



# United States Department of the Interior

BUREAU OF LAND MANAGEMENT  
ALASKA STATE OFFICE  
222 W. 7th Avenue, #13  
ANCHORAGE, ALASKA 99513-7599

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(932)

NOV 21 2002

Mr. Gregory A. Miller  
Birch, Horton, Bittner and Cherot  
1127 West Seventh Avenue  
Anchorage, Alaska 99501-3399

Dear Mr. Miller:

This letter is in response to your inquiry of November 15, 2002, concerning the civil lawsuit, Ahtna, Inc. v. Hughes, et al., involving use of a section 17(b) easement reserved to the United States.

A Sec. 17(b) access easement for the Klutina River Road is reserved to the United States in conveyances issued to Kluti-Kaah Corporation and Ahtna, Incorporated. The Section 17(b) easement is only reserved on lands conveyed to these corporations and not on or across the bed of the Klutina River. The two Alaska Native Claims Settlement Act corporations subsequently merged as Ahtna, Inc.

The section 17(b) easement is identified as EIN 11 C3, C5, D1, D9, L in interim conveyance (IC) number 346 and patents 50-80-0108 and 50-83-0055 issued to Kluti-Kaah Corporation. The Sec. 17(b) easement is identified as EIN 38 C3, C5, D1, D9, L in IC number 442 and patent 50-2001-0492 issued to Ahtna, Inc. The U.S. rights are subject to any valid rights the State of Alaska may have under R.S 2477. (See Alaska Department of Transportation, 88 IBLA 106 [1985]).

The Klutina River Road Sec. 17(b) easement is reserved as an easement sixty (60) feet in width for an existing road from the Copper Center area in Sec. 12, T. 2 N., R. 1 W., Copper River Meridian, southwesterly to site EIN 10a C5, on the Klutina River near Klutina Lake. The uses allowed on the road are travel by foot, dogsleds, animals, snowmobiles, two- and three-wheel vehicles, small and large all-terrain vehicles (ATV's), track vehicles, four-wheel drive vehicles, automobiles, and trucks.

These conveyances further state that all section 17(b) easements are subject to applicable federal, state, or municipal corporation regulation. The conveyance documents also state that any uses, which are not specifically listed<sup>1</sup>, are prohibited.

<sup>1</sup> The United States has no legal standing to take actions against unauthorized use unless that use is unreasonably disrupting or preventing the reserved purposes of the easement. (See Memorandum to the State Director, BLM, from attorney, Office of the Regional Solicitor, March 17, 1980, "Trespass Enforcement Authority of ANCSA Reserved Easements".)

The federal regulations, which govern Sec. 17(b) easements, are found in 43 C.F.R. 2650.4-7. The primary purpose of Sec. 17(b) access easements is for the public to reach publicly owned lands and major waterways. Publicly owned lands include all federal, state, or municipal corporation lands and interests in Alaska including submerged lands under navigable waters defined by the Submerged Lands Act (43 U.S.C. 1301). The Bureau of Land Management (BLM) has administratively determined that the Klutina River is navigable and title to the bed of the river is owned by the State of Alaska. The portion of Klutina River from the east side of the airstrip, E1N 10 C5, westerly to Klutina Lake is also considered a major waterway by the BLM.

The Klutina River Road Sec. 17(b) easement is reserved for public access to major waterways and publicly owned lands. The Sec. 17(b) easement abuts the Klutina River, publicly owned land, at several locations prior to the terminus of the road easement at site easement E1N 10a C5. The public has the right to access the Klutina River at those points where the Sec. 17(b) easement abuts the State owned lands or at site easement E1N 10a C5.

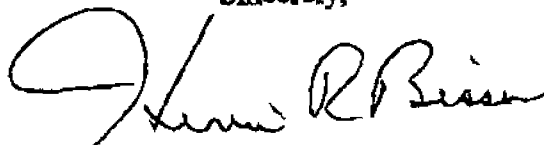
The Klutina River Road Sec. 17(b) easement is reserved for public access. The Hughes, as commercial users of the easement, are considered members of the public and are not prohibited from using the rights reserved to the United States.

Use of the Klutina River Road Sec. 17(b) easement for berry picking and fishing wasn't reserved to the United States. (See 43 C.F.R. 2650.4-7(a)[7]). Ahtna, Inc., as the landowner, controls uses such as berry picking and fishing on the uplands that they own. The State of Alaska regulates these uses on lands it owns such as the bed of the navigable Klutina River.

In summary, the Hughes, as members of the public, have the right to use the Klutina River Road Sec. 17(b) easement to access the Klutina River and offload boats on the road and launch them into the river at those points where the Sec. 17(b) easement abuts State owned lands or at site easement E1N 10a C5. The Hughes cannot use the Sec. 17(b) easement for berry picking or fishing, as these uses were not reserved to the United States.

Please contact me at (907) 271-5076 or Terry Hassett at (907) 271-3229, if you have further questions.

Sincerely,



Henri R. Bisson  
State Director

4 Enclosures

- 1 - IC's 346 and 442 (24 pp)
- 2 - Patents 50-80-0108, 50-83-0055 and 50-2001-0492 (23 pp)
- 3 - Copy of Alaska Department of Transportation  
88 IBLA 106 (1985) (5 pp)
- 4 - Copy of Trespass Enforcement Authority of ANCSA  
Reserved Easements (4 pp)