

**From:** [John F. Bennett](#)  
**To:** [John F. Bennett](#)  
**Subject:** Re: Klutina Lake Road Opinion  
**Date:** Friday, July 19, 2002 10:01:42 AM

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----- Original Message -----

From: John F. Bennett  
To: Ralph D Swarthout  
Cc: MARTIN SHURR ; SIGVALD J STRANDBERG ; George A Levasseur ; James H Little JR ; David T Bloom  
Sent: Friday, July 19, 2002 9:48 AM  
Subject: Klutina Lake Road Opinion

Ralph, at long last we have received the AGO advice on the status of our ROW along the Klutina Lake road (aka Brenwick-Craig road & Valdez to Copper Center trail). In summary:

What are the allowable uses of the ROW?: "The historical uses of the Klutina Lake road include vehicular and pedestrian travel, rest stops, parking for recreational uses of the Klutina River and overnight camping. The law authorizes the reasonable use of the right of way for these purposes."

What authority does Ahtna have over the management of the road?: "Ahtna has no right to interfere with members of the public who use the road consistently with its historic uses. Specifically, Ahtna has no legal authority to regulate the highway by requiring the purchase of permits, the payment of tolls, or by prohibiting historic uses of the road by corporate fiat."

Is a court judgement required to establish the validity of the Klutina Lake road RS2477 ROW?: No. "R.S. 2477 was a self-executing congressional offer of a right-of-way that could be accepted by construction, by public user or some positive act of appropriate public authorities....Neither R.S. 2477 nor case law requires a public authority to obtain a judgement to perfect an R.S. 2477 right-of-way."

Was the RS2477 right of way superseded or supplanted by the ANCSA 17(b) easement?: No. 17(b) easements were "subject to valid existing rights". ANCSA 17(b)(2) provides that "Any valid existing right recognized by this chapter shall continue to have whatever right of access as is now provided for under existing law and this subsection shall not operate in any way to diminish or limit such right of access."

In conclusion the AGO recommends that given the ongoing controversy, that litigation be initiated in state court to confirm the extent of DOT&PF's authority before construction begins on any proposed road improvements.

I have attached a scanned copy of the Klutina Road letter of advice. Note that it is a confidential memo and was prepared in anticipation of future litigation. As Ahtna has already filed a trespass suit against a private individual, there is a possibility that DOT will become involved at some point. Please limit distribution of the memo within DOT. If it is necessary to respond to Ahtna or others on this issue, generally we can paraphrase our the general conclusions of the memo. If you have any questions regarding this, please contact Paul Lyle.

Ralph, I'm not certain whether any action on our part is required at this time. Generally when we have received questions from the public on this issue, our responses have been consistent with the conclusions reached in the AG's memo. Technically, there are still a couple of illegal Ahtan encroachments in the ROW (fee collection station and sign). But, given the nature of this road, enforcement of these encroachments are not yet high on our list of priorities. We are however, better prepared to respond should Ahtna ever again attempt to block the road. JohnB