determinations, equitable property rights appear to have vested in the selecting corporations which may not be revoked without payment of just compensation, pursuant to the Fifth Amendment to the United States Constitution. These, at least, are the initial conclusions reached by the Attorney General's Office after analysis of this issue, and we anticipate urging that the bill be amended to protect existing property rights which have in fact vested, without attempting at this time to identify each such right, a task which would unnecessarily delay the transfer process.

You expressed concern that the U.S. Bureau of Land Management is hastening to "vest" rights to railroad lands in selecting Native corporations in order to enable those corporations to survive the revocation required by Section 5

of the proposed bill. We feel that such actions by BLM, if they are in fact occurring, are not in themselves significant, since it appears that Native corporations which have filed valid selections on lands subject to 3(e) determinations have, in fact, already been vested with constitutionally-protected property rights. Thus if BLM speeds the process of making 3(e) determinations and issuing interim conveyances, the creation of new vested rights will not occur.

Thank you again for your expression of concern regarding areas of mutual legal interest to the State and the Railroad and which involve the property presently owned or controlled by the Alaska Railroad. If you have further thoughts on these issues, please contact the Attorney General's Office at your convenience.

Sincerely,

Jay S. Hammond
Governor

8 of 10

August 3, 1981

Mr. Michael Whitehead
Office of the Governor
Pouch A
Juneau, Alaska 99801

Dear Mike:

At your request, the Railroad is alerting you to the issues in which this office is involved with the State of Alaska.

First, we have two separate issues being fought out with the Department of Natural Resources regarding our rights-of-way. The first is the Lost Slough problem and the second is the Tanana Valley Railroad problem. It would take several pages to describe for you either of these problems. Suffice to say that the question of whether this railroad has a fee interest in its rights-of-way or merely an easement is the crux of both of those items. The Railroad obviously feels that it was granted a fee in its rights-of-way spurs if they were used pursuant to our 1914 Act. If, on the other hand, our right-of-way track was laid down pursuant to any other method of land acquisition, be it (a) a reservation of rights, (b) a purchase of right-of-way, (c) a trade of land or (d) other, than each of these individual problems are being dealt with and determined on an ad hoc basis. We have a rationale that the Railroad has each piece of right-of-way determined legally, but the State has theories of its own. Each theory set forth by the State will solve the individual State problem but does not fit into any pattern needed by the Railroad.

I am sure the State keeps in mind the fact that if our right-of-way becomes a mere easement, all gas lines, sewer lines, water lines, public streets, bicycle trails, oil lines, highways, communications lines and other uses of the rights-of-way historically permitted by the Railroad will be unlawful.

The second general problem is the Chugach Native Study Group. The State is a party to that Study Group and as you know, the Railroad land is an integral part of the major proposals made by the Chugach Natives. All of the Railroad land in Seward, Whittier and Valdez is being requested by the Chugach Natives.

The Railroad has kept control of these portions adjacent to tidewater for a number of reasons, one of the main ones being that our mission as set forth in our Enabling legislation is to keep the Interior rivers of Alaska open to the Southcentral ports of Alaska.

The third problem is the one about which we wrote to Governor Hammond on April 9, 1981 regarding our interest in the State's participation in the Eklutna Village Committee. This Committee, composed of Eklutna, the State and the Municipality, has control over all Federal lands within the Eklutna Village withdrawal area. If there is an agreement between those parties, they can manipulate the land in any way they wish without regard to actual use of the land by the Government agency or any other consideration. The Railroad wrote both the Governor and the Mayor and asked for their agreement that no Railroad land within this area would be affected until the transfer to the State took place. To date we have not heard from the Governor.

Another area in which the State of Alaska could be helpful is in the general 3(e) areas. As you know doubt know, the U. S. Justice Department was asked to determine whether or not the Native Corporations had any vested interest in the Railroad land prior to the introduction of the Senate Bill 1500, the transfer legislation from the U. S. Government to the State of Alaska. The Department of Justice found that no vested interest resided in the Native Corporations, and thus the transfer legislation was introduced.

It looks as if the transfer legislation bill will not be passed prior to 1982, and in the interim BLM is moving as quickly as they can to establish in both Eklutna and Toghotthele, two villages on the Railroad route that have filed on Railroad land, some vested interest in Railroad land.

The Railroad is presently doing its 3(e) evaluation and once the Railroad has submitted this to BLM we are certain (if history proves correct) that BLM will promptly vest in both Eklutna and Toghotthele all interest that BLM is capable of conveying to the respective villages. Therefore, the Railroad will not be transferred to the State intact. If the State has any interest in a complete transfer of the existing structure of the Railroad, then action on behalf of the State is imperative. It would be presumptious of this office to suggest the type of action that could

10710

be utilized, but we stand ready to discuss this matter with you at any time.

Hopefully this letter will allow us to develop a dialogue so that our respective principals will be best served.

Sincerely,

David M. Roderick
Chief Counsel

DMRoderick:re

Doyon, Limited

Doyon Building
201 First Avenue
Fairbanks, Alaska 99701
Tel: (907) 452-4755 Telex 090-35340

December 31, 1981

The Honorable Ted Stevens
United States Senate
260 Russell Office Building
Washington, D.C. 20510

Dear Ted:

It was good to see you again at the AFN convention in Anchorage two weeks ago. I was glad we had the opportunity to meet and talk. Your promise to get the 3(e) adjudication process moving again for native selections on Alaska Railroad land was good news to all in attendance at the meeting and to the native community as a whole.

Your assessment that a speedy resolution at this time of valid 3(e) claims to a few parcels of railroad lands can only enhance the transfer and operation of the railroad to the State is a perceptive one. Adjudication will quantify the railroad's land and resources and thus enable the State to properly plan its future.

Best wishes for the coming new year.

Very truly yours,

Tim Wallis
President

TW:jgf

DRAFT

Dear Senator Kerttula:

Thank you for your letter of December 17, 1981 regarding the meeting with you and other Senators on the Alaska Railroad. As a result of our meeting and subsequent discussions we had with Senator Stevens, we are fully persuaded that the native claims and rights-of-way issues can be resolved in a manner to facilitate transfer of the railroad to the State.

As stated in the meeting, it appears that native corporations may have a maximum entitlement to approximately 4200 acres of railroad lands pursuant to Section 3(e) of the Alaska Native Claims Settlement Act (ANCSA). Disagreement remains regarding the validity of the native claims. Regardless, we are prepared to adjudicate these claims expeditiously and inform the State as well as affected corporations of the extent of claims which we would consider valid. Adjudication can be completed this year.

We are also examining the "warranty deed" concept under which the Federal Government would convey its interests, subject to valid existing rights, to the State but would warrant the conveyance. Essentially, we would determine the extent of valid native claims, convey the remainder (probably over 90 percent of railroad holdings) to the State, and the Federal Government would be liable to the State if other parties establish valid claims to interests conveyed to the State. This approach appears to protect valid existing rights and ensures that the interests the State receives will not be diminished.

S 1500

October 27, 1981

Glenn and Mary Lou Briggs
Box 517
Eagle River, AK 99577

Dear Glenn and Mary Lou:

Thank you for your letter regarding S. 1500, and the clipping and note on abortion.

Your comments about rights-of-way raise a question that I feel is misunderstood at home. The State would be required to buy rights-of-way if additional rights-of-way are needed in the homestead areas. Nothing in S. 1500 will require the State to pay for the rights-of-way the federal government has used for the operation of the Alaska Railroad. Personally, I do not regard the requirement that the State pay for private lands needed in the future as a constraint on future railroad expansion. The provision in S. 1500 would repeal a cloud on all patents issued for homesteaded land in Alaska that allows land to be taken by the federal government without providing compensation. I feel very strongly that if the State requires additional private lands for railroad expansion, it should pay for the lands.

Mortgage bankers in Alaska have advised me that if lands were taken in this manner today, the cloud on title would eliminate financing for lands that lie near the railroad right-of-way. I think this would be most unfortunate. I will continue to support the elimination of federal powers to take private land without payment.

You might also note that this provision does not apply to Native lands, because of courtaaction in Alaska that atruck such "floating" rights-of-way from their deeds.

The lands remaining, then, are small tracts in private ownership. I feel that the State should have the right to condemn private lands, but only after compensating the owner.

To further provide for railroad expansion, there is a need to ensure access over federal land for future expansion. I intend to see that a fair right of access is provided.

With regard to abortion, in the past I have supported limited federal funding for abortion in cases of rape, incest and ectopic

CMW/MAS/cmw

S. 1500

October 26, 1981

Mr. Albert H. Reyerse
Star Route Box 470
Mile 64 Tok Highway
Galena, Alaska 99586

Dear Albert:

Thank you for taking a few moments to visit the Mobile Office when it was in your area and express your concerns about the railroad transfer legislation.

The Resource Development Council letter regarding S. 1500 raised a question that is misunderstood at home. Nothing in S. 1500 will require the State to pay for rights-of-way the federal government has used for the operation of the Alaska Railroad. The State would only be required to buy rights-of-way if additional rights-of-way are needed in the homestead areas. The provision in S. 1500 would repeal a cloud on all p patents issued for homesteaded land in Alaska that allow land to be taken by the federal government without providing compensation. I feel very strongly that if the State required additional private land for railroad expansion, it should pay for the lands.

Mortgage bankers in Alaska have advised me that if lands were taken in this manner today, the cloud on title would eliminate financing for lands that lie near the railroad right-of-way. I think this would be most unfortunate. I will continue to support the elimination of federal powers to take private land without payment.

You might also note that this provision does not apply to Native lands, because of court action in Alaska that struck such "floating" rights-of-way from their deeds.

The lands remaining, then, are small tracts in private ownership. I feel that the State should have the right to condemn private lands, but only after compensating the owner,

To further provide for railroad expansion, there is a need to ensure access over federal land for future expansion. I intend to see that a fair right of access is provided.

Albert, I'm sorry that you did not hear about the railroad hearings. We did advertise them, through press releases which

September 21, 1981

Howard H. Harlson, President
B. F. Walker, Inc.
P. O. Box 178
Denver, Colorado 80217

Dear Mr. Harlson:

Thank you for your letter regarding the proposed transfer of the Alaska Railroad from Federal to State ownership. I share your concern that if the State acquires the Alaska Railroad it will be able to operate it without being restricted by Federal conditions which have not applied to the Railroad under Federal management.

At this time, the transfer legislation includes an agreement by the State to operate the railroad as a rail carrier subject to the Interstate Commerce laws. The Railroad will not become a water or motor carrier, but on the other hand, whoever operates the State railroad must have the flexibility to contract with other carriers too.

The Alaska Railroad is a positive factor in the statewide transportation network and it will supplement the efforts of all carriers by opening up additional markets. The ARR will soon start carrying coal and other minerals for export. However, it is absolutely certain that if the State does not take over the railroad, it will be discontinued.

Your letter has been forwarded to the Senate Commerce Committee for inclusion in the fecord, as you requested.

Again, thanks for taking the time to write.

With best wishes,

Cordially,

TED STEVENS
United States Senator

HH:MS

CMW

October 27, 1981

B. J. Whitley, Jr., D.E.P.
Manager Environmental Affairs - Regulation
Tenneco, Inc.
P. O. Box 2511
Houston, TX 77001

Dear Mr. Whitley:

Thank you for your letter regarding S. 1500.

The proposed transfer legislation does provide for the transfer of railroad real property and equipment to the state. With respect to rights-of-way, nothing in S. 1500 will require the State to pay for the rights-of-way the federal government has used for the operation of the railroad. The State would be required to buy rights-of-way only if additional rights-of-way are needed in the homestead areas. Personally, I do not regard the requirement that the State pay for private lands needed in the future as a constraint on future railroad expansion. The provision in S. 1500 would repeal a cloud on all patents issued for homesteaded land in Alaska that allows land to be taken by the federal government without providing compensation. I feel very strongly that if the State required additional private land for railroad expansion, it should pay for the lands.

Mortgage bankers in Alaska have advised me that if lands were taken in this manner today, the cloud on title would eliminate financing for lands that lie near the railroad right-of-way. I think this would be most unfortunate. I will continue to support the elimination of federal powers to take private land without payment.

You might also note that this provision does not apply to Native lands, because of court action in Alaska that struck such "floating" rights-of-way from their deeds.

The lands remaining, then, are small tracts in private ownership. I feel that the State should have the right to condemn private lands, but only after compensating the owner.

To further provide for railroad expansion, there is a need to ensure access over federal land for future expansion. I intend to see that a fair right of access is provided.

The Alaska Railroad is a positive factor in the statewide transportation network, as you clearly recognize, and it will

supplement the efforts of all carriers by opening up additional markets. The transfer comes at an important time in Alaska's resource development, and in fact the railroad will soon start carrying coal and other minerald for export.

I appreciate knowing of your interest and your concerns over the railroad transfer.

With best wishes,

Cordially,

TED STEVENS
United States Senator

The Honorable Ted Stevens
United States Senate
260 Russell Building
Washington, DC 20510

Dear Senator Stevens:

The SB 1500 which was introduced to transfer the Alaska Railroad from the federal government to the state could be a very progressive advantage, but only if the bill transfers all existing railroad real property, rights-of-way, mineral rights, and equipment to the state. There must also be provisions for the establishment of future transportation corridors and rights-of-way across federal and private lands for reasonable railroad expansion.

Tenneco Inc. is a major chemical and energy producer and transporter, shipbuilder, automotive equipment manufacturer, and producer of agriculture, paper, and forest products. Interest in participating in Alaska's development will involve an effective rail system that your bill could provide if altered to do so; but, to provide the State of Alaska less power than the Federal Government had will permanently consign the railroad to its present size and scope. Costs, in terms of delays, litigation expenses, and out-of-pocket expenses in connection with condemnation awards is anticipated to be so great as to preclude expansion in a timely fashion.

It is strongly recommended that this bill be revised to give full benefit to the State of Alaska. Thank you.

Yours truly,

B. J. Whitley Jr.

B. J. Whitley, Jr., [illegible]

CMW

Tenneco Inc

1100 Milam Building
P. O. Box 2511
Houston, Texas 77001
(713) 757-3509

B. J. Whitley, Jr.
Manager Environmental Affairs - Regulation

August 27, 1981

The Honorable Ted Stevens
United States Senate
260 Russell Building
Washington, DC 20510

Dear Senator Stevens:

The SB 1500 which you introduced to transfer the Alaska Railroad from the federal government to the state could be a very progressive advantage, but only if the bill transfers all existing railroad real property, rights-of-way, mineral rights, and equipment to the state. There must also be provisions for the establishment of future transportation corridors and rights-of-way across federal and private lands for reasonable railroad expansion.

Tenneco Inc. is a major chemical and energy producer and transporter, shipbuilder, automotive equipment manufacturer, and producer of agriculture, paper, and forest products. Interest in participating in Alaska's development will involve an effective rail system that your bill could provide if altered to do so; but, to provide the State of Alaska less power than the Federal Government had will permanently consign the railroad to its present size and scope. Costs, in terms of delays, litigation expenses, and out-of-pocket expenses in connection with condemnation awards is anticipated to be so great as to preclude expansion in a timely fashion.

It is strongly recommended that this bill be revised to give full benefit to the State of Alaska. Thank you.

Yours truly,

B. J. Whitley Jr

B. J. Whitley, Jr., C.E.P.

9/i

S 1500

November 3, 1981

Mr. James A. Messer
President
Aurora Motors, Inc.
P.O. Box 870
Fairbanks, Alaska 99701

Dear Jim:

I saw your note on the recent "Red Alert" issued by the Resource Development Council. I think my position has been misunderstood at home, Jim.

S. 1500 does provide for the transfer of Railroad equipment and real property. However, nothing in the bill would require the State to pay for the rights-of-way which the Federal Government has used for the operation of the Alaska Railroad. The State would be required to buy rights-of-way <u>if</u> additional rights-of-way are needed in the homestead areas.

Personally, I don't regard the requirement that the State pay for private lands needed in the future as a constraint on future expansion. The provision in S. 1500 would repeal a cloud on all patents issued for homesteaded land that allows land to be taken by the Federal Government without providing compensation. I feel very strongly that if the State requires additional private land for Railroad expansion, it should pay for it.

Mortgage bankers in Alaska have advised me that if lands were taken in this manner today, the cloud on the title would eliminate financing for lands that lie near the Railroad right-of-way. I think that would be very unfortunate. I will continue to support the elimination of Federal powers to take private land without payment.

Also, this provision doesn't apply to Native lands because of court action in Alaska that struck such "floating" rights-of-way from their deeds.

The lands remaining, then, are small tracts in private ownership. I think the State should have the right to condemn private lands, but only after compensating the owner.

Can we get the
matter out
of all those
our counsel

To provide for Railroad expansion, Jim, there is a need to ensure access over Federal land. I intend to see that a fair right of access is provided.

With best wishes,

Cordially,

TS

TED STEVENS

KAB

James A. Messer, Pres, Aurora Motors, Inc, P.O. Box 870, Fbks 99701

Resource Development Council for Alaska, Inc.

444 West 7th Avenue, Anchorage, Alaska 99501
Box 516, Anchorage, Alaska 99510 - 907/278-9615

RED ALERT - YOUR LOBBYING EFFORT NEEDED!

August 20, 1981

Dear Member:

Your help is urgently requested. Federal legislation, SB 1500 introduced by Senator Ted Stevens, to transfer the Alaska Railroad from the federal government to the state seriously limits the expansion of the railroad.

See — There is concern state wide — but very much in Fbks & area — Jim Messer

The intent of the 1914 Enabling Act was to make the Alaska Railroad an instrument to open up and develop the country, to provide for "a line or lines of railroad in the Territory of Alaska not to exceed in the aggregate one thousand miles." As of this date approximately 500 miles have been built.

SB 1500 includes language that excludes all rights-of-way held by the federal government and does not establish any corridors across federal land.

Senator Stevens insists that rights-of-way on patented land be excluded from the transfer so that Alaskans owning these lands can be paid for the rights-of-way. This is an outright gift to these land owners at the expense of all other Alaskans, if the state must buy back the access rights the federal government already owns.

To provide the State of Alaska less power than the Federal Government had will permanently consign the railroad to its present size and scope. Costs, in terms of delays, litigation expenses and out-of-pocket expenses in connection with condemnation awards will, we anticipate, be so great as to preclude expansion in a timely fashion.

The bill should include all rights, privileges and obligations that exist under federal ownership. To insure the successful operation of the railroad, it is essential for Congress to declare the transfer will include all existing railroad real property, rights-of-way, mineral rights and equipment.

There must be provisions for the establishment of future transportation corridors and rights-of-way across federal and private lands for reasonable railroad expansion.

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THE SECRETARY OF TRANSPORTATION

WASHINGTON, D.C. 20590

APR 7 1981

The Honorable James G. Watt
Secretary of the Interior
Washington, D.C. 20240.

Dear Mr. Secretary: Jim

I am concerned that Department of the Interior Regulations for Native selection of Federal agency lands in Alaska, 45 Fed. Reg. 70204 (1980), will adversely affect the Alaska Railroad, an agency of the Department of Transportation, by allowing Native selection of Railroad land holdings that are needed for its continued operation as an economically viable rail carrier. The purpose of this letter is to ask that you reconsider those Regulations and to request that you delay the approval of any Native Claims for Railroad land until the Regulations can be reexamined.

There has been correspondence between our Departments in the past on this issue, and our predecessors apparently were unable to reach an agreement on the appropriate application of the Alaska Native Claims Settlement Act, (ANCSA), to the land holdings of the Alaska Railroad. In the most recent exchange of letters, (copies enclosed), Secretary Andrus defended the Regulations on the basis that there was no specific statutory exemption for the Alaska Railroad in ANCSA. He also indicated that the Regulations would probably have only a moderate impact on the Railroad's land holdings.

I do not believe the Regulations or Secretary Andrus' letter are consistent with the intent of Congress in enacting section 3(e) of ANCSA which was designed to exempt from Native selection those Federal lands that are actually used by an agency in carrying out its statutory responsibilities. Secretary Goldschmidt's November 20, 1980 letter explains the DOT view that the Regulations misrepresent the legislative history and the purpose of sections 3(e) of ANCSA and indicates why standards for determining actual use of land should exempt Railroad support lands. I am in full accord with the views expressed in that letter.

In addition, I do not believe Secretary Andrus' statement that the Regulations will have only a modest impact on the Railroad is correct. Our analysis indicates that the Regulations will result in the loss of significant portions of the Railroad's land holdings. Under the Regulations, approximately 20 percent of the Railroad's land holdings would be available for Native selection, including important Railroad gravel reserves, leased lands, and right-of-way lands. The Regulations set standards that may ultimately be applied to Native claims that have been filed for virtually all Railroad land. This would cause a loss of revenue for the Railroad and result in greater maintenance and operating

costs, thereby impeding the Railroad's ability to operate on a self-sustaining basis. The Regulations will also impede the Administration's ongoing effort to transfer the Railroad to the State of Alaska, because without these land holdings, the Railroad would be less attractive to the State due to the need for an ever-increasing subsidy for it to continue operating. Our analysis of the probable impact on specific categories of Railroad land follows:

Rental Lands: The Regulations reject the concept that an agency operated as a business enterprise can actually use land as an economic asset in support of its commercial mission. This is most evident in the treatment of rental lands. Any agency's lands that have a "direct and substantial connection to the purpose" of the agency would not be available for Native selection; but if those lands are used primarily to derive revenue, they are eligible for selection. This presents a difficult situation for the Railroad. Railroad rental lands have a "direct and substantial connection to the purpose" of the Railroad for the very reason that they provide rental income that is used to pay operating costs. Yet, these rental lands will be eligible for Native selection because their primary purpose is to provide revenue to the Railroad.

The Alaska Railroad is presently receiving about $2 million per year in lease revenues that would be reduced as Native selections for Railroad rental lands are approved under the Regulations. Any loss of lease revenue would have to be made up either through the further reduction of unprofitable activities (i.e., passenger service) or a new federal or State operating subsidy. In addition, the government may be liable to the Native corporations for lease revenue received from these leased lands since 1976, because a 1976 amendment directs the Secretary of Interior to place all proceeds from the lease of federal land eligible for selection in escrow to be paid to the Native corporation once selection of that land is completed. The proceeds from Railroad leased lands have not been placed in escrow -- they have been used to pay operating costs as required by the Railroad's enabling act.

Gravel Reserves: The Regulations would make agency lands held for future gravel needs eligible for Native selection. The only gravel lands that would be exempt would be those where mining activity has actually begun by the end of the Native selection period. This is completely contrary to DOT's view that holding land that contains gravel for future needs is a present use of the land as a gravel reserve and, therefore, it should be ineligible for Native selection. It is estimated that the Railroad saves about $1 million per year by using its own gravel and rock resources. The loss of Railroad gravel

reserves will result in the need for a progressively greater subsidy to buy gravel from commercial sources, including buying back the same gravel from Native corporations, as the Railroad's active gravel pits become exhausted in the future.

Right-of-Way Lands: The Regulations and Secretary Andrus' letter indicate that the Railroad would only be allowed to retain an easement across its existing right-of-way lands, rather than the present fee interest, thereby allowing Native selection of the underlying land. This would make operations over the existing Railroad track and roadbed difficult, dangerous and more costly. It would result in a mixed pattern of ownership with the Railroad retaining only easement rights along those parts of its right-of-way that pass through Native selection areas and holding full fee interests in other parts of the right-of-way that are not conveyed to Native corporations. The Regulations and the Andrus letter also state that those sections of the right-of-way that are converted to easements would become subject to section 17(b) of ANCSA, the provision that deals with easements. This is particularly troubling for two reasons. First, as DOT pointed out during the comment period, this is an incorrect interpretation of ANCSA because the section 17(b) easement provision should not apply to the section 3(e) actual use determination process, and second, the Department of Interior has drafted proposed regulations under section 17(b) that would very narrowly limit an agency's right to use a 17(b) easement across land conveyed to Native corporations. For example, under the draft 17(b) easement regulations, the Railroad would not be allowed to use spot gravel from the right-of-way easement without paying the underlying Native owner; the Railroad would not be allowed to bar trespassers thereby destroying its present exclusive possessory right to the right-of-way; and the Railroad would be prevented from using the right-of-way for any of the many related activities that have taken place over the years including leasing areas for temporary shipper storage, or allowing pipelines and other utilities to run along or across the right-of-way without the permission of and, presumably, payment to the underlying Native owner.

The Regulations adopt an exceedingly narrow view of actual use of land by a federal agency. They would cause serious problems for the Alaska Railroad which uses its lands in the same manner as a private rail carrier - to generate income, to provide maintenance material and for operating purposes. Once implemented, these Regulations are likely to change the character of the Railroad from a viable commercial enterprise to a subsidized activity with severe operating difficulties.

I urge you to begin a prompt reexamination of the standards contained in these Regulations, since I believe the Native Claims Act should not be interpreted to allow conveyance of important Railroad support lands. Until you have had an opportunity to reconsider the Regulations, I also request that you instruct the Bureau of Land Management in Alaska to withhold final decisions on any Native Claims for Railroad land. If determinations are made under the Regulations before you have an opportunity for review, the Railroad may be seriously damaged, and it may become necessary to revoke completed conveyances or to reacquire conveyed land for Railroad use. This could lead to litigation and considerable cost.

Your consideration of our concerns would be greatly appreciated. I am confident that we can reach agreement on this matter.

Sincerely,

Enclosures

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

MAY 29 1981

Memorandum

To: Legislative Counsel

From: Solicitor William Hendricks

Subject: DOT No. 4-Draft Bill to Provide for Transfer of the Alaska Railroad to the State of Alaska

We have reviewed the draft Department of Transportation (DOT) opinion on the question of whether one aspect of the proposed legislation is constitutional, and we cannot agree with it.

At issue is whether the bill as drafted could constitute a "taking" under the 5th Amendment to the Constitution in that the bill would extinguish certain claims of Alaska Natives under the Alaska Native Claims Settlement Act of 1971 (ANCSA), 43 U.S.C. § 1601 et seq. (1980), to lands which have been withdrawn for the use of the Alaska Railroad, a federally created, owned and operated entity.

I. Background-Native Claims

In the years since the acquisition of Alaska by the United States from Russia, Alaska Natives have asserted claims to lands in Alaska based on traditional use and occupancy, a concept generally referred to as "aboriginal title." In Tee-Hit-Ton Indians v. United States, 348 U.S. 272 (1955) rehearing denied, 348 U.S. 965 (1955) the Supreme Court ruled that aboriginal title "not specifically recognized as ownership by action authorized by Congress, may be extinguished by the government without compensation." Id. at 288-89.

Congress, on December 18, 1971, passed the Alaska Native Claims Settlement Act. Section 4 of ANCSA extinguished claims of aboriginal title in Alaska and provided various means of compensation therefor, including authorization of the selection of certain "public lands" in Alaska. In the case of Native villages, Section 12 of ANCSA, 43 U.S.C. § 1611 (1980) provided for the selection of the townships occupied by the village, if the lands were available. (Claims by Native Regional Corporations and Native groups may also be involved, but for purposes of this memorandum, we deal only with Native village claims. The impact of the proposed legislation on other Native claims would be similar.)

The term "public lands" is defined in Section 3(e) of ANCSA, 43 U.S.C. § 1602(e)(1980), to exclude "the smallest practicable tract, as determined by the Secretary, enclosing land actually used in connection with the

administration of any Federal installation . . . ." Some of the land withdrawn for the Alaska Railroad has been selected by Native villages, and in the absence of the proposed bill, would be adjudicated, and under regulations at 43 C.F.R. Part 2650(1980), determinations would be made as to what lands were in actual use by the railroad. Selected lands determined by the Secretary not to be in "actual use" would be conveyed to the Native villages. It appears that there are in fact lands which have been withdrawn for the railroad which it is not actually using, and other lands which are being used, but arguably not "in connection with the administration of" the Alaska Railroad. It is the Native claims to these lands which have been selected by Native villages which are here in issue.

II. Background-Alaska Railroad

The Alaska Railroad was established by the Act of March 12, 1914, 38 Stat. 308, 43 U.S.C. §§ 975-975(g) (1980). Authority over the railroad was placed in the President. By Executive Order No. 11107, 28 Fed. Reg. 4225 of April 26, 1963, the President delegated administration of the railroad to the Secretary of the Interior. On October 16, 1966, administration was transferred to the Secretary of Transportation by Act of Congress, 49 U.S.C. § 1655(i) (1980).

III. Nature of Native village rights to lands selected which are withdrawn for the Alaska Railroad, but not "actually used" by it under Section 3(e) of ANCSA

The first question is what rights were conferred by Congress through Section 12 of ANCSA and subsequent selection by Native villages of lands pursuant thereto. Prior to ANCSA, Congress had recognized aboriginal title in Native Americans through treaties and other congressional action. The congressional actions constituting recognition may have given fee simple title or less than fee simple title. United States v. Cherokee Nation, 474 F. 2d 628 (Ct. Cl. 1973). In many cases legal title was retained by the United States as trustee for the tribe.

In enacting ANCSA, however, Congress chose to simultaneously extinguish all aboriginal title of Alaska Natives, and give compensation therefor by land selection rights and money. 1/

Congress has granted certain rights to Alaska Natives to select certain lands, which include lands withdrawn for the Alaska Railroad. Congress

1/ Whether the abrogation of elements of the compensation would give rise to renewed claims under aboriginal title, arguably recognized before extinguishment under ANCSA, is still an open issue; but we believe it to be secondary to the current problem.

has plenary power to deal as it will with the property of the United States under Article IV, Section II, Clause 2 of the Constitution. See, e.g., Kleppe v. New Mexico, 426 U.S. 529 (1976); Bagnell v. Broderick, 38 U.S. 436 (1839). The Alaska Railroad has no being except as an expression of Congress, and lands used by it may be dealt with by Congress as it sees fit.

Through ANCSA, Congress, in the exercise of its plenary power over Federal property, has seen fit to allow qualifying Native villages to select property now under the control of the Alaska Railroad, subject to a determination under Section 3(e) of ANCSA as to whether such lands were actually being used by the Alaska Railroad for railroad purposes on the date when ANCSA was passed, December 18, 1971. 2/

In Wisenak, Inc. v. Andrus, 471 F. Supp. 1004, 1009 (1979), the U.S. District Court for the District of Alaska ruled that Native rights in any particular parcel of land did not vest until land selections were filed. In the current situation, Native village selections have been filed on Alaska Railroad lands, and some right has therefore vested, subject only to a determination under Section 3(e) of ANCSA.

IV. Native village claims would be "taken" under the proposed DOT bill

The next question is whether the bill would "take" these claims. The regulations at 43 C.F.R. Part 2650 (1980) provide that legal title to lands validly selected by Natives passes by "patent" or "interim conveyance." Neither of these has occurred as to the lands in issue. The proposed bill states in the second paragraph of section 4(a):

> any claim for the rail properties of the Alaska Railroad under any Federal law other than this Act, for which legal title has not vested with the claimant, is hereby revoked (emphasis added).

2/ DOT raises an issue of contract. We believe that to be irrelevant. No contract or consideration is required to validate a grant of Federal property made by Congress under its plenary constitutional powers over such property; else the Mining Law of 1872, the various homestead laws, the several railroad grant acts, and innumerable private grants of public land would be invalid. In any case, it can well be argued that the extinguishment of Alaska Native claims provided ample consideration for the new rights granted.

This provision is certainly designed to "take" any claim, however valid, if it has not yet ripened into vested legal title.

Thus, while valid selections under Section 12 of ANCSA may constitute rights, they do not constitute vested legal title, and therefore would be taken under the terms of the DOT bill.

V. The 5th Amendment to the Constitution protects rights which have not yet been acknowledged as "vested legal title"

A 5th Amendment taking for which compensation is required can be based on rights substantially less than vested legal title. Compensation has been required for the taking of tribal lands, in which the government is vested with legal title as trustee for the tribe, United States v. West, 232 F.2d 694 (9th Cir. 1956), Healing v. Jones, 174 F. Supp. 211 (D. Ariz. 1959) aff'd per curiam, 373 U.S. 758 (1963)); for the withholding of lands promised in consideration of the cession of other lands, The Yakima Tribe v. United States, 158 Ct. Cl. 672 (1962); and for the taking of a mining claim under the Mining Law of 1872, Idaho Maryland Mines Corp. v. United States, 122 Ct. Cl. 670 (1952).

The village selections under Section 12 of ANCSA of Alaska Railroad lands are more closely analogous to mining claims than they are to recognized aboriginal title to which the United States retains the legal title as trustee for the Natives. The U.S. District Court for the District of Alaska has held that rights of Alaska Natives under ANCSA do not vest in particular land until a selection is made and that this is "much like the well-established principle in mining law that a claim located on land which is not open to appropriation confers no rights on the locator." Wisenak, supra at 1009. Conversely, a mining claim located on public land which is open to appropriation does confer compensable rights on the locator, Idaho Maryland Mines, supra; and so too does a selection by a Native village of public land made available to it by Congress for selection. 3/

We believe that the selection rights granted by Congress and exercised by Native villages on Alaska Railroad lands which fail to meet the ANCSA Section 3(e) test are valid existing rights for which the 5th Amendment to the Constitution requires compensation if they are taken by the United States, as they would be under the language of the proposed DOT bill.

3/ Even if the selection claims are considered in the nature of recognized aboriginal title, they are still compensable under United States v. West, Healing v. Jones, and The Yakima Tribe v. United States, supra.

VI. Judicial remedies which a Native village might seek if the proposed bill were enacted

Ordinarily the taking of such rights would give rise to a cause of action in the Court of Claims for compensation. However, the legislative scheme here would make it impossible to determine the value of the taking because under it no ANCSA Section 3(e) determinations on the railroad would ever be made. That could possibly give rise to a cause of action in a U.S. District Court to have the statute declared unconstitutional.

The best argument against this would be that the Natives were not harmed as they would still get the same number of acres, even if it were different land. However, the lands for which claims would be revoked would be, in the case of villages, lands in the immediate vicinity of the village and particularly valuable for the development of the village. Replacement lands would be more remote from the village, and often would be mountainous and even glaciated. It is unlikely that a court would find this to be adequate compensation.

VII. Making the grant of the Alaska Railroad subject to valid existing rights would avoid the taking problem

The problem could be avoided entirely by using the language which is standard in most conveyances of public land: that the conveyance is subject to valid existing rights, and by removing the taking language. In light of the serious constitutional problems raised by the current language, we strongly recommend that be done.

VIII. Any claims the United States may have regarding Alaska Railroad lands already conveyed to Alaska Natives should be conveyed to the State of Alaska by the legislation

Finally, any interim conveyance or patent which has already issued to Alaska Natives for lands withdrawn for the Alaska Railroad constitute "vested legal title," and would not be taken under the language of the DOT bill. As pointed out by DOT, some mainline track has already been conveyed to a Native village, arguably without a proper Section 3(e) determination. The United States lacks jurisdiction to reform the patent in question now that it has issued. However, the United States may have a cause of action to request a court to reform the patent or for other relief. We recommend that language be added to the bill to convey to the State of Alaska any such claim the United States may have.

STATE OF ALASKA
JAY S. HAMMOND, GOVERNOR
DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
420 "L" STREET, SUITE 100
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-3550

August 19, 1981

James Wickwire, Esq.
Wickwire, Lewis, Goldmark & Schorr
500 Maynard Building
Seattle, Washington 99104

Re: S.1500 (Alaska Railroad Transfer Legislation)
Our File A66-031-82

Dear Jim:

Enclosed is a copy of my first draft of a proposed response to the congressional delegation concerning treatment of Native lands issues in the proposed Alaska Railroad transfer legislation. As I mentioned last week, it would be my intention to modify and expand this commentary as appropriate, and to integrate it into your comprehensive submission to the delegation on all aspects of S. 1500. To achieve that result, I would appreciate your suggestions concerning format, addressees, et cetera.

In addition to the subject discussed at length in my draft, I anticipate that the next draft will comment briefly on two sections which are not dealt with in the first draft. Section 4 of the proposed legislation requires the Secretary of the Department of Transportation and the State of Alaska to execute a "closing agreement" which describes the real properties which are being transferred to the State. Since the extent of Railroad property is central to both the 3(e) determinations required under ANCSA and the extinguishment of "unvested" rights in Section 5 (or, as we have proposed, the protection of "valid existing rights"), the bill should clearly state that Section 4 does not contemplate that the Secretary of Transportation would assume the role presently filled by the Department of the Interior in making 3(e) determinations under ANCSA, or that DOT would otherwise determine the existence and extent of valid existing rights asserted under the general public land laws or special statutory land grants.

Re: S. 1500 (Alaska Railroad
Transfer Legislation)
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Second, Section 7 of the proposed legislation imposes a reversion clause upon Railroad real property transferred to the State. The breadth of this reversion clause would appear to require the State to defend claims against Railroad real property which are later adjudicated pursuant to the Section 3(e) requirements of ANCSA, whether or not the State felt justified to do so on the facts, under threat of reversion of Railroad property to the United States or assertion of a monetary claim by the United States for the value of the property "lost" to the 3(e) process. The reversion clause in Section 7, if it continues to remain in the legislation, must be coordinated with the treatment of "valid existing rights" and vested Native selections, to insure that lands determined to be outside the protection of Section 3(e) of ANCSA, and thus conveyable to selecting Native corporations, do not pose a monetary liability upon the State.

In our meeting last week we discussed the originalcongressional authorization for 1,000 miles of Railroad line, and our belief that specific rights-of-way for unbuilt extensions of the Alaska Railroad had not been reserved or designated. While this may be the case, it appears that Senator Stevens' concerns regarding homesteaders and other occupants who have acquired title to federal lands since 1914 may have substantial basis, because while no specific right-of-way has been reserved, the general federal statutory right-of-way reservation for "pipelines, ditches, canals, and railroads" (48 U.S.C. § 411, 43 U.S.C. § 942-1, repealed by Sec. 706 of the Federal Land Policy and Management Act, (1976)), has been routinely included in most federal patents to public lands in Alaska. This general reservation would appear to permit the unbuilt portions of the Railroad to extend in any direction over former federal lands which have been patented into private ownership, without payment for compensation for either improvements or the underlying land.

I recently learned that the Alaska Railroad right-of-way may be subject to unpatented mining claims which were located prior to the date of withdrawal of the Railroad and which were arguably kept "alive" during the intervening years. The passage of FLPMA required claimants to file notice of unpatented mining claims with BLM prior to October 21, 1979. If unpatented claims to lands underlying

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the Railroad right-of-way were registered with BLM pursuant prior to that date, and if available evidence does not clearly disprove annual labor assertions and continued validity from the date of such claim's pre-1914 location until the present time, there may be a number of these property claims which have not "vested", in addition to those ANCSA-related claims which would be "revoked" by Section 5(a) of the bill. If that is the case, I would expect that the Alaska Miners Association would be at least as vocal as affected Native corporations have been regarding the treatment of these claims by the bill.

I would be happy for any suggestions you have concerning the format of the proposed State commentary on S. 1500, and my contribution to it. If you think a more legally-oriented analysis, complete with statutory construction and case citations, is required or desirable, please inform me.

Sincerely yours,

WILSON L. CONDON
ATTORNEY GENERAL

By: Tom
Thomas E. Meacham
Assistant Attorney General

cc: Tom Brewer, Esq.
Jerry Johnson, Esq.
Wilson L. Condon, Esq.
Enclosure

DRAFT

August 14, 1981

The Honorable Ted Stevens
United States Senate
127 Russell Building
Washington, D.C. 20510

Re: Alaska Railroad
Transfer Bill (S. 1500):
Recognition and Treatment
of Valid Existing Rights.
Our File A66-031-82

Dear Senator Stevens:

I have been requested by Alaska Attorney General Wilson L. Condon to prepare a brief summary of the State's concerns regarding the relationship between the proposed legislative transfer to the State of the Alaska Railroad and pending claims against some of the Railroad's real property. These claims involve application of the Alaska Native Claims Settlement Act (43 U.S.C. § 1601 et seq., hereinafter referred to as "ANCSA") to the Alaska Railroad as an instrumentality of the Federal Government. This letter is not intended to be a comprehensive legal analysis of the relationship between ANCSA and the Railroad, but discusses certain apparent constitutional and legal deficiencies in the proposed legislation, and offers suggestions for their improvement.

The involvement of Alaska Railroad real property in the ANCSA land selection and conveyance process is occasioned by the language of Section 3(e)(1) of ANCSA, which defines the term "public lands", and by Section 11 of that Act, which makes "public lands" within certain designated and withdrawn townships available for Native selection. Section 3(e) defines "public lands" as,

> ... all Federal lands and interests therein located in Alaska except: (1) The smallest practicable tract, as

> determined by the Secretary, enclosing land actually used in connection with the administration of any federal installation, ...

Section 11(a)(1) withdraws those "public lands" within concentric township rings for Native village and regional corporation selection, and exempts from such withdrawal only those " ... lands in the National Park System and lands withdrawn or reserved for national defense purposes other than Naval Petroleum Reserve Numbered 4 ... ". Native village corporations were allowed three years from the date of enactment of ANCSA to make their land selections (i.e., until December 18, 1974), and regional corporations were allowed an additional year to complete their selections (i.e., until December 18, 1975). ANCSA, § 12(a)(1); § 12(c)(3).

The legal difficulties posed by S. 1500 are found at Section 5, which states in part,

> (a) This Act shall govern if there is conflict with any other law. Any claim for the rail properties of the Alaska Railroad under any Federal law other than this Act, for which legal title has not vested with the claimant, is hereby revoked.
>
> (b) Lands to be transferred under this Act are --
>
> (1) Not public lands for purposes of Section 3(e) of the Alaska Native Claims Settlement Act, as amended (43 U.S.C. § 1602(3))(85 Stat. 689),
>
> (2) Excluded from selection under Public Law 94-204, as amended (89 Stat. 1150) (set out as a note following 43 U.S.C. 1611),
>
> (3) Excluded from selection under Section 1425 of the Alaska National Interest Lands Conservation Act (Public Law 96-487) (97 Stat. 2515), and

> (4) Not available for conveyance under Section 140 of the Alaska National Interest Lands Conservation Act (Public Law 96-487) 94 Stat. 2531).
> ...

Each of the subsections and paragraphs quoted above will be discussed in turn.

Section 5(a) of the Bill purports to revoke claims against rail properties of the Alaska Railroad " ... for which legal title has not vested with the claimant ....". This provision is based upon a memorandum from the Office of Legislative Affairs of the Unied States Department of Justice dated July 8, 1981, which concludes that if the Secretary of the Interior has not issued a patent to a Native corporation for an otherwise valid selection under ANCSA, Congress may revoke the selection without constitutional liability. A memorandum issued by the Department of Transportation on May 28, 1981 reaches a similar conclusion. We believe that the conclusions reached by these memoranda are legally incorrect, and that the Bill, if enacted in its present form, would subject the State to lengthy, involuntary litigation regarding equitable property interests which have vested in Native corporations, and which the federal courts will be constitutionally required to protect.

The legal memoranda referred to above assume that the Secretary of the Interior has broad discretion to reject an otherwise valid Native land selection if patent from the United States has not yet issued. This assumption finds no support in the prior administration of ANCSA or other statutory land grants, and ignores the fact that by the definition contained in Section 3(e) of ANCSA, certain Alaska Railroad lands may not have been, during the period 1971-1975, the "smallest practicable tract, ... enclosing land actually used in connection with the administration ... " of the Railroad, and were thus validly selected by Native corporations. Nor does the fact that "smallest practicable tract" determinations under Section 3(e) and applicable regulations have yet to be made give the Secretary discretion to reject otherwise valid Native land selections.

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The crux of the legal issue is this: if valid Native selections were filed upon "public lands" as defined in Section 3(e) during the statutory Native land selection period, and if in fact some of the selected lands were outside the "smallest practicable tract" at that time, then those selections appear to have vested equitable property rights in the selecting corporation whether or not interim conveyance or patent has yet issued, and are therefore protected by the Fifth Amendment to the United States Constitution against involuntary loss by subsequent legislation. Since Section 5(a) of the Bill assumes, in conformity with the above-mentioned legal memoranda, that Native land selections of Alaska Railroad properties subject to Section 3(e) determinations may be revoked simply because "legal title has not vested with the claimant ... " (presumably evidenced by lack of issuance of a patent), we believe that Section 5(a) mis-interprets relevant public land law principles, will lead to lengthy litigation, and will be ultimately overturned as unconstitutional.

Section 5(b)(1), quoted above, may suffer from the same constitutional infirmity. However, it is possible to interpret this paragraph (which defines lands transferred under the Act as " ... not [constituting] public lands for purposes of Section 3(e) of the Alaska Native Claims Settlement Act, ... ") in a constitutionally sound manner if it is first assumed that lands which in fact are "public lands" under Section 3(e)(1) of ANCSA have been withdrawn and validly selected by eligible Native corporations, and that the equitable rights vesting in those corporations have been protected by the proposed legislation. Under this interpretation, these vested claims and the lands transferred to the State under the legislation would be mutually exclusive: i.e., the lands which are validly subject to Congressional transfer by legislation are in fact not "public lands" for purposes of Section 3(e) of ANCSA, because those "public lands", if validly selected by Native corporations and determined by the Secretary of the Interior to be outside those lands "actually used" in connection with the administration of the Railroad, would be beyond the constitutional reach of subsequent legislation. Thus subsequent legislation could legally transfer only those lands which in fact were not public lands as defined by Section 3(e) of ANCSA.

If interpreted in this manner, however, Section 5(b)(1) of the Bill would appear to serve little purpose, since mere recognition of "valid existing rights" in Section 5(a) would accomplish the same result. With the background represented by the previous Justice Department and Department of Transportation memoranda referred to above, however, it appears that Section 5(b)(1) is intended instead to define "public lands" nunc pro tunc, so as to exclude from transfer under ANCSA all Railroad properties, whether or ot they constitute the "smallest practicable tract". As stated previously, we believe that this approach is constitutionally unsound.

Section 5(b)(2) of the proposed Bill purports to exclude Alaska Railroad lands from selection under Section 12 of Public Law 94-204, which is the Cook Inlet Land Exchange legislation. It appears that Cook Inlet Regional Corporation ("CIRI") has slight opportunity to designate Railroad lands for transfer to it under P.L. 94-204 and the "Terms and Conditions" agreement which is incorporated into that legislation. Section I.C.(2)(a) of the Terms and Conditions document creates a selection pool within the exterior boundaries of Cook Inlet Region which may include certain federal properties, including federal surplus property, revoke federal reserves, and

> " ... public lands created by the reduction of federal installations as defined in Section 3(e) of ANCSA and not validly selected by any village corporation prior to December 18, 1975; and ... any other federal lands as agreed by the State, CIRI and the Secretary, ...

Aside from "public lands" which result from implementation of the Section 3(e) process and which were not validly selected by a village corporation, the ability of CIRI to select Railroad property without the consent of the State and the Secretary of the Interior, or without voluntary federal action through a declaration of surplus property or revocation of a federal reserve, appears limited. Even with regard to Section 3(e) "public lands", it is unlikely that any Railroad lands determined to be not actually used in conjunction with the Railroad would remain for CIRI selection after the exercise of village corporation selection rights.

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Regarding the statutory right of CIRI to select lands outside its region, Section I.C.(1) of the Terms and Conditions document grants CIRI 29.66 townships from

> " ... any federal public lands withdrawn under Sections 11(a)(1), 11(a)(3), or 17(d)(1) without the exterior boundaries of Cook Inlet Region, to be identified in the manner herein provided; ...

CIRI is limited by this section to the selection of lands within specified regions, including the Doyon Region which contains some Alaska Railroad properties from the crest of the Alaska Range north to Fairbanks. CIRI may exercise its selection rights in Doyon Region without concurrence by the State, the Secretary, or Doyon. However, it is limited to those lands withdrawn under the referenced sections of ANCSA, only one of which (Section 11(a)(1)), withdrew all public lands, rather than only " ... unreserved, vacant and unappropriated ... " public lands, as do Sections 11(a)(3) and 17(d)(1). Further, Section 11(a)(1) withdrawals are limited to the 25-township ring around existing villages, and it is likely that if any "public lands", including Alaska Railroad lands not actually used in conjunction with railroad operations, were avaiable for selection under Section 11(a)(1), they have already been selected by the village corporations.

Thus the out-of-region selection opportunity of CIRI appears limited with regard to Railroad properties. However, to the extent that this selection opportunity exists, and to the extent that selections are not rejected by the nomination-and-strike procedure involving the Secretary and the State and which is set forth in Section I.C.(1)(b) of the Terms and Conditions document, then CIRI's statutory right to nominate Railroad lands appears to be vested, and may not be abrogated by subsequent legislation. Thus while the actual impact of CIRI selections on Railroad lands appears minimal, Section 5(b)(2) of the Bill does contain potential constitutional infirmities.

Section 5(b)(3) of the proposed legislation purports to exclude Alaska Railroad lands from selection

under Section 1425 of the Alaska National Interest Lands Conservation Act (P.L. 96-487). This section is entitled "Eklutna-State Agreements and Negotiations", and withdraws lands in the Anchorage area, including " ... lands determined by the Secretary under Section 3(e)(1) of the Alaska Native Claims Settlement Act not to be public lands for purposes of the Alaska Native Claims Settlement Act ... ". Thus this section, by its terms, would withdraw for future disposition Alaska Railroad lands which survive the Section 3(e) process and are determined to be actually necessary for the operation of the Railroad. The Section 1425 withdrawal does not affect the administrative jurisdiction of the present holding agency over the withdrawn lands, but merely protects the lands pending execution of an agreement to be negotiated between the State of Alaska, the Municipality of Anchorage, and Eklutna, Inc. regarding future partitioning of these lands.

The ultimate fate of the withdrawal made by Section 1425 of ANILCA is to be determined as follows:

> ... The withdrawal made by this subsection (b) will expire March 15, 1982, if an executed agreement described in this section is not filed by the parties thereto on or before that date with the Secretary in the Alaska State Office of the Bureau of Land Management; but if an agreement is so executed, rights under the agreement shall vest as of the effective date of this Act, and this withdrawal shall become permanent, except as otherwise provided in the agreement. ...

If the contemplated agreement is executed, the withdrawn lands will become available for conveyance to the Native corporations, the State, or the Municipality of Anchorage only upon termination or revocation of any of the underlying federal withdrawals or reservations now in existence, including reservations for the benefit of the Alaska Railroad. Thus separate Congressional or administrative action would be required before any of such lands would become available for conveyance in accordance with the contemplated agreement.

Re: Alaska Railroad
Transfer Bill (S. 1500):
Recognition and Treatment
of Valid Existing Rights.
Our File A66-031-82

Because Section 1425(b)(1) requires that an agreement between the Native corporation, the Municipality and the State be reached prior to March 15, 1982, and further provides that rights under the agreement will vest retroactively as of December 2, 1980, but only if an agreement is executed (which agreement has not yet been negotiated), it appears clear that at the present time rights to the future disposition of these federal lands have not vested, and thus Section 5(b)(3) of the proposed legislation does not appear to contravene the Fifth Amendment to the United States Constitution.

Section 5(b)(4) of S. 1500 states that Alaska Railroad lands are not available for conveyance under Section 1430 of ANILCA. Section 1430 is the Chugach Region Land Study, and requires a comprehensive review of Federal, State and Native land availablility in the Chugach Region, with a final report and recommendations to be made to Congrss by December 2, 1981. This analysis of lands, including any relevant Alaska Railroad properties, does not purport to vest any present property rights or interests in Chugach Region, and Section 5(b)(4) of the proposed legislation does not appear to confront any constitutional barriers.

To resolve the serious constitutional issues which the State believes are posed by the present Sections 5(a), (b)(1), and (b)(2) of S. 1500, we suggest that Section 5(a) be amended by deletion of the phrase " ... for which legal title has not vested with the claimant ... " in lines 12 and 13, page 6, and substitution therefor of the phrase "subject to valid existing rights". We would further suggest that paragraphs 5(b)(1) and 5(b)(2) be deleted. By making the changes, valid, vested Native selections under Sections 3(e) and 11 of ANCSA and any valid, vested selections of land under the Cook Inlet Land Exchange would be protected as "valid existing rights". Unexercised selection opportunities and statutory study provisions which have not vested a property right would be precluded from having any effect upon the transfer of Railroad lands, both by the "valid existing rights" criterion of Section 5(a), and by the current Sections 5(b)(3) and (4).

Thank you for this opportunity to present the State's views regarding the treatment of vested property rights of Native corporations created under ANCSA and its

Re: Alaska Railroad
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Recognition and Treatment
of Valid Existing Rights.
Our File A66-031-82

amendments. We urge that S. 1500 be amended to avoid the constitutional issues discussed in this letter

Sincerely yours,

WILSON L. CONDON
ATTORNEY GENERAL

By:

Thomas E. Meacham
Assistant Attorney General

cc: The Honorable Jay S. Hammond, Governor
Wilson L. Condon, Attorney General

M E M O R A N D U M

TO: Senator

FROM: Mark and Bill

SUBJECT: Railroad Right-of-Way

DATE: September 23, 1981

You are right on this issue--

1.) It appears that the 1914 Right of Way Act has not been specifically used in Alaska, however the general federal statutory right-of-way reservation for "pipelines, ditches, canals, and railroads" (48 U.S.C. §411, 43 U.S.C. §942-1, repealed by FLPMA in 1976), has been routinely included in most federal patents to public lands in Alaska. This general reservation would permit the unbuilt portions of the railroad to extend into privately patented lands without compensation if federal action expanded the railroad. Our bill prevents the State from assuming that right.

2.) The 1914 reservation (copy attached) does not apply to lands conveyed to Native corporations under ANCSA - following a 1977 decision in the Federal District Court of Anchorage. (Alaska Public Easement Defense Fund v. Andrus, 435 F. Supp. 664 (1977). The court held that Section 26 of ANCSA required ANCSA preempt prior statutory authority when they conflict. In this case the two floating easements in question (Acts of 1890 and 1914) directly conflict with section 17(b)1 of ANCSA, and are thus expressly repealed as to ANCSA lands. Alaska Public Easement was not appealed.

3.) All other patents including mining claims, homesteads, homesites, etc. that might traverse a future right of way would be included in the general reservation language in each patent.

4.) We are working with the State, Interior, Agriculture, and Transportation to fashion an adequate solution for right of way expansion; along the lines of ANILCA with improvements on procedure.

'erritories and In-

lroad Lands; Re-
b.L. 95-611, § 6,
00, provided that:
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work authorized by sections 975 to 975g should not exceed $35,000,000, and that in executing the authority granted by those sections the President should not expend nor obligate the United States to expend more than that sum. It also appropriated the sum of $1,000,000 to be used for carrying out the provisions of those sections, to continue available until expended.

Authority of Secretary of Interior to Operate. Ex.Ord.No.3861, June 8, 1923, 48 C.F.R. § 5.1, which authorized and directed Secretary of Interior to operate railroads acquired or constructed under the Alaska Railroad Act, was superseded by Ex.Ord.No.11107, Apr. 25, 1963, 28 F.R. 4225, set out as a note under section 975f of this title. Under Order 1040 of Feb. 13, 1936, the Secretary of the Interior delegated general supervision over the activities of the Alaska Railroad to the Division of Territories and Island Possessions which was established as a division in the Department of the Interior by Ex. Ord.No.6726, May 29, 1934.

Mount McKinley National Park. Amendment of section 1 of Act Mar. 12, 1914, by Act Mar. 29, 1940, ch. 74, 54 Stat. 80, relating to Mount McKinley National Park, and providing for accommodations for visitors and residents, is set out as section 353a of Title 16, Conservation.

Legislative History. For legislative history and purpose of Pub.L. 95-565, see 1978 U.S.Code Cong. and Adm.News, p. 5293. See, also, Pub.L. 96-423, 1980 U.S. Code Cong. and Adm.News, p. —.

telegraph and telephone lines

nted under section 975 of this title shall include the
maintain, and operate telegraph and telephone lines
be necessary or convenient in the construction and
road or railroads as herein authorized, and they shall
ll the usual duties of telegraph and telephone lines

§ 1, 38 Stat. 305.

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Transfer of Functions. For transfer to the Secretary of Transportation of the administration of the Alaska Railroad and all of the functions authorized to be carried out by the Secretary of the Interior pursuant to Ex.Ord.No.11107, Apr. 25, 1963, 28 F.R. 4225, relative to the operation of the railroad, see section 1655 (l) of Title 49, Transportation.

d. Pub.L. 94-579, Title VII, § 704(a), Oct. 21, 1976,

2, 1914, c. 37, §
d the President to
spose of lands for
ng Alaskan rail-

Repeal. Section
provided in part

that this section is repealed effective on and after Oct. 21, 1976.

Savings Provisions. Repeal by Pub.L. 94-579 not to be construed as terminating any valid lease, permit, patent, etc., existing on Oct. 21, 1976, see note under section 1701 of this title.

erminals, stations, and rights of way

tion grounds and rights of way through the lands
in the Territory of Alaska are granted for the con-
ls, telegraph, and telephone lines authorized by sec-
f this title, and the President may, in such manner
ble, make reservation of such lands as are or may
hing materials for construction and for stations, ter-
for such other purposes in connection with the con-
ion of such railroad lines as he may deem necessary

§ 1, 38 Stat. 305.

Codification. Section is comprised of part of the last paragraph of section 1 of Act Mar. 12, 1914. The other part of the last paragraph is classified to section 975d of this title and the remainder of section 1 of Act Mar. 12, 1914, is classified to sections 975 to 975b, and 975f of this title.

Section was formerly set out as section 304 of Title 48, Territories and Insular Possessions, prior to transfer to this section.

Transfer of Functions. For trans[fer to]
the Secretary of Transportation o[f the]
administration of the Alaska Ra[ilroad]
and all of the functions authorized [to be]
carried out by the Secretary of the [Inte-]
rior pursuant to Ex.Ord.No.11107, A[pr. 25,]
1963, 28 F.R. 4225, relative to the [opera-]
tion of the railroad, see section 165[5(l) of]
Title 49, Transportation.

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R.
Section
2(b)1
Repeals

§ 975d. Same; patents to contain reserve for right of way

In all patents for lands taken up, entered, or located in Alaska
March 12, 1914, there shall be expressed that there is reserved to
United States a right of way for the construction of railroads, teleg
and telephone lines to the extent of one hundred feet on either sid
the center line of any such road and twenty-five feet on either sid
the center line of any such telegraph or telephone lines.

Mar. 12, 1914, c. 37, § 1, 38 Stat. 305.

Codification. Section is comprised of part of the last paragraph of section 1 of Act Mar. 12, 1914. The other part of the last paragraph is classified to section 975e of this title and the remainder of section 1 of Act Mar. 12, 1914, is classified to sections 975 to 975b, and 975f of this title.

Section was formerly set out as section 305 of Title 48, Territories and Insular Possessions, prior to transfer to this section.

Transfer of Functions. For transf[er to]
the Secretary of Transportation o[f the]
administration of the Alaska Rai[lroad]
and all of the functions authorized [to be]
carried out by the Secretary of the [Inte-]
rior pursuant to Ex.Ord.No.11107, Ap[r. 25,]
1963, 28 F.R. 4225, relative to the o[pera-]
tion of the railroad, see section 1655([l) of]
Title 49, Transportation.

§ 975e. Same; disposition of proceeds of lease or sale of public la[nds]

All moneys derived from the lease, sale, or disposal of any of the pu
lands, including town sites, in Alaska, or the coal or mineral the
contained, or the timber thereon, and the earnings of said railroad
railroads, together with the earnings of the telegraph and telephone li
constructed under authority of sections 975 to 975g of this title, ab
maintenance charges and operating expenses, shall be paid into the Tr
sury of the United States as other miscellaneous receipts are paid,
a separate account thereof shall be kept and annually reported to C
gress.

Mar. 12, 1914, c. 37, § 3, 38 Stat. 307.

Codification. Section was formerly set out as section 306 of Title 48, Territories and Insular Possessions, prior to transfer to this section.

Transfer of Functions. For transfer to the Secretary of Transportation of the administration of the Alaska Railroad
and all of the functions authorized t[o be]
carried out by the Secretary of the I[nte-]
rior pursuant to Ex.Ord.No.11107, Apr[. 25,]
1963, 28 F.R. 4225, relative to the op[era-]
tion of the railroad, see section 1655(l[) of]
Title 49, Transportation.

§ 975f. Same; authority of President

It is the intent and purpose of Congress through the provisions of s
tions 975 to 975g of this title to authorize and empower the Presid
of the United States, and he is fully authorized and empowered, throu
such officers, agents, or agencies as he may appoint or employ, to do
necessary acts and things in addition to those specially authorized in s
sections to enable him to accomplish the purposes and objects of s
sections.

Mar. 12, 1914, c. 37, § 1, 38 Stat. 305.

Codification. Section is comprised of the fourth paragraph of section 1 of Act Mar. 12, 1914. The remainder of section 1 of Act Mar. 12, 1914, is classified to sections 975 to 975d of this title.

Section was formerly set out as section 307 of Title 48, Territories and Insular Possessions, prior to transfer to this section.

Transfer of Functions. All functions of all other officers of the Department of the Interior and all functions of all agen-
cies and employees of that Departm[ent]
were, with two exceptions, transferred [to]
the Secretary of the Interior, with po[wer]
vested in him to authorize their perfo[rm-]
ance or the performance of any of [his]
functions by any of those officers, ag[en-]
cies, and employees, by 1950 Reorg.P[lan]
No. 3, §§ 1, 2, eff. May 24, 1950, 15 F[.R.]
3174, 64 Stat. 1262, set out in the App[en-]
dix to Title 5, Government Organizat[ion]
and Employees.

United States Senate

COMMITTEE ON APPROPRIATIONS
WASHINGTON, D.C. 20510

September 30, 1981

Mr. Robert Atwood, Editor
Anchorage Times
Box 40
Anchorage, Alaska 99510

Dear Bob:

I hope you will treat everything after this first paragraph as a letter to the Editor. There has been a great deal of misunderstanding about this issue. I only hope you and others will understand that while I want the railroad extended, I do not feel that homesteaders should give up rights-of-way across their lands for nothing when everyone else, native and non-native alike, will be compensated.

Because of publicity given to the 1914 Act of Congress as it applies to the Alaska Railroad as it is acquired by the State of Alaska, I believe it is necessary to clarify the history and use of that Act.

In the first place, that Act provided a reservation (that is: a right of the Federal government to use lands patented to individual citizens in Federal patents for "pipelines, ditches, canals, and railroads...to the extent of one hundred feet on either side of the center line of any such road...") This Act, I am informed by the Department of Interior, has rarely been used for a right of way for railroad purposes in Alaska. In such instances, such as the railroad extension to the Fairbanks airport, the right of way was negotiated with the private owners, people who urged the extension. In fact, the A.R.R. has used Federal property -- as it did for the Anchorage airport extension -- and not used this authority to acquire private lands.

Furthermore, in a 1977 decision of the Federal District Court in Alaska (Alaska Public Easement Defense Fund vs. Andrus, 435 F. supp. 664 (1977), this Act and all other such "floating easements" were ruled not to apply to Alaska native lands.

The effect of this 1914 reservation, when used to acquire lands in private ownership for railroad purposes, is to take privately owned land without compensation. To preserve this right to the state when it takes over the Alaska Railroad would mean that this reservation (which predates the Alaska Railroad) would allow the State to take

lands which were patented under the homestead, trade and manufacturing site, or small tract lands to individual Alaskans.

Provisions in the Federal Land Policy and Management Act of 1976 (FLPMA) do grant to the State a way to obtain a right-of-way across Federal Land in Alaska, and the Alaska Lands Act also has a mechanism for rights-of-way across reserved Federal land.

It is my belief that the State should acquire rights-of-way across privately owned lands for the Alaska Railroad, should this become necessary, in the same way we acquire rights-of-way for highways. The State's emminent domain powers allow condemnation of private land for fair compensation.

The original lands adjacent to the right-of-way of the Alaska Railroad -- such as those in residential areas in or near Anchorage like South Addition, Forest Park, Turnagain, and Ocean View (there are many more) and areas similar in or near Fairbanks -- have been subdivided. To allow the 1914 Act to permit the State to acquire lands for railroad purposes could impose a great hardship on those who built homes in these areas. Since the original townsite of Anchorage was a railroad townsite, the 1914 Act does apply to the original townsite of Anchorage as well.

> The Alaska Railroad Act provides for a railroad "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."

It is my hope and fervent desire that the State will extend the Alaska Railroad. If it does, the need for extensions through homesteads or other private land is almost nil, except for native lands, which the Alaska Federal District court has already ruled are not subject to the reservation.

I do hope you and others will review this subject -- for myself, I just cannot believe it is good public policy to allow privately owned land to be taken by the State for public use without compensation.

With best regards,

Cordially,

TED STEVENS