

Is this any way to run a Railroad?

## Description

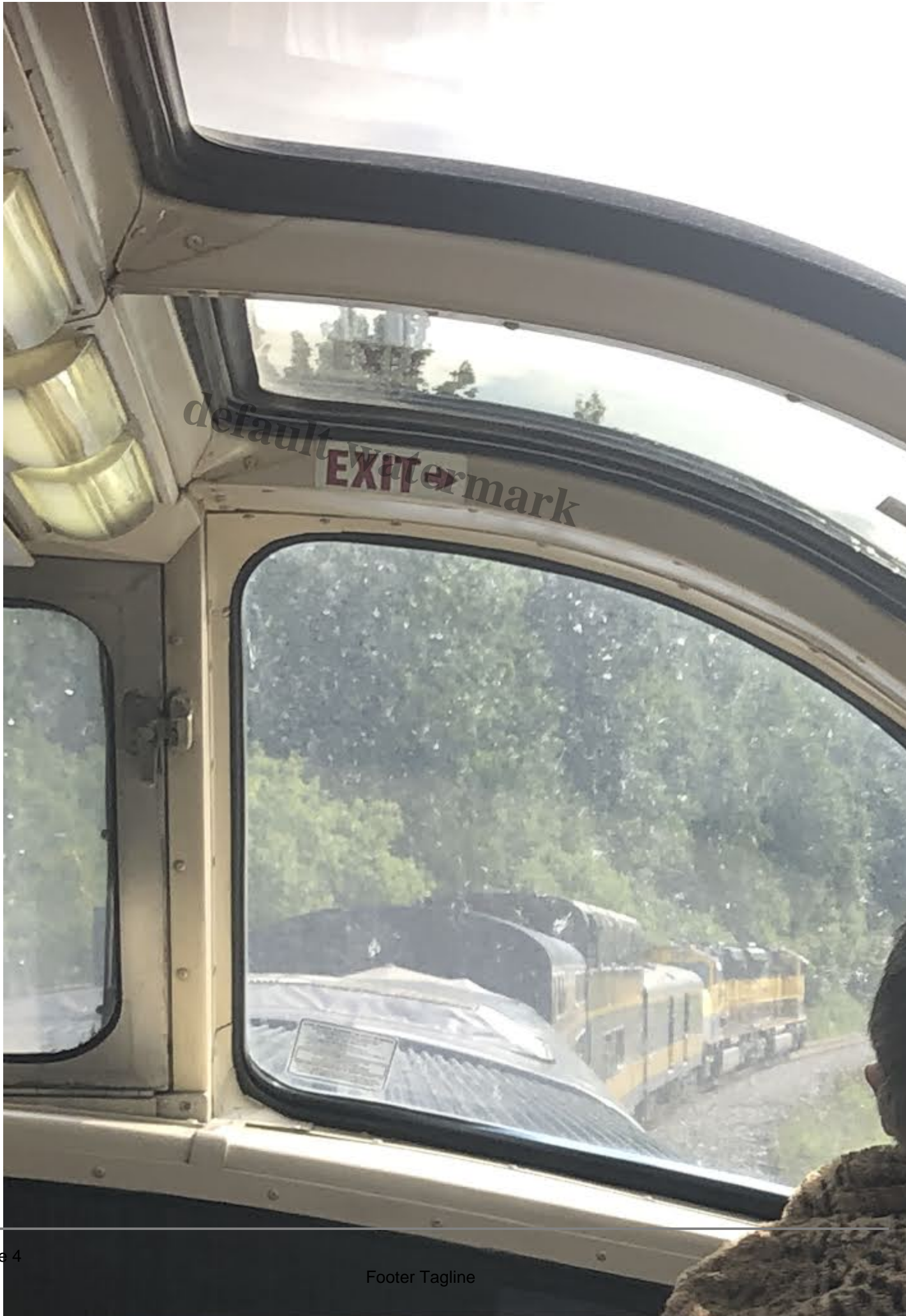
# The Alaska Railroad Deception

by Ben Traylor



Alaskans love the Alaska Railroad. I was reminded of what a delightful part of Alaska this historic railroad represents when **Waneta Borden** and I won a free trip to Denali during the **Willow Winter Carnival** raffle in 2019. We enjoyed every minute of the trip in mostly empty cars during summer of 2020.

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## **This is our train. Alaskans subsidize its operation**

The Alaska Railroad was turned over to the *State of Alaska* from the federal government in 1982 under US Code Title 45, Chapter 21, the Alaska Railroad Transfer Act â??ARTA.â?•[1]

## **ARR has been our baby for 30 years**

The *Alaska Railroad Corporation 2020 Annual Report* reveals the decline in revenues it has recently suffered. Waneta and I were two of the mere 32,000 passengersâ??down from an average ridership of half a million passengersâ??who rode the trains last year. We used free tickets.

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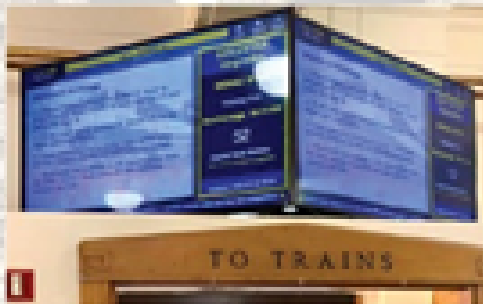
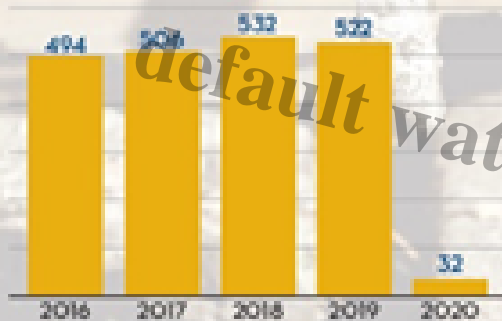


# BUSINESS HIGHLIGHTS

## PASSENGER BUSINESS

ARRC's passenger business declined by 94% compared to 2019. Due to dramatic pandemic-driven travel declines, total ridership sank from 522,101 passengers in 2019 to 32,069 in 2020.

Passenger Ridership (in thousands)



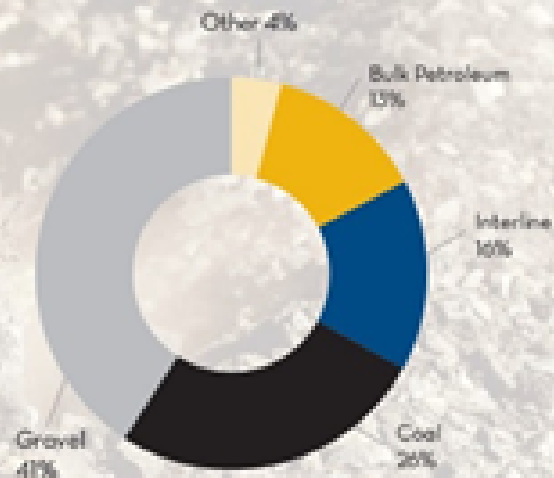
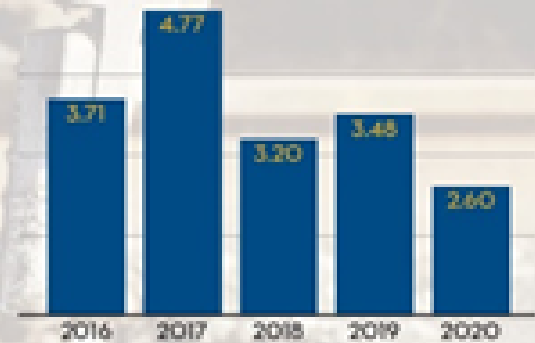
New digital signs in the Anchorage Historic Depot provide answers to common questions, pandemic protection measures, and excursion and ticket upgrade information.



Pandemic protocols for passengers and employees include face covering and social distancing.

## FREIGHT BUSINESS

Total Freight Tonnage (millions of tons)



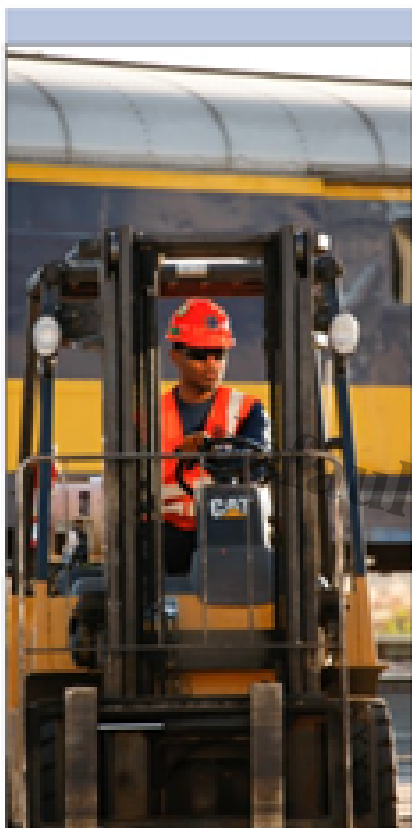
A brand new van loader is put to work, supporting the Anchorage Trailer on Flat Car (TOFC) business.

## **Milepost 1- March 12, 1914**

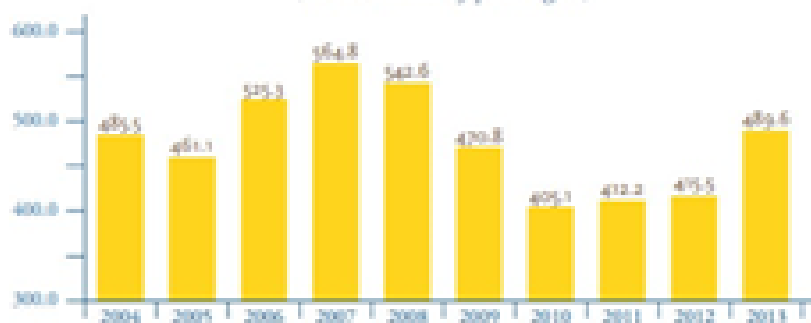
**The US Congress agrees to fund construction and operation of a railroad from Seward to Fairbanks. Estimated construction cost â?? \$35 million.**

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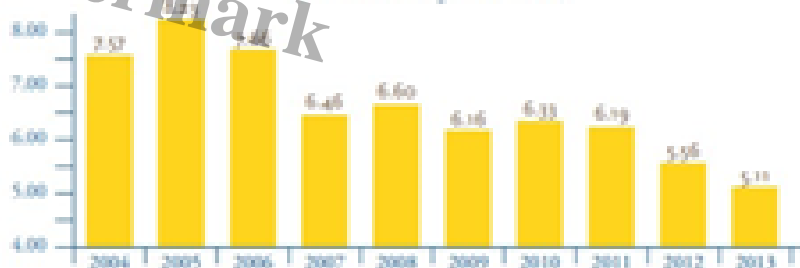
## 10-YEAR OPERATING TRENDS



### PASSENGER RIDERSHIP (in thousands of passengers)



### FREIGHT TONNAGE (in millions of short tons)



**Headquarters Mailing Address:**  
P.O. Box 107500  
Anchorage, AK 99510-7500

**Toll Free Phone Numbers:**  
Corporate Information:  
1-800-321-6518

Freight Marketing/Customer Service:  
1-800-321-6518

Passenger Customer Service:  
1-800-544-0552

Seattle Office: 1-800-843-2772

ARRC Offices	Physical Location	Telephone	Fax
<b>Anchorage, Alaska (99501)</b>			
Headquarters Offices	327 W. Ship Creek Avenue	(907) 265-2500	(907) 265-2312
Reservations & Depot	411 W. 1st Avenue	(907) 265-2494	(907) 265-2509
Operations Center	825 Whitney Road	(907) 265-2434	(907) 265-2643
<b>Fairbanks, Alaska (99701)</b>			
Passenger Depot	1745 Johansen Expressway	(907) 458-6025	(907) 458-6068
Freight Customer Service	1888 Fox Avenue	(907) 458-6022	(907) 458-6034
Freight House	250 Jack Lindsey Lane	(907) 458-6048	(907) 458-6061
<b>Seward, Alaska (99664)</b>			
Dock Operations / Terminal	913 Port Avenue (99664)	(907) 224-5550	(907) 265-2660
<b>Seattle, Washington (98106)</b>			
Barge Operations Office	1001 Klaskanin Ave, Ste 200B	(206) 767-1100	(206) 767-1112

Online: [facebook.com/alaskarailroad](https://facebook.com/alaskarailroad)



[www.AlaskaRailroad.com](http://www.AlaskaRailroad.com)



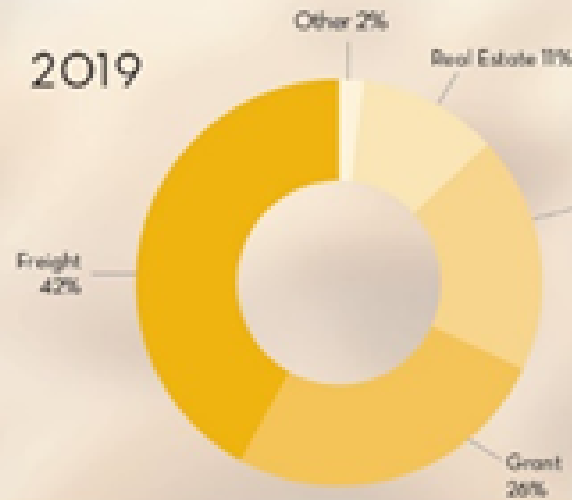
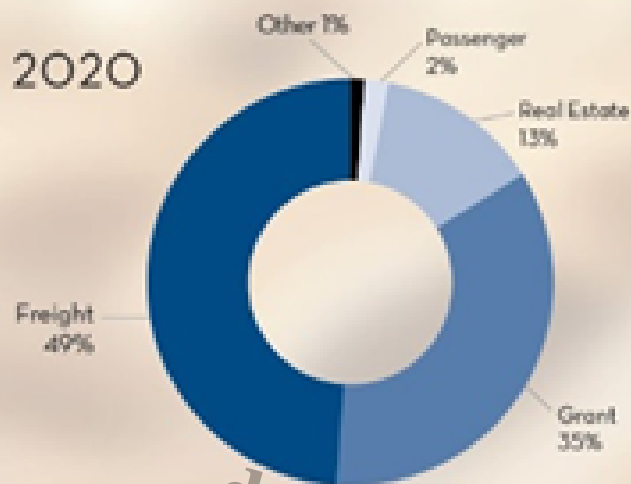
[twitter.com/akrr](https://twitter.com/akrr)



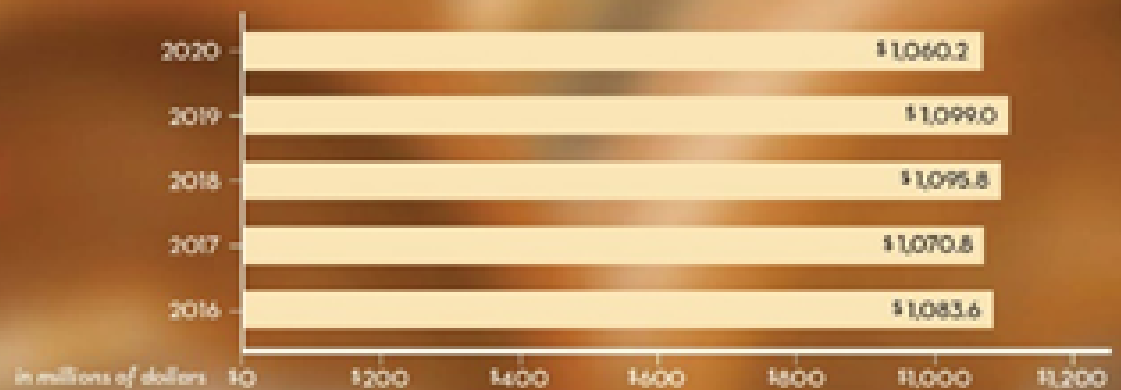
Tourism is only part of ARRâ??s function. Passenger travel is not enough to sustain the corporation that manages this system. The bread and butter of ARRC is 1) hauling freight, 2) grants from the government, and 3) real estate. Passenger revenues are typically 20 percent of revenues. 2020 saw another financial downturn in that respect: ridership declined and grants again increased.

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## REVENUES



## TOTAL ASSETS



## NET INCOME



## **This corporation is hungry.**

From the corporation Press Release, April 1, 2021: ANCHORAGE, Alaska â?? The Alaska Railroad Corporation (ARRC) released its 2020 annual report today. Audited financial statements show a net loss of \$7.8 million, with total revenues of \$150.7 million and total expenses of \$158.5 million.[2]

## **Those are the big numbers.**

In short, freight revenues for 2020 were down to \$73,649,000 from 2019â??s gross of \$85,340,000â??a loss of \$11,691,000. Passenger revenues in 2020 were down to \$3,348,000 from 2019â??s \$39,571,000. Covid-19 has taken its toll, but operation of trains is only one part of the equation.

## **Milepost 2- July 15, 1923**

**President Warren G. Harding travels to Alaska to mark the completion of the Alaska Railroad by driving the golden spike in ceremonies at Nenana, one of the stateâ??s largest cities at the time. President Harding died from an attack of food poisoning on his return trip to San Francisco on August 2, 1923.**

For an overview of how our State Railroad has performed, I have gone through the financial report for every year since 2005 to consider how the leadership of the company describe results of their efforts. Since the primary mission is to operate a railroad, I gleaned from the annual reports basic operation costs/expenses and created an overview chart with those simple numbers. I am not an accountant and the complicated financials of this corporation are far beyond my training, but as Alaskans we can reach some general conclusions about the railroad gifted to us by the federal government, and perhaps explanations for current business practices.

Alaska Railroad Operating Profit/Loss (\$Thousands)

Year	Total Revenues	Total Expenses	Profit/Loss	Grant Revenue
2020	129,873	148,216	-18,343	52,609
2019	177,592	172,889	4,703	52,141
2018	163,426	161,916	1,510	52,540
2017	165,151	158,696	6,455	57,380
2016	149,894	159,596	-9,702	46,933
2015	163,880	164,436	-556	49,965
2014	167,319	163,585	3,743	42,237
2013	165,578	160,725	4,853	40,111
2012	168,476	164,659	3,817	40,433
2011	161,473	156,524	4,949	39,892
2010	146,108	140,556	5,552	40,225
2009	143,613	137,993	5,620	36,515
2008	158,795	155,490	3,305	37,013
2007	148,562	138,878	9,684	32,949
2006	132,670	128,419	4,251	21,299
2005	129,645	122,841	6,804	15,115

\*ARR lists Grant Revenue as Operating Income.

Below is a listing of ARR grant revenue sources posted in the 2011 Annual Report as an example of the types of grants which benefit this corporation. I have not seen stated this clearly in any more recent reports.

## NOTES TO FINANCIAL STATEMENTS

December 31, 2011 and 2010

The ARRC recognized the following grant revenue during the years ended December 31, 2011 and

(in thousands)

	<u>2011</u>	<u>2010</u>
Alaska State Fair		
Depreciation on assets constructed	\$ 12	12
FTA Formula Funds relating to Capital Grant		
Receipts Bonds, Series 2006 and 2007:		
Depreciation on assets purchased and constructed	5,913	5,079
Grant funded principal, interest and issuance costs	2,518	2,759
Department of Agriculture:		
Depreciation on assets constructed	182	182
Department of Interior:		
Grant funding of accrued derailment expense	1	30
Derailement expense paid in current year	(1)	(30)
Federal Emergency Management Agency:		
Depreciation on assets constructed	388	255
Federal Railroad Administration:		
Depreciation on assets constructed	13,539	16,443
Right of way acquisition	37	511
Federal Transit Administration:		
Depreciation on assets purchased and constructed	9,963	8,382
Grant funded maintenance and transit security expense	8,922	9,660
Right of way acquisition	359	(39)
Homeland Security:		
Depreciation on assets purchased and constructed	102	93
Grant funded transit security expense	—	15
Municipality of Anchorage Ship Creek Economic Development:		
Depreciation on assets constructed	10	10
Rasmuson Foundation:		
Depreciation on assets purchased	80	80
State of Alaska:		
Depreciation on assets purchased and constructed	531	404
Taxpayer Relief Act:		
Depreciation on assets purchased and constructed	939	1,178
US Environmental Protection Agency		
Depreciation on assets constructed	53	—
US Fish and Wildlife:		
Depreciation on assets constructed	30	30
	<u>43,578</u>	<u>45,054</u>
Less grant revenue included in real estate and other revenues	(1,325)	(2,226)
Less grant revenue reported as a reduction of interest expense	(2,361)	(2,603)

Milepost 3 January 14, 1983

## President Ronald Reagan signs into law legislation authorizing transfer of the Alaska Railroad to the State of Alaska.

This railroad is considerably more than the train some of us we were gifted under the Christmas Tree as children; we like our railroad, and we want it to be successful. But some Alaskans have begun to express concern about business practices regarding easements on privately owned land. They have become an organized political force.

Facebook Page:



### AASPR Alaskans Against Stolen Property Rights

Public group · 367 members

Joined

+ Invite

## WHO ARE WE AND HOW CAN YOU HELP STOP THE INJUSTICE?

**ALASKANS FOR PROPERTY RIGHTS** is a joint response public relations campaign to educate the public on the injustices caused by the Alaska Railroad. We are a group of Alaskan Citizens, Businesses, Municipalities, and Utility Companies fighting for the injustices being caused by our own Alaskan Company; The Alaska Railroad Corporation.

And their message has become shrill:





I first learned of these concerns as staff for **Rep. Lora Reinbold** in 2018 when an effort was made to address railroad easement property right concerns with **House Joint Resolution No. 38**. I recall extensive conversations with representatives of ARRC—including former Gov. **Bill Sheffield** who is now *Director Emeritus* on the **ARRC Board of Directors**. Sheffield is the only Alaska governor to be impeached but he has been a mainstay on the ARRC Board.

**Milepost 4 April 1995**

**Former Governor Bill Sheffield is appointed to the Board of Directors and elected chairman.**

See my previous story about Gov. Sheffield here: <https://donnliston.net/2019/12/alaska-corruption-and-failed.html>

Another bill in the 2017-18 Alaska House (HB 93) had a companion bill in the Senate (SB 68), sponsored by then-Sen. **Michael Dunleavy** clarifying state law to protect landowners with ARRC easements. [4] That resolution (HJR 38) went through two committees and was rolled into HB 119 which passed the legislature in the very last hour of the session despite a huge lobby effort against it by the ARRC. It established the intent of the **Alaska Legislature** and expressed concerns about ARRC business practices.[5]

## PURPOSE

HJR 38 is targeted at recent Alaska Railroad Corporation wrongful claims to an “exclusive use easement,” conveyed over property patented to others where the United States did not conclusively hold such an interest in the right-of-way at the time of transfer from federal to state ownership in 1983.

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Alaska Congressman **Don Young** was part of the deliberation that transferred ARR to the state in 1982 and in an April 16, 2018 letter to Alaska **Rep. Chuck Kopp** the intent was spelled out:

House Joint Resolution 38 outlines what can only be described as a failure by the agencies to understand clear direction from Congress and to dutifully recognize basic tenets of due process, needlessly resulting in a cloud on title for both the Alaska Railroad and its neighbors along the right-of-way. There is no way a bill quietly annexing private property rights, especially without any notice or compensation, would have passed Congress in 1982. You only have to read the plain language of ARTA to know that -the transfer of rail properties of the Alaska Railroad over privately owned land only included the Federal interest in those lands. If the federal government did not own it, it was not included in the transfer. There is no canon of statutory construction, or even common sense reading, that could argue an unconstitutional taking of private property rights was the intent of Congress.[7]

### ARRC Doesn't Care

Direction from the Alaska Legislature and our US Congressman didn't solve the problem, which seems to be getting more elevated. The parties are likely to be in court before too long although Gov. Dunleavy has urged mediation of the issue. These Alaskans who own land with railroad easements are facing a corporation with tremendous resources. As recently as August 2, 2021 Gov. Dunleavy sent a letter to ARRC Vice-Chair **Judy Petry** urging the corporation to back off. In that letter Gov. Dunleavy conveys his view that the transfer of the railroad rights-of-way **for train tracks and utilities** does not mean exclusive use ownership. Because ARRC has sued a South Anchorage Homeowner's association, ***Flying Crown HOA***, and asked the court for summary judgment, other interests have stepped up to charge they have also been harmed by ARRC. [8]

In their legal brief ARRC in federal court asserts that there are two questions at issue:

(1) the scope of the interest reserved by the federal government in the Federal Land Patent issued to defendant's predecessor in interest; and (2) the scope of the interest conveyed by the federal government to the state of Alaska in its right-of-way over the same property.[8]

Defendants have alleged that the State cannot give to ARRC what the Federal Government never possessed. They have launched a public education campaign to explain this point.

## A BRIEF HISTORY

### 1914 - Alaska Railroad Act

The federal government owned and operated the Alaska Railroad and some of the lands over which the railroad operated. However, there was much Railroad right of way across private land that had passed into non-federal ownership. Throughout Alaska's history, many citizens received homestead land patents from the federal government.

When those homestead patents included lands crossed by the Alaska Railroad, the federal government still transferred ownership of the homestead to the citizen, but reserved for itself a specific property interest called a **right of way**, so that it could continue to use **100 feet** on either side of the **centerline** of the railroad to operate the railroad, as well as telegraph and telephone lines.

## A BRIEF HISTORY

The 1914 Alaska Railroad Act right-of-way gave the Railroad a right to use land owned by others, as identified in each federal patent, but *it did not transfer a right to own and control the property in a manner unrelated to the patent reservation.*

This is an important distinction because some railroad rights-of-way actually grant title (fee simple interest) to the railroads.

By its very terms, the 1982 ARTA should have had no impact on pre-existing private property rights. Unfortunately, the land transfer to the state was implemented in a way that violated the constitutional rights of an unknown number of homesteaders and their successors.

### Other interest's Legal Briefs

The *Municipality of Anchorage* on August 8, 2021 filed a brief in opposition to ARRC's request for summary judgement. (Case 3:20-cv-00232-JMK Document 86). It concludes the following:

As described above, the right of way reservation in patent under the 1914 Act reserved an easement limited for railroad purposes similar in kind to the types of easements created under the 1875 ROW Act and the 1898 AK ROW Act. Contemporary legislation and legal precedent support this conclusion in addition to broader legal precedent and public policy considerations. Further, no more than the easement limited for railroad purposes which was reserved under the 1914 Act was transferred to ARRC by ARTA. To find otherwise would go against the public policy supporting the determinant nature of deeds and create an impermissible, unconstitutional interpretation of ARTA resulting from a federal taking of property rights previously conveyed under patent.

*Enstar Natural Gas Co.* also submitted an amicus legal brief August 23, 2021 in support of Flying Crown's Opposition to Motion for Summary Judgment. (Alaska Railroad Corp. v. Flying Crown, Case No. 3:20-cv-00232-JMK)

The width of the 1914 Act railroad easement is "one hundred feet on either side of the center line of any such road." At Potter Marsh, the pipeline runs parallel to the tracks between railroad mileposts 100.33 and 103.12 along the Turnagain Arm. The pipeline is buried approximately 80 to 97 feet to the southwest (ocean side) of the tracks. This is well outside of the railbed itself. The majority of the pipeline at Potter Marsh is within the Turnagain Arm tidal area—an expanse of mudflat that floods at hightide and is scraped by ice in the winter. The fee interest to the relevant Potter Marsh land was conveyed to the State of Alaska in 1969 by Patent 50-69-0199, subject to a reservation for the 1914 Act right-of-way easement. The Railroad currently charges \$5,875/year for ENSTAR's permit to this

stretch of subsurface tideland. This is more than six times what ENSTAR would pay were it to simply acquire a right-of-way from the State of Alaska Department of Natural Resources, the actual owner of the tideland.

**ARRC has already initiated a payment scheme for recreational users, rock climbers and wind surfers on the ROW along Turnagain Arm and has expressed interest in expanding this practice.**

Alaskans love our railroad. We are proud to take visitors on the trains through pristine wilderness to magical destinations. We respect our railroad's need to be profitable and accept the reality of that challenge. Historically, intrepid Alaskans have settled Alaska homesteads and depended upon the Alaska Railroad, accepting its need for room to operate on lands it doesn't own outright. But that is where our charity ends; we do not expect the Alaska Railroad to be a predator organization, usurping land, overcharging for use of land or dragging good Alaskans into federal court at great expense to bully landowners who must rally popular support for justice. That isn't the Alaskan way; this bull-headed business practice tarnishes the brand when we all know the AARC future is bright for many reasons.

**This spectacle needs to end and ARRC can end it NOW.**

**Resources:**

[1] ARTA • US Code Title 45 Chapter 21

[https://www.alaskarailroad.com/sites/default/files/akrr\\_pdfs/Corp\\_ARTA\\_2005.pdf](https://www.alaskarailroad.com/sites/default/files/akrr_pdfs/Corp_ARTA_2005.pdf)

[2] ARRC Press Release April 1, 2021

[https://www.alaskarailroad.com/sites/default/files/Communications/04\\_01\\_2021\\_ARRC\\_2020\\_AnnualRpt](https://www.alaskarailroad.com/sites/default/files/Communications/04_01_2021_ARRC_2020_AnnualRpt)

[3] AARC Annual Reports (2011-Present)

<https://www.alaskarailroad.com/corporate/leadership/reports>

[4] 2017 Legislation RE ARRC Right-of-Ways

<http://www.akleg.gov/PDF/30/Bills/SB0068A.PDF>

<http://www.akleg.gov/PDF/30/Bills/HB0093A.PDF>

[5] House Joint Resolution No. 38

<http://www.akleg.gov/PDF/30/Bills/HJR038A.PDF>

HJR 38 Supporting Documents: [http://www.akleg.gov/basis/get\\_documents.asp?session=30&docid=54490](http://www.akleg.gov/basis/get_documents.asp?session=30&docid=54490)

[6] Letter to Rep. Chuck Kopp from Congressman Don Young

<https://www.railroadedalaska.com/wp-content/uploads/2018/04/Don-Young-letter-41618-re-HJR38.pdf>

[7] Gov. Dunleavy recent response to ARRC Legal Action:



STATE CAPITOL  
P.O. Box 10001  
Juneau, AK 99811-0001  
907-465-1500



350 West Seventh Avenue, Suite 1700  
Anchorage, AK 99501  
907-269-7450

Governor Mike Dunleavy  
STATE OF ALASKA

August 2, 2021

Ms. Judy Petry  
Vice Chair  
Alaska Railroad Corporation Board of Directors  
327 West Ship Creek Avenue  
Anchorage, AK 99510

Dear Alaska Railroad Corporation Board of Directors,

The Alaska Railroad Corporation (ARRC) has filed a "quiet title action" lawsuit against dozens of private-property owners in Anchorage. While the lawsuit is filed against the Flying Crown Subdivision and its homeowners, it will affect hundreds of Alaskan landowners, possibly more, who own the land beneath the ARRC easement.

As the Board is aware, and as Congressman Young stated in his 2018 letter, the property owners have a strong argument that Congress did not intend to take their fee interest in the land underlying the easement when it passed the Alaska Railroad Transfer Act. (ARTA)

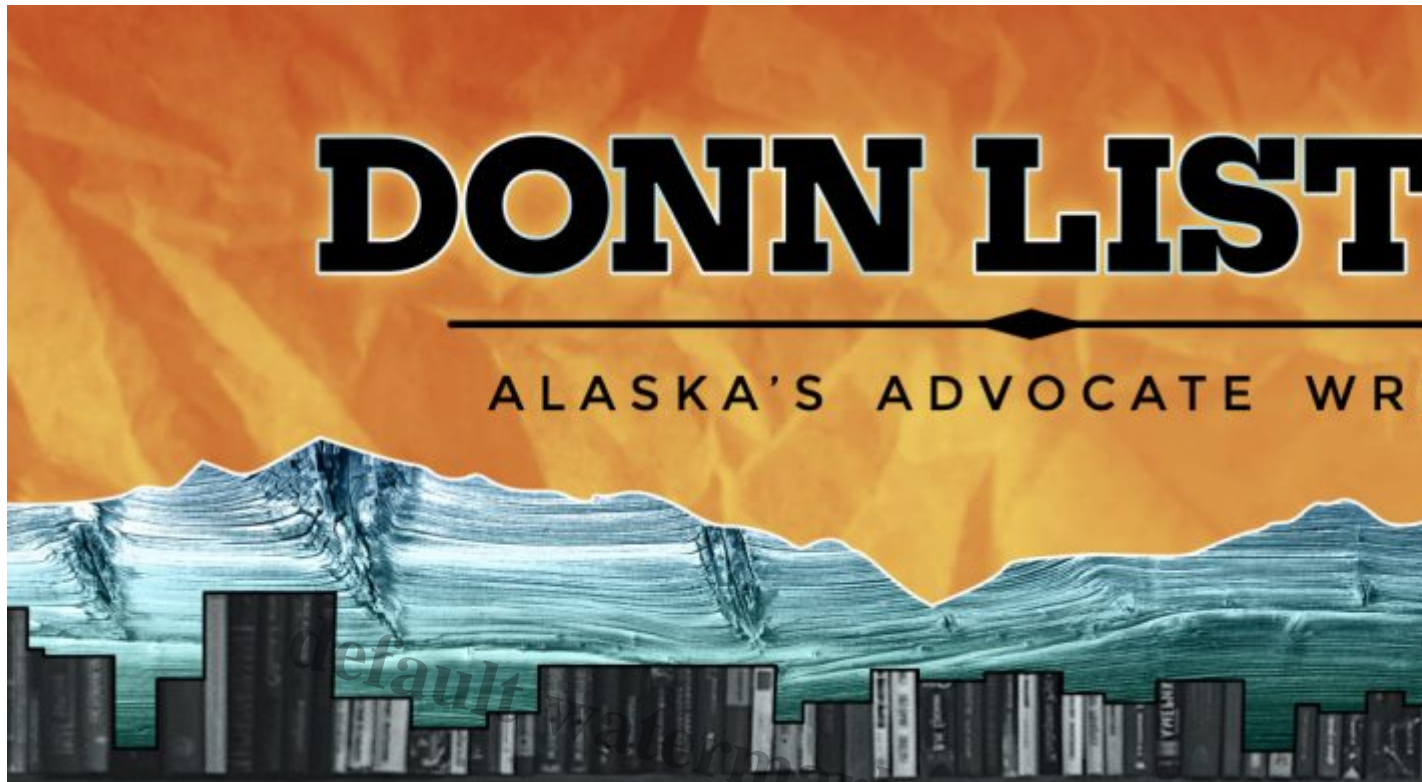
When Congress passed ARTA it limited ARRC's easement to the purpose stated in federal law, construction and operation of a railroad. Congress did not provide for ARRC to act as a general landlord, charging the owners of the land the easement runs across, nor did it provide exclusive use of the land the easement crosses to ARRC that is not needed for operation of the railroad. Unfortunately, Congress has not acted to clarify this.

ARRC's exploitation of the unsolved ambiguity in federal law, and its approach to litigation, has caused the private landowners to incur significant legal costs. Litigation costs on both sides could be stopped quickly if the private landowners and ARRC had taken up my offer to pay for a mediator. Lawsuits are expensive endeavors, and we are talking about individual homeowners, who likely do not have the financial resources to continue in a prolonged lawsuit with the ARRC. Such action is not aligned with my policies and goals that state agencies, even the ARRC which is governed by the Board, must treat private landowners with respect.

[8]Alaska Railroad Corporation vs Flying Crown HOA

<https://www.railroadedalaska.com/wp-content/uploads/2021/01/ARRC-Complaint-v.-Flying-Crown-HOA-1.pdf>





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1. Alaska Economy
2. Alaska Elected Officials
3. Alaska Property Rights

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