

**ALASKA STATE LEGISLATURE**  
**SENATE JUDICIARY STANDING COMMITTEE**

April 12, 2017

1:31 p.m.

**MEMBERS PRESENT**

Senator John Coghill, Chair  
Senator Mia Costello  
Senator Pete Kelly  
Senator Bill Wielechowski  
Senator Mike Dunleavy

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

SENATE BILL NO. 58

"An Act relating to the Department of Law public advocacy function to participate in matters that come before the Federal Energy Regulatory Commission."

- MOVED SB 58 OUT OF COMMITTEE

CONFIRMATION HEARING

Attorney General of the State of Alaska  
Jahna Lindemuth

CONFIRMATION ADVANCED

**PREVIOUS COMMITTEE ACTION**

BILL: SB 58

SHORT TITLE: DEPT OF LAW: ADVOCACY BEFORE FERC

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

02/13/17	(S)	READ THE FIRST TIME - REFERRALS
02/13/17	(S)	RES, JUD, FIN
03/20/17	(S)	RES AT 3:30 PM BUTROVICH 205
03/20/17	(S)	Heard & Held
03/20/17	(S)	MINUTE(RES)
03/22/17	(S)	RES AT 3:30 PM BUTROVICH 205

03/22/17 (S) Moved SB 58 Out of Committee  
03/22/17 (S) MINUTE(RES)  
03/23/17 (S) RES RPT 2DP 4NR 1AM  
03/23/17 (S) DP: GIESSEL, COGHILL  
03/23/17 (S) NR: HUGHES, VON IMHOF, STEDMAN, MEYER  
03/23/17 (S) AM: WIELECHOWSKI  
04/10/17 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
04/10/17 (S) Heard & Held  
04/10/17 (S) MINUTE(JUD)  
04/12/17 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

#### **WITNESS REGISTER**

CLYDE "ED" SNIFFEN, Assistant Attorney General  
Regulatory Affairs and Public Advocacy (RAPA)  
Department of Law (DOL)  
Anchorage, Alaska

**POSITION STATEMENT:** Answered questions related to SB 58 on behalf of the administration.

JAHNA LINDEMUTH, Designee  
Alaska Attorney General  
Department of Law (DOL)  
Anchorage, Alaska

**POSITION STATEMENT:** Testified as Alaska Attorney General Designee.

NIESJE STEINKRUGER, representing herself  
Fairbanks, Alaska

**POSITION STATEMENT:** Testified in support of the confirmation of Jahna Lindemuth to the position of Alaska Attorney General.

ALAN LEMASTER, representing himself  
Copper River Salmon Charters  
Gakona, Alaska

**POSITION STATEMENT:** Testified during the confirmation hearing of Jahna Lindemuth to the position of Alaska Attorney General.

MARY BISHOP, representing herself  
Fairbanks, Alaska

**POSITION STATEMENT:** Testified in opposition to the confirmation of Jahna Lindemuth as Alaska Attorney General.

SCOTT OGAN, representing himself  
Palmer, Alaska

**POSITION STATEMENT:** Testified in opposition to the confirmation of Jahna Lindemuth as Alaska Attorney General.

MICHAEL GERAGHTY, representing himself  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of the confirmation of Jahna Lindemuth as Alaska Attorney General.

PATTY BARBER, representing herself  
Palmer, Alaska

**POSITION STATEMENT:** Stated opposition to the confirmation of Jahna Lindemuth as Alaska Attorney General.

KENNY BARBER, representing himself  
Palmer, Alaska

**POSITION STATEMENT:** Stated that he does not support the confirmation of Jahna Lindemuth as Alaska Attorney General

CHUCK DERRICK, representing himself  
Fairbanks, Alaska

**POSITION STATEMENT:** Testified in opposition to the confirmation of Jahna Lindemuth as Alaska Attorney General.

CRAIG COMPEAU, representing himself  
Fairbanks, Alaska

**POSITION STATEMENT:** During the confirmation hearing for Attorney General Lindemuth, he asked why she does not believe the R.S. 2477 case against Ahtna is worth defending.

DOUG VINCENT-LANG, representing himself  
Anchorage, Alaska

**POSITION STATEMENT:** During the confirmation hearing for Attorney General Lindemuth, he asked the committee to get her on the record committing to reach out to all potentially affected users on all R.S. 2477 cases going forward.

GARY STEVENS, representing himself  
Chugiak, Alaska

**POSITION STATEMENT:** Stated that he opposes the confirmation of Attorney General Lindemuth.

RICK ALLEN, Director  
Office of Public Advocacy  
Anchorage, Alaska

**POSITION STATEMENT:** Stated support for the confirmation of Attorney General Lindemuth.

CAREY MILLS, representing himself

**POSITION STATEMENT:** During the confirmation hearing for Jahna Lindemuth as Alaska Attorney General, testified that the court issued a decision recently in his longstanding R.S. 2477 case in which the state chose not to intervene.

CHRISTINE WILLIAMS, representing herself  
Seattle, Washington

**POSITION STATEMENT:** Testified in strong support of the confirmation of Jahna Lindemuth as Alaska Attorney General.

MIKE COONS, representing himself  
Palmer, Alaska

**POSITION STATEMENT:** Stated that he strongly opposes Jahna Lindemuth for Alaska Attorney General.

MIKE TINKER  
Alaska Wildlife Conservation Association (AWCA)  
Fairbanks, Alaska

**POSITION STATEMENT:** During the confirmation hearing for Attorney General Lindemuth, testified that the public does not understand the decision to settle and fears losing ground on access issues to resources along the Klutina Lake Road.

KAREN GORDON, representing herself  
Fairbanks, Alaska

**POSITION STATEMENT:** Testified in opposition to the confirmation of Jahna Lindemuth as Alaska Attorney General.

LARRY SMITH, representing himself  
Homer, Alaska

**POSITION STATEMENT:** Testified in support of the confirmation of Jahna Lindemuth as Alaska Attorney General.

ROD ARNO, Executive Director  
Alaska Outdoor Council  
Juneau, Alaska

**POSITION STATEMENT:** Testified in opposition to the confirmation of Jahna Lindemuth as Alaska Attorney General.

LAWRENCE ARMOUR, Mayor of Klawock;  
Tribal Administrator for Klawock Cooperative Association  
Klawock, Alaska

**POSITION STATEMENT:** Testified in support of the confirmation of Jahna Lindemuth as Alaska Attorney General.

AL BARRETTE, representing himself  
Fairbanks, Alaska

**POSITION STATEMENT:** Testified in opposition to the confirmation of Jahna Lindemuth as Alaska Attorney General.

GREGORY RAZO, representing himself  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of the confirmation of Jahna Lindemuth as Alaska Attorney General.

NICOLE BORRROMEO, Executive Vice President and General Counsel  
Alaska Federation of Natives  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of the confirmation of Jahna Lindemuth as Alaska Attorney General.

RICHARD BISHOP, representing himself  
Fairbanks, Alaska

**POSITION STATEMENT:** Testified in opposition to the confirmation of Jahna Lindemuth as Alaska Attorney General.

SUE ZAJAC, representing herself  
Eagle River, Alaska

**POSITION STATEMENT:** During the confirmation hearing of Jahna Lindemuth as Alaska Attorney General, cautioned against making any arbitrary decisions about access along the Klutina Lake Road before getting to know the area.

#### **ACTION NARRATIVE**

[1:31:58 PM](#)

**CHAIR JOHN COGHILL** called the Senate Judiciary Standing Committee meeting to order at 1:31 p.m. Present at the call to order were Senators Dunleavy, Costello, Wielechowski, and Chair Coghill. Senator Kelly arrived during introductions.

#### **SB 58-DEPT OF LAW: ADVOCACY BEFORE FERC**

[1:33:44 PM](#)

**CHAIR COGHILL** announced the consideration of SB 58 and noted the proposed amendment.

**CLYDE "ED" SNIFFEN**, Assistant Attorney General, Regulatory Affairs and Public Advocacy (RAPA), Department of Law (DOL), Anchorage, Alaska, said he presented SB 58 on Monday and he didn't have anything to add.

[1:34:11 PM](#)

**SENATOR WIELECHOWSKI** moved Amendment 1, labeled 30-GS1875\A.1.

CHAIR COGHILL objected for an explanation.

**AMENDMENT 1**

OFFERED IN THE SENATE  
TO: SB 58

BY SENATOR WIELECHOWSKI

Page 1, line 2, following "**Commission**":

Insert "**; and relating to the regulatory cost charge**"

Page 1, following line 3:

Insert a new bill section to read:

"\* **Section 1.** AS 42.08.380(a) is amended to read:

(a) Each year, a person operating an in-state natural gas pipeline under this chapter shall pay to the commission a regulatory cost charge if the pipeline for which the charge is assessed is subject to this chapter and the commission has taken action on the pipeline or certificate under this chapter during the prior fiscal year. The amount of the regulatory cost charge may not exceed the sum of the following percentages of gross revenue derived from operations in the state:

(1) 0.7 percent to fund the operations of the commission; and

(2) **0.23** [0.17] percent to fund operations of the public advocacy function under AS 42.04.070(c) and AS 44.23.020(e) in the Department of Law."

Page 1, line 4:

Delete "**Section 1**"

Insert "**Sec. 2**"

SENATOR WIELECHOWSKI explained that the amendment increases to .23 percent the regulatory cost charge (RCC) funding for the Department of Law RAPA Section. That is the amount the department indicated it would need to fully fund the RAPA budget without relying on the general fund.

CHAIR COGHILL asked Mr. Sniffen if he had seen the amendment.

MR. SNIFFEN answered no, but that is the rough number Department of Law has presented. It would result in another \$700,000 in the regulatory cost charge that the Department of Law would be able to look to for funding.

SENATOR WIELECHOWSKI asked him to confirm that this would result in a savings to the general fund.

MR. SNIFFEN said that is correct, but the amendment should probably be in AS 42.06, the pipeline RCC statute, rather than AS 42.08.

[1:37:08 PM](#)

CHAIR COGHILL asked what Title 42 addresses.

[1:37:25 PM](#)

SENATOR WIELECHOWSKI said he received the amendment from legislative legal late last night and this is where the drafter said the amendment should be placed.

[1:37:35 PM](#)

CHAIR COGHILL maintained his objection to Amendment 1.

[1:38:14 PM](#)

SENATOR WIELECHOWSKI said he would withdraw Amendment 1 and give everyone an opportunity to think it over.

SENATOR WIELECHOWSKI withdrew Amendment 1.

[1:38:26 PM](#)

SENATOR COSTELLO moved to report SB 58, version A, from committee with individual recommendations and attached fiscal note(s).

CHAIR COGHILL announced that without objection SB 58 is reported from the Senate Judiciary Standing Committee.

[1:39:00 PM](#)

At ease

### **CONFIRMATION HEARING**

[1:40:46 PM](#)

CHAIR COGHILL reconvened the meeting and announced the next order of business would be to continue the confirmation hearing for the Governor's appointee to the position of Alaska Attorney

General. He summarized that the primary discussion has been the issue of [the R.S. 2477 right-of-way access from Copper Center to Klutina Lake]. He thanked Attorney General Designee Lindemuth for providing his office with extensive information on the topic and meeting with him on three separate occasions.

He said the purpose today is to give Attorney General Designee Lindemuth an opportunity to talk about the discussions over the past several weeks, take public testimony, and allow her to respond to the testimony.

[1:42:12 PM](#)

JAHNA LINDEMUTH, Alaska Attorney General Designee, Department of Law (DOL), said she would go over her background and talk about the case before there is public testimony. She advised that she is a lifelong Alaskan, other than leaving for undergraduate and law school. She takes her citizenship, responsibilities as an Alaskan, and duties as attorney general very seriously. "I am honored to serve as Alaska's Attorney General."

She noted that at the last hearing she talked about the many hats the attorney general wears depending on the particular issue. Depending on the circumstance, the governor can be the client, or an independent board or commission can be the client. When there is a lawsuit involved, as in the Klutina case, there is a statute that gives the attorney general the sole authority to run that case and settle that case if he/she deems it appropriate. "Again, I'm not going to pursue a case or recommend settlement in a case unless I think it's in the best interest of all Alaskans. That's the primary client that I serve - the whole state of Alaska."

She directed attention to the Alaska Department of Law List of Federal Issues and Conflicts that she distributed earlier. It summarizes the status of the federal issues the state is dealing with. "So we're pressing full steam ahead on all of the different cases we have against the federal government." She noted that many of the cases have updates since the recent change from the Obama Administration to the Trump Administration.

[1:44:55 PM](#)

ATTORNEY GENERAL LINDEMUTH clarified that the Klutina case is against the private party Ahtna, not the federal government. This case involves access rights on 24 miles of road from Copper Center to Klutina Lake. The state has been in right-of-way litigation with Ahtna for over eight years. With the trial

pending, the parties again looked at whether some interests could align making settlement possible. Speaking as someone who has 20 years of commercial litigation experience, she said this is a normal part of any case that is moving forward. Being able to evaluate cases and decide what is in the best interest of the state is expertise she brings to this position.

Over the last eight years there have been two previous attempts to settle with Ahtna. At that time the parties were too far apart; Ahtna was not willing to give on the critical issue of a 100 foot right-of-way under R.S. 2477. "That is the basic right that we insisted be a part of any settlement." This is the difference between now and the failed settlement attempts in past years. While there is no settlement at this point, DOL insisted on including key terms in the settlement before they released the trial date. "When and if we get to a place where I believe that we are getting what we want out of the settlement, and that we're ensuring access for future Alaskans and that's in the best interest of all Alaska, that's a settlement that I'll be recommending that we move forward on and sign." She would confer with the governor and other three commissioners involved to ensure that they agree with her judgement. "But at the end of the day it's my call on whether we move forward with that settlement."

ATTORNEY GENERAL LINDEMUTH explained that before the settlement document is signed, it will be put out for at least 30 days of public comment and testimony. The comments from the public and the legislature will be evaluated, and a determination will be made on whether additional negotiations need to occur and whether the state should move forward. "So we won't have a signed deal until we have completely evaluated the input we have received from the public."

[1:49:29 PM](#)

She explained that the two issues at play in the case are the existence of an easement and the use of the easement. The state first has to prove - based on historical use before 1976 - that an R.S. 2477 actually exists. This fact and time-intensive exercise poses some risk, but the Department of Law believes this case is a winner and is asserting a 100-foot right-of-way in any settlement. The second outstanding issue is what use can be made of that R.S. 2477. It is not to the state's advantage that Judge Guidi ruled several years ago that access is limited to driving from point A to point B along the right-of-way but no stopping, fishing, or camping, which the state has and continues to assert should be included.

She underscored that the state has already lost that issue in this case. Even if the R.S. 2477 is proved in trial, the state would still need to appeal Judge Guidi's order to the Alaska Supreme Court. What is important to recognize, she said, is that Ahtna is a private party and private rights are involved so there is real risk of losing that order in this case. She said she would like to see the court make a strong, precedence-setting case about state's rights sometime in the future, but here the intent is to avoid a precedent-setting event.

ATTORNEY GENERAL LINDEMUTH highlighted that Governor Walker issued a press release to clarify what key terms the state is insisting be included in the settlement. This is a 100-foot state-controlled R.S. 2477. It is not a federally controlled 17(b) easement. She expressed confidence that once Alaskans review the settlement documents their fears will be allayed and they will agree that the settlement is in the best interest of Alaska.

[1:53:55 PM](#)

SENATOR KELLY agreed with the chair that the Attorney General and her office has been very responsive since the first hearing. He said it is frustrating, but he understands that it wouldn't be wise or appropriate to ask probing questions about this case because it is active.

[1:55:11 PM](#)

CHAIR COGHILL agreed with Senator Kelly and predicted that the public testimony would sound cautionary.

[1:55:52 PM](#)

SENATOR WIELECHOWSKI summarized that the dispute centers on what can be done along the R.S. 2477 right-of-way.

ATTORNEY GENERAL LINDEMUTH clarified that there are two disputes. One is whether the R.S. 2477 even exists and the second is what can be done along the right-of-way.

SENATOR WIELECHOWSKI observed that the state argued that this area was historically used for boat launching, camping, and day-use sites, whereas Ahtna asserted that access is limited to simple ingress and egress along the route.

ATTORNEY GENERAL LINDEMUTH agreed; the state argued that the historical use was part of the R.S. 2477, but Ahtna argued that as a legal matter under R.S. 2477 it is ingress/egress.

CHAIR COGHILL added that what makes a strong case for the state is that historical use is embedded in the R.S. 2477.

SENATOR WIELECHOWSKI summarized that R.S. 2477 sets the easements as of 1976. Judge [Guidi] made a finding that R.S. 2477 only grants the right to pass over the land; it does not and cannot convey the right to develop the land for recreational and commercial purposes.

ATTORNEY GENERAL LINDEMUTH said the state absolutely disagrees with that finding.

SENATOR WIELECHOWSKI pointed out that the state is stuck with that judge's order; if the case went to the Alaska Supreme Court the state could get a bad decision that would have statewide impact.

ATTORNEY GENERAL LINDEMUTH agreed; if the Alaska Supreme Court ruled against the state that would impact this R.S. 2477 and others. She added, "If we do reach that settlement we're actually securing those very access rights that we are insisting on here." She said her goal is to make sure that the current users experience very little disruption.

CHAIR COGHILL observed that Ahtna wants to be respected as a property owner; an R.S. 2477 does that but the question is how.

[2:00:21 PM](#)

SENATOR WIELECHOWSKI summarized that Ahtna is asking for a simple 60-foot-wide, 24-mile-long [17(b)] easement from point A to point B, whereas the state is arguing that the easement should be 100 feet wide and provide opportunities for recreational day use.

ATTORNEY GENERAL LINDEMUTH agreed with the summary.

SENATOR WIELECHOWSKI asked her to convey what Governor Walker publicly stated must be included in a settlement.

ATTORNEY GENERAL LINDEMUTH responded that the most important tenet is a 100-foot right-of-way maintained by the state. There will be boat launches, fishing opportunities, and camping along the right-of-way. The distinction is that Ahtna will be able to charge a reasonable fee for camping on Ahtna land. Certain campers are leaving trash on their land, and the state is trying to balance the rights of both parties.

SENATOR WIELECHOWSKI asked her perspective of the facts in this case.

ATTORNEY GENERAL LINDEMUTH said the state has very good facts on the historical existence of the R.S. 2477. The main risk in the case is if Judge Guidi's order is upheld on appeal. That would be a problem for all the R.S. 2477s in the state.

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SENATOR WIELECHOWSKI asked if the appeals court would hear the case de novo or if Judge Guidi's interpretation would be given deference.

CHAIR COGHILL asked if settling this case would set precedence.

ATTORNEY GENERAL LINDEMUTH clarified: 1) that the settlement will not create precedence for any other case, and 2) that the state intends to pursue all its R.S. 2477 rights statewide. "This is not a new change in policy or how the state is handling R.S. 2477s." Addressing Senator Wielechowski's question, she said Judge Guidi's order raises a legal issue that would be resolved de novo; but that lower court order and the legal analysis would be very important if the state were to lose the case and appeal it to the Alaska Supreme Court. A future R.S. 2477 case would be a better case to take up on appeal because there would be a different superior court judge who would make his/her own legal analysis of the case; they would not follow Judge Guidi.

SENATOR KELLY asked why the Klutina case would not be precedent setting.

ATTORNEY GENERAL LINDEMUTH explained that reaching a settlement means that the parties have evaluated the risks in the case and agreed to resolve their dispute in a particular way. The parties are not conceding their rights; what the state is doing here does not mean it would do the same thing for anybody else.

[2:05:10 PM](#)

SENATOR COSTELLO asked her to talk about the significance of this being an R.S. 2477 across private property and if the state would have taken a different approach if it were across federal land.

ATTORNEY GENERAL LINDEMUTH said the court approaches the case very differently when it is a state versus federal issue. When

there is private property involved, the court is more likely to weigh in favor of the property owner versus the state. The state has an R.S. 2477 case pending in the Chicken area against the federal government, which the state hopes will result in good court orders and create good precedent.

SENATOR WIELECHOWSKI asked if her final decision would be unilateral or based on the opinions of the Governor and three commissioners.

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ATTORNEY GENERAL LINDEMUTH said that in this particular case she will only recommend settlement if she believes it is in the best interest of the state. "When I recommend settlement, I'll then talk it through with the other three commissioners - Department of Transportation, Department of Natural Resources, Fish and Game - and the Governor. And I want to make sure we're all on the same page and that we all agree that it's in the best interest of Alaskans."

[2:08:57 PM](#)

CHAIR COGHILL opened public testimony.

[2:09:05 PM](#)

NIESJE STEINKRUGER, representing herself, Fairbanks, Alaska, reviewed her professional career as an attorney and current position on the superior court bench. She said she met Attorney General Lindemuth in her professional capacity on two occasions and was struck by her professionalism and integrity. She comes from a civil law background, but has paid attention to the criminal division and learned the issues related to [Senate Bill 91]. "This is not the usual AG in Alaska. Alaska is fortunate to have a competent lawyer with supervising litigation experience running the Department of Law."

[2:14:32 PM](#)

ALAN LEMASTER, representing himself, Copper River Salmon Charters, Gakona, Alaska, said he has been an outfitter who has operated on the Klutina off-and-on for over 35 years. He spoke of the importance of maintaining access to the Klutina River for boating and fishing as well as camping along the right-of-way. He explained that he launches his rafts into the Klutina River at no cost where the river encroaches on the right-of-way and he pays Ahtna's fee whenever he uses their land. He stated support for Ahtna's right to charge a reasonable fee for the use of their land and the 100 foot right-of-way under R.S. 2477.

[2:17:52 PM](#)

MARY BISHOP, representing herself, Fairbanks, Alaska, stated that she is not confident that Attorney General Lindemuth supports the state's commitment that all people are entitled to equal rights and opportunities. She cited three actions that she views as contrary to the Alaska Constitution: 1) she participated in developing the Memorandum of Agreement between the Interior Department and an Ahtna Intertribal Commission; 2) she supports settlement of the R.S. 2477 Klutina matter; and 3) she dropped the state's case opposing tribes placing lands in trust.

[2:21:18 PM](#)

SCOTT OGAN, representing himself, Palmer, Alaska, testified in opposition to the confirmation of Jahna Lindemuth as Alaska Attorney General. He reviewed his legislative career and work with the Department of Natural Resources including the years he managed the various disciplines that supported the Klutina litigation. He opined that the Klutina case has the best historical use of any R.S. 2477 case in the state, and that settling is not in the best interest of the state. He described Judge Guidi's ruling as unfortunate and posited that Attorney General Lindemuth should be very aggressive in appealing it.

[2:25:12 PM](#)

MICHAEL GERAGHTY, representing himself, Anchorage, Alaska, reviewed his 39 year legal career in Alaska including his two-year service as attorney general during the Parnell Administration. He described Attorney General Lindemuth as a skillful attorney and wholeheartedly endorsed her appointment. "The state is fortunate to have an attorney of her caliber in that position." Regarding the controversy over the Klutina settlement, he said, "Any attorney general worth his/her salt will always explore opportunities to resolve cases at the appropriate time based upon the calculus of weighing the risks involved and whether there is a compromise available that can accommodate the critical needs of the people of Alaska." The little he knows about the Klutina case leads him to believe it is a good settlement that achieves the fundamental goal of access for Alaskans. The larger point, he said, is that it would be a tragic mistake to make a single settlement the basis for challenging Jahna Lindemuth's confirmation as attorney general.

[2:31:01 PM](#)

PATTY BARBER, representing herself, Palmer, Alaska, stated opposition to the confirmation of Jahna Lindemuth as Alaska Attorney General. She mentioned unequal representation and

asked, "If this case against Ahtna has been going on for over eight years, shouldn't someone have found out that the road is an R.S. 2477 by now?"

[2:31:48 PM](#)

KENNY BARBER, representing himself, Palmer, Alaska, stated that he does not support the confirmation of Jahna Lindemuth as Alaska Attorney General because she doesn't appear to believe in the Alaska Constitution. He maintained that the state is losing a lot of land and rights because of the Klutina litigation.

[2:32:49 PM](#)

CHUCK DERRICK, representing himself, Fairbanks, Alaska, stated that Attorney General Lindemuth has ignored the rights of Alaskans by agreeing to settle with Ahtna and removing R.S. 2477 designation in favor of a 100-foot easement where Ahtna controls access and activities that were guaranteed under R.S. 2477. She has placed the wishes of one special interest above the rights of all Alaskans, he asserted. He expressed concern that the settlement could affect dipnetters who use another state easement between O'Brien and Haley Creek to access the Copper River.

[2:34:49 PM](#)

CRAIG COMPEAU, representing himself, Fairbanks, Alaska, asked Attorney General Lindemuth why she wants to pursue an R.S. 2477 case against the federal government like the one in the Chicken area to set precedent, but doesn't believe the R.S. 2477 case against Ahtna is worth defending after spending eight years in litigation and close to \$1 million of taxpayer money.

[2:36:14 PM](#)

DOUG VINCENT-LANG, representing himself, Anchorage, Alaska, stated that the role of the Alaska Attorney General is to represent the interests of all Alaskans. Attorney General Lindemuth has the responsibility to reach out to all potentially affected Alaskans on issues of importance, but she never asked potential users for advice, concerns or possible remedies in the Klutina case before entering into private settlement talks. He asked the committee to get Attorney General Lindemuth on the record committing to reach out to all potentially affected users on all cases going forward. He said he is encouraged that she has begun to reach out to individuals, but would like in on record what the bar is for walking away from the settlement talks.

[2:39:14 PM](#)

GARY STEVENS, representing himself, Chugiak, Alaska, stated that he opposes the confirmation of Attorney General Lindemuth and agrees with the testimony of Mr. Bishop and Mr. Ogan.

[2:40:12 PM](#)

RICK ALLEN, Director, Office of Public Advocacy, Anchorage, Alaska, stated support for the confirmation of Attorney General Lindemuth. He knows her in a professional capacity and considers her a friend. He has worked with many lawyers during his 20-year legal career and she is one of the smartest and most hard working lawyers he has ever had the pleasure of working with. She is also a skilled manager. She is deeply committed to serving the state and Alaskans are lucky to have an attorney general of her caliber.

[2:41:31 PM](#)

CAREY MILLS, representing himself, stated that he is a litigant in the 40-mile Station Eagle Trail R.S. 2477 case that the state chose not to intervene in. He related that the district court recently ruled that the Alaska statutes that were approved on August 3, 1988 recognized the 40-Mile Station Eagle Trail. The court said that as long as the state recognizes the trail, the court would accept it until there is proof otherwise. He read an excerpt from the order. Customary usage is a key element. He said he doesn't know enough about Attorney General Lindemuth to make a determination, but he does understand the need to resolve litigation. "If she is resolving the litigation by settlement that protects those rights that the R.S. 2477 ensures us, I would applaud her."

[2:44:51 PM](#)

CHRISTINE WILLIAMS, representing herself, Seattle, Washington, stated that she was born and raised in Alaska and knows Attorney General Lindemuth in both a professional and personal capacity. She is a strong advocate for her clients and she knows how to make informed decisions. She is held in high regard by other attorneys and is highly skilled. Alaskans should be honored to have her as attorney general, she said.

[2:47:58 PM](#)

MIKE COONS, representing himself, Palmer, Alaska, stated that he strongly opposes Jahna Lindemuth for Attorney General. He disagreed with her closed door negotiations on R.S. 2477 access litigation; questioned her ability to successfully litigate the R.S. 2477 matter concerning access to Chicken trails through federal lands; noted that she is a graduate of the University of California, Berkeley that has "a long history of extreme liberal

thought and action"; questioned whether she and the Governor would side with "eco-wackos" in his remaining term since they did not join other states in filing lawsuits against the Obama administration on carbon tax; and stated support for a constitutional amendment that supports an elected attorney general.

[2:51:41 PM](#)

MIKE TINKER, Alaska Wildlife Conservation Association (AWCA), Fairbanks, Alaska, advised that his subdivision in the Fairbanks North Star Borough accesses over private property via an R.S. 2477. He said AWCA has a 40-year interest in access issues and believes that settlement of the Ahtna case is controversial because the public does not understand the decision and fears losing ground on access issues to resources along the Klutina Lake Road. He highlighted the importance of Attorney General Lindemuth's statement that the settlement is only on the Klutina Lake Road. Keep that in mind, he said, because the testimony opposing the settlement may be overwhelming.

[2:56:07 PM](#)

KAREN GORDON, representing herself, Fairbanks, Alaska, maintained that instead of asserting state sovereignty on the established R.S. 2477 right-of-way on the Klutina State Road, Attorney General Lindemuth appears to have resorted to negotiations behind closed doors and is relinquishing the state's rights to appease Ahtna Corporation. "Negotiating away a state asset we already own is unconscionable. I fear the state would soon be giving away more R.S. 2477 trails across the state if we cavalierly not take this one to the mat." She emphasized that the AG's office has not been open about this case and it hasn't helped in the eyes of Alaskans. Some look at it as a betrayal of Alaskans and the Alaska Constitution that she negotiated a memorandum of agreement (MOA) between the Ahtna Intertribal Resource Commission and the U.S. Department of Interior. She concluded, "I ask that she not be confirmed as Alaska's Attorney General."

[2:59:05 PM](#)

LARRY SMITH, representing himself, Homer, Alaska, stated that he has been working on resource issues in Alaska since statehood and he sympathizes with Alaskan's concerns about access to resources, homes, and livelihoods. He expects Attorney General Lindemuth to help with these things. She is a woman of independent judgement who has firm recommendations from many respected legal voices and that makes a large impression. "I would ask you to send her confirmation right along."

[3:00:28 PM](#)

ROD ARNO, Executive Director, Alaska Outdoor Council, Juneau, Alaska, said AOC's hope was that 20 years from now Alaskans would still be talking about Attorney General Lindemuth's pit-bull defense of state sovereignty and the common use clause of the Alaska Constitution. However, those hopes have been dashed by events since she took office. He said the AOC supports the sovereign right of the state to manage and allocate public resources, but state sovereignty is being eroded bit by bit. He pointed out that the last AG quit when the third floor agenda differed from the policies the legislature set, but AOC cannot say that Attorney General Lindemuth would follow the same path. He cautioned that if you see the erosion of state sovereignty and the Klutina Lake Road as a pattern, then do not confirm Jahna Lindemuth as Alaska's Attorney General.

[3:03:33 PM](#)

LAWRENCE ARMOUR, Mayor of Klawock and Tribal Administrator for Klawock Cooperative Association, Klawock, Alaska, opined that every once in a while, an attorney comes along who is universally recognized as the best in jurisprudence and is extremely qualified as an administrator. Attorney General Lindemuth personifies those attributes. She is a strong and ethical litigator, an inspiring leader, and is able to manage a large staff. She will serve the state with distinction.

[3:05:49 PM](#)

AL BARRETTE, representing himself, Fairbanks, Alaska, said he is testifying in opposition to the confirmation of Jahna Lindemuth as Alaska Attorney General. He said the settlement has no precedence, but it will ensure that the next R.S. 2477 right-of-way to be compromised will be the Chitna dipnetting trail. He stressed that the trail into the Klutina area is well-developed and documented and the state should move forward through the court case. "I think it's one of the better court cases I've seen for R.S. 2477 rights-of-way."

[3:07:25 PM](#)

GREGORY RAZO, representing himself, Anchorage, Alaska, said he has practiced law in Alaska for 33 years and knows Attorney General Lindemuth to be a highly qualified attorney. Speaking from his perspective as a member of the Alaska Criminal Justice Commission, he said that during her tenure on the commission she has been a strong advocate for public safety and victims' rights, and has always asserted the Department of Law's concerns over the commission's review of Alaska criminal law and

policies. "She's done a good job and, in my opinion, she should be confirmed as Attorney General."

3:08:25 PM

NICOLE BORRROMEO, Executive Vice President and General Counsel, Alaska Federation of Natives, Anchorage, Alaska, stated that AFN has submitted a letter in support of the confirmation of Jahna Lindemuth as Alaska Attorney General, so her comments would be brief. She said she wanted to echo the testimony of former Attorney General Geraghty in full. "She is a very strong candidate for the position and fully capable of leading Alaska in the right direction."

3:09:15 PM

RICHARD BISHOP, representing himself, Fairbanks, Alaska, stated that he has been involved with Alaska's natural resource issues for 40 years as a biologist and a public interest advocate and he is mad that Attorney General Lindemuth seeks consensus on issues at the expense of Alaskans. He said he is fed up with: fumbling federal overreach; insidious internal special interest imprecations [sic]; and the erosion of Alaskans' equal protection under the state constitution. He concluded, "Alaska needs a champion - not an architect of cloying consensus regarding such issues as: fee to trust tribal lands; the Interior Department/Ahtna MOA; and R.S. 2477 issues."

3:12:08 PM

SUE ZAJAC, representing herself, Eagle River, Alaska, stated that she has enjoyed the Klutina Lake Road in all four seasons since she moved to Alaska 47 years ago. It is the only four-season road along the Richardson Highway. Speaking as a 33-year resident of the Copper River Valley, she cautioned against making any arbitrary decisions before getting to know the area. "Please go out there. If you were limited to a 100-foot right-of-way, you wouldn't like it," she said.

CHAIR COGHILL asked the individuals who had not testified to submit their written comments. He asked Attorney General Lindemuth to address some of the concerns that were articulated.

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ATTORNEY GENERAL LINDEMUTH clarified that the state is not a part of the Ahtna MOU with the U.S. Department of Interior that several testifiers mentioned. Rather, she and Bruce Dale with the Alaska Department of Fish and Game attended a meeting to ask those parties to make certain changes to their agreement to make it clear that the state's management of state fish and game

resources statewide was not impinged. "We filed a whole lawsuit over this so I'm not going to let some agreement impact those rights."

Regarding the Klutina Lake Road case, she agreed with Mr. Ogan and other callers that there is strong historical use of that road. That type of evidence is what the state would use to prove a 100-foot state-maintained R.S. 2477. Establishing that in the settlement eliminates any risk of the judge thinking otherwise. "We are actually securing those rights into the future if we are able to reach that in a settlement."

Regarding the number of R.S. 2477s on federal land versus private land, she said a 2014 memo in the material she provided today references that the state has 20,000 linear miles of R.S. 2477 right-of-way. DNR estimated at the time that 50 percent was private land, which implies that 50 percent was federal land.

She said she is happy to hear that there is a recent decision in Mr. Mills' R.S. 2477 case that the prior administration declined to intervene in. "We will look for that and look for what order was entered in his case to see if it's relevant here."

ATTORNEY GENERAL LINDEMUTH said the public is rightly concerned about the Klutina River Road case and potential settlement. It is an important state right. However, there has been confusion and misunderstanding about the final terms because the final terms agreement has not been put out for public comment.

The comment period will be meaningful and we will consider the comments we receive from the public. I think some of the comments we got today were very helpful and I expect that the next comment period will allow us to better negotiate and have a better final agreement if we can reach one. My goal here is to act in the best interest of all Alaskans in pursuing this settlement. And my goal is to preserve access, not to give it away.

She asked the people who disagree with her in this case, to judge her entire record. This is one case amongst hundreds she has been involved with as Attorney General. She concluded saying:

The last eight months has been a true pleasure and I've really enjoyed my time as Alaska's Attorney General. I think it's an honor and a privilege to

serve this state and I look forward to continuing my service if confirmed. I ask that I be confirmed as Attorney General.

CHAIR COGHILL thanked Attorney General Lindemuth and emphasized the interest in preserving the right of access in Alaska. He asked anyone who didn't have an opportunity to testify to submit their comments in writing and he would post it to BASIS.

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Off the record

[3:22:10 PM](#)

CHAIR COGHILL reconvened meeting and stated that in accordance with AS 39.05.080, the Senate Judiciary Standing Committee reviewed the following and recommends the confirmations be forwarded to a joint session for consideration: Alaska Attorney General - Jahna Lindemuth and Commissioner of the Department of Public Safety - Walt Monegan.

He reminded members that signing the reports regarding appointments to boards and commissions in no way reflects individual members' approval or disapproval of the appointees, and that the nominations are merely forwarded to the full legislature for confirmation or rejection.

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There being no further business to come before the committee, Chair Coghill adjourned the Senate Judiciary Standing Committee meeting at 3:22 p.m.