

Frequently Asked Questions on Klutina-Gulkana Proposed Settlement

July 17, 2017

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(Find the additional questions and answers starting on page 5)

Overall

Why didn't the state continue to litigate to protect historic public use (camping, parking, etc.) along the Klutina Lake Road?

Litigation can present a lot of uncertainty, regardless of how good your legal arguments may be. In this case, the superior court judge had already issued an order that, even if the State had won the remainder of the case, would have greatly restricted the uses within the right-of-way, with the possibility that there would be no camping and overnight parking allowed along Klutina Lake Road. The State would have had to ultimately appeal the order, which would have been costly and may have resulted in a negative outcome. Not only would this impact this case, but it would have set precedent at the Alaska Supreme Court for any future R.S. 2477 right-of-way in Alaska. By negotiating with Ahtna, the State is able to ensure that it gets its "must haves," while also making some concessions to Ahtna for its "must haves." In the end, the settlement protects public access to prime areas for fishing and does not set legal precedent that is unfavorable for the State in future cases.

What is R.S. 2477?

R.S. 2477 is a portion of the federal Mining Law of 1866 that provides "[t]he right-of-way for the construction of highways over public lands, not reserved for public uses, is hereby granted." R.S. 2477 allowed the public and state or local government to create highways on federal lands by use or an act of acceptance until the law was repealed in 1976.

Is the state creating a new policy toward R.S. 2477s, including making concessions regarding camping and parking?

No. This proposed settlement only deals with the long protracted litigation over the Klutina Lake Road and access to the Gulkana River. For other R.S. 2477s, the State will continue to vigorously assert all of the rights underlying the R.S. 2477 and deal with access issues on a case-by-case basis.

Can the settlement be modified or changed depending on the comments received?

The parties believe they have reached a reasonable settlement that protects public access. The purpose of the public comment period is to get the public's input on the provisions in the settlement and whether there are items that the parties have failed to consider. The parties will review the comments and modify the agreement, if appropriate.

Klutina

Where along the Klutina Lake Road will overnight parking be allowed, and what is the estimated cost per day?

Overnight parking will not be allowed within the right-of-way generally, but there will be areas reasonably close to fishing and boating opportunities where overnight parking is permitted outside of the right-of-way for a reasonable fee as well as a one-acre lot adjacent to the Airstrip site for free. For any area where a fee will be charged, the fee cannot exceed \$28.75 per night for the next 8 years and must remain reasonable after that. Ahtna currently charges \$25 per night for a camping and overnight parking permit; an Ahtna annual permit for camping and overnight parking currently costs \$125. The one-acre lot adjacent to the Airstrip is a federal 17(b) site easement, and the public will continue to be able to camp and park in this area for free for 24 hours.

Can we park and camp along the Klutina Lake Road after an Agreement is signed but before the “no camping” and “no overnight parking” signs go up?

Overnight parking and camping will not be allowed within the right-of-way after the proposed agreement has been finalized, even if the signs have not yet been posted.

Will there be provisions by Ahtna for an annual permit that will allow overnight parking?

Ahtna intends to continue selling annual permits for overnight parking and camping in areas reasonably close to fishing and boating opportunities. Additionally, 24-hour camping will still be permitted for free on the one-acre site adjacent to the Airstrip.

Where will camping be allowed on Ahtna land?

Camping will be allowed at Boys’ Camp (see exhibits A and G) of the proposed agreement) and other areas that provide reasonable fishing and boating access. These areas will generally be near areas where users have camped in the past, although they will now be outside of the right-of-way. Additionally, 24-hour camping will still be permitted for free on the one-acre site adjacent to the Airstrip.

If erosion or a major landslide eliminates the road at a location, and eliminates the possibility that the road could be reconstructed within the boundaries of the proposed new right-of-way, how will the state maintain public access?

The State will work with Ahtna to maintain public access.

What is the financial obligation of the state to maintain the Klutina Lake road?

There is no specific financial obligation contained in the Agreement, but the road remains a state highway.

What does the state envision as the level of maintenance on the Klutina Lake road?

Maintenance will be dependent on the availability of resources and balancing the various maintenance priorities of the Department of Transportation.

Why does the agreement distinguish between boat launching from a trailer and not from a trailer?

Backing a trailer into the water on an undeveloped river bank can cause erosion and other damage to the bank and river. The State and Ahtna want to minimize the areas where such damage occurs so that bank damage can be prevented or reduced. This is also the best way to preserve the existing road and prevent it from eroding. Watercraft that do not require a trailer for launch, like canoes or kayaks, do not present the same level of erosion risk. The distinction between trailered and non-trailered launching is intended to balance public access with the need to protect resources.

Where are the locations where boat launching from a trailer is allowed under the agreement?
See exhibits A, F, and G of the proposed agreement. There will be three trailered boat launch locations spread across the upper portions of the River (Boys' Camp, Airstrip, and 14-Mile), providing access to both the river and lake for a variety of fishing and boating opportunities.

Why does the state need a new 50-foot easement to reach state lands on the north shore of Klutina Lake when the existing 17(b) easement does this?
Agreeing to this easement ensures that the State will have the necessary access to reach these state lands via Klutina Lake Road on a specific suitable route, which was not necessarily the case with the 17(b) easement.

Does the proposed agreement affect the road that goes to Hudson Lake?
The proposed agreement does not affect the road that goes to Hudson Lake.

Do the terms of the proposed agreement apply to the proposed 50-foot-wide easement that continues beyond where the right-of-way reaches Klutina Lake?
Yes. This route will be over Ahtna property and the same terms will apply.

What does "overnight parking" mean? How long can I park?
Whether someone is parking overnight will depend on when they arrive, what they are doing, and how long they stay. People will be expected to use common sense and to use the camping and overnight parking areas that Ahtna will make available outside the right-of-way when they intend to stay overnight. Ahtna will allow overnight parking in areas reasonably close to fishing and boating opportunities to ensure the public still has access to the normal recreational activities in the river. A permit will have to be obtained for a fee. The public will also still have the ability to park and camp for 24 hours for free at the one-acre 17(b) site easement adjacent to the Airstrip.

What are the consequences of parking or camping within the right-of-way and not paying the fee Ahtna charges to park or camp on its property?
If you park overnight or camp in an area where those uses are not allowed, you may be subject to a civil trespass claim or a criminal trespass charge.

Gulkana

Why did the State decide to include Gulkana in the Klutina settlement?

Both areas (Klutina River and Lake and Gulkana River) impact the same user groups and provide access to prime fishing and other recreational areas for many Alaskans. Ahtna has been assisting Gulkana Village Council in trying to resolve the issues surrounding the historic cemetery and townsite of Gulkana Village, and Ahtna's shareholders include Gulkana Village tribal members. In the end, the parties recognized that resolving the public access issue at Gulkana at the same time might turn out to be the best way to for the parties to reach an agreement on all of the issues.

Will there be a charge to park at the proposed Gulkana public parking area?

The State, which will own the launch and parking sites, does not have any current plan to charge for use of the proposed Gulkana public parking area, but that could change in the future.

Will there be a charge to launch boats at the existing Gulkana boat launch site?

The State does not have any current plan to charge for use of the proposed Gulkana boat launch, but that could change in the future.

Will there be any camping area designated at or near the Gulkana River Bridge over the Richardson Highway, on either state or Ahtna land?

Ahtna has agreed to provide at least primitive camping areas, similar to what is currently available near the boat launch, on its property adjacent to the planned new parking lot on Lot 7.

What if Ahtna never constructs or opens a proposed campground near the existing Gulkana boat launch site?

Under the proposed agreement, Ahtna would have a contractual obligation to provide primitive camping areas on its property adjacent to the location of the State's planned new parking lot on Lot 7. If Ahtna does not fulfill that duty, the State may pursue the legal remedies that are provided for in the proposed agreement.

Where will we camp while the State is working on the Lot 7 parking facilities?

The public will be allowed to camp on the current site until the State has completed the Lot 7 parking facilities.

Additional Frequently Asked Questions on Klutina-Gulkana Proposed Settlement

July 27, 2017

Estimated Costs of Survey and Road Extension

What is the estimated cost for the survey of Klutina Lake Road, the Lot 3 Bypass, and the road extension?

Approximately \$300,000. It should be noted that the survey work along Klutina Lake Road likely would have occurred in any scenario where the court agreed that there was a state highway right-of-way.

What is the estimated cost to build the new road extension?

The settlement does not require that the State build a road, but allows for the option in the future. The costs would depend on what type of road or trail is created. An ATV road could cost anywhere from \$25,000 to \$100,000 per mile. A one-lane road would likely cost \$500,000 per mile.

Settlement Terms

What is the purpose of the cash payment of \$25,000?

The settlement agreement has many parts, and everything the State is giving Ahtna under the agreement, including the \$25,000, is provided in return for everything Ahtna is giving the State. The cash payment was a necessary term for Ahtna to sign the agreement. It is not tied to any particular matter, and Ahtna can use the money for whatever it wishes.

Will the existing 17(b) easements (EIN 21 and 11) be vacated by this agreement?

The State will support an Ahtna application to BLM to terminate 17(b) easements EIN 21 and 11 after the conditions in the proposed agreement have been met. Along the existing Klutina Lake Road, Ahtna cannot seek termination of the 17(b) easements until the State has recorded the road surveys. For the undeveloped 17(b) routes past the end of the existing road, Ahtna may not seek to have the undeveloped 17(b) route terminated until the Klutina Lake Road Extension has been constructed.

If the 17(b) easements are vacated, does that mean that the new road extension will become the sole access to state lands north of Klutina Lake?

No. As the public can (and often does) today, they may travel from access points on the existing road to the state lands north of Klutina Lake by:

- *Travelling on state land below the ordinary high water mark of the river or lake*
- *Travelling on Klutina Lake*

Paragraph 3.1 of the proposed agreement specifically ensures access for the public to continue utilizing these routes to state lands along the north shore of Klutina Lake.

Who will maintain and operate the boat launch at Boys' Camp?

The boat launch at Boy's Camp is on Ahtna land and will be operated by Ahtna. Ahtna can charge a reasonable fee for use of the boat launch.

Who will maintain the boat launches at Mile 14 and the Airstrip?

The boat launches at Mile 14 and the Airstrip will be maintained by the State. At this time, the State has no plans to charge a fee.

Can Ahtna charge the public for access to Klutina Lake Road in the future?

No. Klutina Lake Road is a state right-of-way, and Ahtna cannot charge a fee for use of the road. Ahtna can charge fees only for uses of Ahtna land outside of the right-of-way; in this case, camping, overnight parking, and boat launching on Ahtna's private property.

R.S. 2477

Does this agreement vacate the R.S. 2477 right-of-way?

The agreement does not vacate the R.S. 2477 right-of-way. The State's position has always been that a 100-foot-wide highway right-of-way was granted to the State under R.S. 2477 along Klutina Lake Road, while Ahtna's position was that there was no R.S. 2477 right-of-way. The agreement acknowledges the State has a 100-foot-wide highway right-of-way, although it does not say whether it is an R.S. 2477 right-of-way.

Does the State or Ahtna own the right-of-way mentioned in the agreement?

Ahtna owns the underlying land. The State does not own the land but it owns the right-of-way, which gives it a property right to use the land for highway purposes.

How do the uses permitted in the proposed agreement differ from uses generally allowed in an R.S. 2477 right-of-way?

The State's position is that overnight parking and camping are permissible uses within a right-of-way granted under R.S. 2477, subject to the State's control. It is also the State's position that the right-of-way can be used by the public to park, access the river, and drive or hike along the road. Ahtna disagrees and argued that the uses of the state right-of-way, if there even was one, were restricted to ingress and egress. In this case, Judge Guidi agreed with Ahtna and determined that the public can only drive up and down the road—not use it for parking, camping, etc. That order is subject to appeal, so the courts have not yet made a final ruling on the question, but Judge Guidi's ruling creates the possibility that public access to the Klutina River could be severely limited. In the proposed agreement, the State compromised with Ahtna, ensuring river access, but prohibiting overnight parking and camping within the right-of-way. The State continues to hold the position that these activities are permitted within R.S. 2477 rights-of-way and will continue to assert this position in future cases.