

A hard road

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An angler does battle with a king salmon on the Klutina River/Alaska
Department of Fish and Game photo

A long-running dispute over access to a remote lake at the head of a
popular salmon stream 25-miles off the Richardson Highway in a remote

corner of eastern Alaska has tangled confirmation hearings for the 49th state's acting attorney general, Jahna Lindemuth.

Lindemuth's confirmation is on hold because Senate President Pete Kelly, R-Fairbanks, fears a possible giveaway of state rights, Suzanne Downing at MustReadAlaska.com reported Thursday.

Under Lindemuth's direction, the Alaska Department of Law is preparing to settle a lawsuit with the Ahtna Corp., an Alaska Native regional corporation, which could forfeit some state authority over a road corridor from the highway to Klutina Lake south of Glennallen.

The issues involved in the case were well framed in a resolution backed by the Alaska Federation of Natives in 2014.

The state of Alaska, that resolution warned, wants to "open up public access to Ahtna land and the Klutina River for recreational and other uses such as camping, boat launching, day use, and fishing access."

Ahtna wants access restricted to transportation only – no camping, no boat launching, no day use, no fishing access.

Big implications

The state has long fought such restrictions on what are called "Revised Statute 2477" easements or what are more commonly called R.S. 2477 corridors.

These date back to the federal Mining Law of 1866 intended to promote development of the West. R.S. 2477 corridors were intended to protect

future public use of primitive roads and trails.

R.S. 2477 corridors in Alaska, according to previous opinions from the state Departments of Law and Natural Resources are vital to “preserve public access to lands and resources; enable the state to reasonably manage, maintain and develop the lands, resources and opportunities it owns and holds for the public; maintain state sovereignty and preserve state’s rights.”

Scott Ogan, a former state representative and later manager of the public access assertion and defense unit in the Mining, Land and Water Division of the Department of Natural Resources, said any shift in state policy away from protecting R.S. 2477 corridors could have broad implications.

Parts of the Iditarod National Historic Trail run on R.S. 2477 right-of-ways across private and Native lands. The Iditarod Trail Sled Dog Race, which is now rolling along the trail toward Nome, is the state’s most cherished sporting event.

Were the state to agree to new standards which prohibit camping on R.S. 2477 lands, Iditarod mushers could be restricted as to where they stop to camp during the race.

The issue is complicated, Ogan said.

“We’re still a teenage state, and these are things other states settled long ago,” he said.

Ogan was involved in negotiations with Ahtna when he worked for the state. He had nothing but praise for the company, but admitted he was

perplexed by its position on the road to the Klutina Lake. He thought Ahtna's R.S. 2477 opposition self-defeating.

"Ahtna needs access across other people's lands to get to some of their lands," he said.

R.S. 2477 corridors are designed to protect just such access.

A big, undeveloped state

"Alaska, the largest state in the country, actually has fewer public roads than Connecticut, the third smallest state in the country," state attorney Z. Kent Sullivan noted in a 2013 report on R.S. 2477 issues prepared for a "Federal Overreach Summit" in Anchorage.

State failure to protect R.S. 2477 corridors could seriously restrain future development, the report argued. Sullivan was at one-time the state attorney handling the Ahtna case. Ogan noted that Sullivan has since been removed.

Why is not known. Craigmedred.news was unable to reach Sullivan before this was published.

Ahtna, according to MustReadAlaska, wants to downgrade the right-of-way designation from an R.S. 2477 to a federal 17-B easement under the terms of the Alaska Native Claims Settlement Act of 1971. In general, 17-B easements sharply restrict parking, camping and access to fisheries.

There is already a 17-B easement covering what the U.S. Bureau of Land Management calls the "Brenwick Craig Road (Klutina Road)."

“Camping or parking on or within this easement is prohibited,”the BLM warns. “This is an easement through private lands and anyone wishing to park, camp or exit from the 60 foot easement must receive a permit from Ahtna, Inc. in Glennallen.

“There is a one-acre site easement at the end of this road that allows you to park your vehicle and change your mode of transportation. Camping to change your mode of transportation is limited to 24 hours.”

Legal authority

Noting that the “Brenwick/Craig Road” is a statutorily designated roadway in Alaska, Ogan questioned whether the attorney general has the legal authority to negotiate away any state authority over the right-of-way.

And if she does, he added, it would be a bad idea to do so.

“This is probably one of the best cases we have with historical evidence (of use),” he said.

The state contends the road began as part of the “All American” route to the Klondike gold fields in the late 1800s. But Gregory F. Dorington, an attorney for Ahtna, has offered a different view.

He argues that “Leonard Brenwick and Oscar Craig constructed the road to reach Native allotments at the (Klutina) lake” in the 1960s and that public use piggybacked on those improvements.

Dorington believes the corridor is better suited to a 17B designation than to an R.S. 2477. He has a distinctly different view on the history than

Ogan.

Which view the state is now prepared to settle on is unknown.

“We had an all-day mediation at the end of January that went late into the night until 10 at night, and then two weeks more of back and forth between lawyers on the ground on it before I was confident enough that we were close enough for a framework about what would be on the table, before I could put off the litigation,” Lindemuth told the Senate in Juneau as reported by MustRead.

“I hope that folks at the end of the day will look at it as a win-win,” Lindemuth said. In every negotiation there is compromise, she said, and the State will not get everything it asserted, nor will Ahtna, she said. Some question whether the right of way actually exists.

“She would not get into the particulars of the case, since she is negotiating it. But she allowed that she didn’t want to go to litigation because the state could lose, and it would affect other access cases. Settling was her best decision, she said.”

Kelly disagreed. So does Ogan. There are dozens of R.S. 2477 cases hanging out there in Alaska, he said. And win or lose, the state really needs to resolve the parameters of what qualifies for R.S. 2477 designation going forward.

Not to mention that he believes the state will never get a case more clear-cut than the Klutina road.

“The idea we had to settle because we weren’t going to win is absolute balderdash,” he said. “This case would build a foundation for other cases. To back away is a paradigm shift in the direction the state has been going. Millions of dollars have been spent on defending these easements.”

The Alaska Outdoor Council, the state’s largest organization of recreational land users, is charging that the state’s latest move is nothing but political pandering.

“Now AOC has the attention of the Legislature and public it’s time to expose the land-into trust and co-management efforts with Athna Inc. scheme,” AOC director Rod Arno said in a message to AOC members on Thursday. “Jahna Lindemuth makes a good target for where Gov. Walker is allowing (Lt. Gov. Byron) Mallott to take the state.”

Mallott is the one-time head of the Sealaska Native Corporation in Southeast Alaska. He advocated development and job creation while there. He later became a fellow for the First Alaskans institute, and since then his views have shifted toward advocacy for state Native corporations and tribal entities as states within the state.

He is credited with a major role in a Walker transition-team reporting calling for “Alaska tribes ‘as sovereign nations they are’ (to) negotiate and partner with the state of Alaska on an officially recognized, permanent government-to-government basis.”

The Klutina road is wrapped up in these issues. Lessening state authority over the Klutina corridor would give Ahtna’s approximately 1,700 shareholders more control over future land use in a big chunk of eastern

Alaska. Maximizing state control would give the public, including most Alaska Natives, greater access to public lands in the same area.

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