

"Section 1813 Comments", submitted by Rogers and Antonia Hardy, Harrison, Idaho

We confine our comments to the Union Pacific Railroad right-of-way easement, granted to the (then) Washington and Idaho Railroad Company in January, 1889, through what was then within the Coeur d' Alene Indian Reservation within the Territory of Idaho.. This grant was for an easement, seventy-five feet wide each side of the center line, with compensation set by the DOI and paid to the Coeur d' Alene Tribe at \$6.00 per acre.

Since this was not a "land grant railroad" and the Tribe was compensated for an easement, the land underneath the easement was subsequently included within the 160 acre homestead plots when the area was opened to homesteading under the Dawes Acts. The homestead patents, based on the "Meander Survey", the accepted survey tool at the time, reflect ownership (in our case) of 8 eight acres of land now submerged (due to the Post Falls Dam) that carries an easement to Washington Water Power (now Avista) to store water there. In short, one of our patents reflects our ownership of acreage down under the railroad easement that continues out into Lake Coeur d' Alene. A neighbor holds 18 acres, etc. The Tribe was paid compensation for the homestead land, in addition to the compensation for the railroad easement. The Tribe was further compensated with a final payment under the Indian Claims Commission payments.

In the early 1990's. Union Pacific applied to abandon the 72-mile spur line that serviced the silver mines and smelter in the Silver Valley area of north Idaho. Due to secret, exclusionary negotiations that, we assert, violated the Congressional intent of NEPA and the 1983 Railbanking legislation, a deal was made among UPRR, DOI, EPA, Idaho, the Coeur d' Alene Tribe for a precedent Superfund "Remedy" rail trail to be created, a 12-foot "cap" within the 150 foot wide swath of contamination left by the mining and other industries within a flood plain, wetlands, rivers and lakes. The Tribe falsely claimed reversionary ownership, and to this day, many issues remain unsettled and our citizen/landowner rights continue to be abused and ignored as the corporate Tribal government tries to assert illegal (Brendale v. Yakima, Montana, etc.) jurisdiction and control over non-tribal land and non-tribal citizens through their "management" of this rail trail that lies on our reversionary land.

The astounding fact is that the Governments continue to work around us and our patents, and it is we, not the Tribe, that are treated as if we do not exist. Complaints, FOIA requests, inquiries have been filed with government agencies for the past decade. We continue to work with EPA Region 10 Public Policy representatives to try and "make right" this stunning abuse of federal laws and we press for more cleanup and human and environmental health testing that was circumvented within this politically motivated sweetheart deal among the governments and UPRR.

Suffice it to say, we are clear that the Coeur d' Alene Tribe has been compensated several times for the railroad easement and for the land under the easement. If, through your investigation and fact-finding you find more claims from this Tribe, we urge that you review carefully any and all documents. We would be glad to provide additional information, should you require it.

Rogers and Antonia Hardy
31169 S. Benewah Road
Harrison, Idaho 83833