



ALASKA FEDERATION OF NATIVES
BOARD OF DIRECTORS
RESOLUTION 14-1—

- TITLE:** A RESOLUTION IN SUPPORT OF AHTNA’S STATE LEGISLATION SENATE BILL 94, “AN ACT VACATING A PORTION OF THE COPPER CENTER-VALDEZ RIGHT-OF-WAY; AND RELATING TO RIGHTS-OF-WAY ACQUIRED UNDER FORMER 43 U.S.C. 932 THAT CROSS LAND OWNED BY AN ALASKA NATIVE CORPORATION.”
- WHEREAS:** Ahtna has been engaged in litigation with the State of Alaska (“State”) over 26-miles of undeveloped road that stretches from the Richardson Highway to the outlet of Klutina Lake, which is often referred to as the “Brenwick-Craig Road;” and
- WHEREAS:** All 26-miles of the Brenwick-Craig Road (“Road”) lies within land conveyed to Ahtna, Inc., in accordance with the Alaska Native Claims Settlement Act (“ANCSA”); and
- WHEREAS:** The Klutina River drainage is an important subsistence use area for Ahtna shareholders and has been used by the Ahtna People for millennia; and
- WHEREAS:** Ahtna recognizes the Road as a 60-foot wide 17(b) public easement reserved by the federal government under ANCSA, limited to point-to-point transportation and emergency stopping; and
- WHEREAS:** The State contends that the Road is part of a much larger 100-foot wide RS 2477 right-of-way (“ROW”) that runs unimpeded from Copper Center to Valdez for a total of approximately 103 miles; and
- WHEREAS:** “RS 2477” is a federal Civil War era mining statute that granted ROWs across unreserved federal lands throughout the United States, including Alaska; and
- WHEREAS:** RS 2477 highways burden the servient estate to a greater extent than a 17(b) easement because they are generally 40 feet wider and the public can use an RS 2477 road for any purpose consistent with a highway, which the State claims includes not only transportation, but also pull outs for rest areas, picnics, camping, and access to adjacent public lands and waters; and

WHEREAS: In October of 2006, portion of the existing Road sloughed off during a flooding event, so in early 2007 Ahtna, the Bureau of Land Management and the State negotiated a re-route of the Road with bypass easements onto Ahtna land and outside of the existing easement, to allow users passage to and from public and private lands; and

WHEREAS: The dispute over the legal status of the 17(b) easement came to a head in 2007 when the State widened several miles of the Road to 100 feet in width, clearing adjacent Ahtna land, cutting trees in the process and removing one of Ahtna's permit fee stations as an "unauthorized encroachment" on its claimed right-of-way; and

WHEREAS: In 2008, Ahtna filed suit against the State to obtain a judgment that there is no RS 2477 ROW; the State filed a claim in response asking the court to declare the existence of the RS 2477 right-of-way; and

WHEREAS: In May 2012 the State Attorney General's Office sent certified letters to 14 private landowners near the confluence of the Klutina River and Klutina Lake stating:

"Ahtna, Inc.'s lawsuit may affect you because Ahtna, Inc. argues that the public does not possess a continuous, permanent, state right-of-way along the roadway from its junction with the New Richardson Highway to Lot 3, U.S. Survey No. 6785."

and the State's letter continued with:

"If Ahtna, Inc. is successful in this litigation, you may ultimately be prevented from reaching your property by way of the Klutina Lake Road or you may be required to pay fees in order to continue to do so."

WHEREAS: Ahtna has never denied the public access to the Road and has no intention of ever doing so; and

WHEREAS: In late 2012, Ahtna and the State engaged in mediation, at which point the State asserted for the first time a claim to 41 spurs and arterials (secondary easements) coming off of the primary transportation corridor, and the State intends for these spurs and arterials 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; and

WHEREAS: Ahtna's experience with the State on the Klutina River is not unique and many of the ANCSA Regional Corporations will be faced with a similar legal battle if the State establishes the existence of an RS 2477 ROW and the related spurs and arterials which would open up private corporation land to general public use; and

WHEREAS: Approximately 529 miles of the State's claimed RS 2477 ROWs throughout the State overlap with existing 17(b) easements on lands owned by ANCSA Regional Corporations; and

WHEREAS: Ahtna has drafted legislation that would not only resolve the Klutina dispute, but would also limit the scope of RS 2477 ROWs across all land owned by ANCs; and

WHEREAS: Ahtna's legislation would address RS 2477 ROWs established on lands conveyed to an ANC under ANCSA by clarifying the following:

- Limiting the scope of use of the ROW to transportation purposes only (*i.e.*, no rest areas, parking lots, overnight camping, or recreation sites);
- Limiting the physical width of the ROW to the established usage of the route, but in no event shall the width exceed 60 feet;
- Limiting the State's authority to maintain, repair and improve the ROW;
- Requiring consultation with the Native Corporation prior to engaging in anything other than routine maintenance or improvement activities;
- Requiring consultation with the Native Corporation prior to realigning damaged segments of the ROW and requiring payment of just compensation to the landowner for any additional acreage burdened by the realigned ROW; and The proposed legislation would reduce the State's RS 2477 ROWs to an interest similar to that of a 17(b) easement which would preserve Native control over its own ANCSA land, and also address the confusion resulting from overlapping RS 2477 ROWs and 17(b) easements; and

WHEREAS: The legislation would also specifically vacate the RS 2477 ROW along the Klutina Lake Road, effectively ending Ahtna's litigation with the State;

NOW THEREFORE BE IT RESOLVED that AFN hereby supports and endorses Ahtna's legislation, SB 94, and commits to working with Ahtna and our membership to secure passage of the bill.

