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## McKenna, Goldmark battle over trust lands court case

**Craig Welch**

Washington's Commissioner of Public Lands Peter Goldmark and Attorney General Rob McKenna are going to war over who gets to decide how to fight legal battles over state trust lands.

Goldmark, a Democrat, wants McKenna, a Republican, to appeal a Superior Court decision that gave an Okanogan PUD the right to condemn state land in order to build a new power transmission line across pristine sections of the sun-drenched Methow Valley. McKenna on Wednesday declined to appeal.

Goldmark still wants to fight and his office is now considering representing the agency pro se.

The state Democratic Party, eager to wound McKenna, an expected GOP contender in the next governor's race, immediately charged that the attorney general was trying to curry favor with the state's public utility district association at the expense of another state agency. McKenna responded with a written statement, calling the charge "wrong, and frankly, insulting."

McKenna said his office followed all the normal procedures -- trying to gauge whether legal errors were made by the trial court judge and considering the likelihood of an appeal's success. Of course, neither the AG nor Goldmark would release a four-page later that detailed McKenna's rationale for declining to appeal. Both claimed it was protected under attorney-client privilege.

Hugh Spitzer, an affiliate professor at the University of Washington School of Law, said it's not entirely clear who has the right or the power to have the last word on when to end such a legal battle. "They're both independently elected representatives," he said. "There is no easy answer."

Goldmark spokesman Aaron Toso said McKenna's duty to represent his client -- the Department of Natural Resources -- means the AG should be required to keep fighting if that's Goldmark's wish.

McKenna spokesman Dan Sytman disagreed. "Usually, when we're working with clients and we explain the legal reasoning, they defer to our expertise," Sytman said. "Generally they'll defer to us on legal matters, just as we defer to them on policy matters."

Goldmark has until Thursday to decide how to proceed. That's the deadline for filing an appeal.