

# MEMORANDUM

**State of Alaska**  
**Department of Transportation & Public Facilities**  
**Northern Region Design & Engineering Services**

**TO:** Paul Lyle  
Assistant Attorney General  
Transportation Section

**DATE:** June 19, 2001

**FILE NO:**  
**TELEPHONE NO:** x5423  
**FAX NO:**

**FROM:** John F. Bennett  
Chief, Right of Way  
Northern Region

**SUBJECT:** Klutina Lake Road  
Allowable Public Use

On 4/17/01, you joined myself, Ralph Swarthout, Jerry Rafson, Jim Little and Judy Chapman in a discussion regarding the Klutina Lake Road (aka Brenwick-Craig road) and the validity of an RS-2477 right of way claim. On 4/19/01 you responded that based upon your review, "It is fairly clear that we have an RS 2477 right-of-way for the road as of 1898 or 1899."

Since your response, Ralph and I had met with representatives from Ahtna and Princess Hotels to discuss their unpermitted blockage and relocation of the Klutina Lake road. We believe we are on our way to resolving the issues with Princess as they are now going through the formal vacation and replat process with DNR. Ahtna on the other had refuses to acknowledge the RS-2477 right of way and claims that the only existing ROW for the road is an ANCSA 17(b) easement. While it might take a quiet title action to resolve that difference of opinion, another issue came up in our discussions with DNR.

DNR had commented that the scope of use of an RS-2477 right of way was somewhat limited. This comment concerned us as it resembled comments we had received from Ahtna in the past regarding allowable uses of a PLO highway easement. Ahtna had suggested that the purpose of the PLO highway easement was for passage from point "A" to point "B" and that travelers really had no business stopping and getting out of their vehicles except in emergency situations. This of course precluded all uses we have come to take for granted such as parking, waysides, fishing, overnight camping and other recreational use. I recollect hearing in the past from AAG's that the scope of a highway right of way was fairly broad. The only relevant Alaska cite that I am aware of is the Golden Valley Electric v. Fisher case (658 P.2d 127 Alaska 1983) regarding the use of an RS-2477 section line easement for the construction of a sub-station. This case argued that communications and power utilities were allowable incidental uses of the highway right of way as they were just adaptations of traditional highway uses such as freight wagons and messenger riders. If a customary and traditional use of a highway right of way included overnight camping/rest stops, fishing and picnicking then I would think that those activities would still be allowed.

The comments by DNR regarding the limited scope of an RS-2477 right of way were based upon conversations between DNR staff and DNR AAG Rob Nauhiem. I was told that Rob had not expressed any of his views in writing. You may wish to contact him to determine the basis of his views.

We are requesting a letter of advice that will explain the extent or limitations on the public's use of the Klutina Lake road RS-2477 right of way.

The fact that DNR's policy on management of RS-2477 rights of way differs from DOT's perspective may not be unreasonable given the different management roles of the departments.

***Sec. 19.30.400. Identification and acceptance of rights-of-way.***

- (a) The state claims, occupies, and possesses each right-of-way granted under former 43 U.S.C. 932 that was accepted either by the state or the territory of Alaska or by public users. A right-of-way acquired under former 43 U.S.C. 932 is available for use by the public under regulations adopted by the Department of Natural Resources unless the right-of-way has been transferred by the Department of Natural Resources to the Department of Transportation and Public Facilities in which case the right-of-way is available for use by the public under regulations adopted by the Department of Transportation and Public Facilities.*

***11 AAC 51.100 MANAGEMENT OF RS 2477 RIGHTS-OF-WAY.***

- (a) The commissioner has management authority over the use of any RS 2477 right-of-way that is not on the Alaska highway system.*

The Klutina Lake road is listed on the Alaska Highway system and therefore its management is under the jurisdiction of DOT.

I have attached the August 2000 DNR Fact sheet regarding RS 2477 Rights-of-Way. Note that under the question "What are the rules for using RS 2477 rights-of-way?" they state that when the allowable use is in doubt, "each land owner should be consulted before crossing their property." It is this suggestion that the landowner may dictate what the allowable use will be that concerns me.

I believe that your initial research into the Klutina Lake road ROW validity was charged to the Right of Way overhead account. Please continue to use the same charge number for this task.