

## Interior Alaska man's mining access fight uncovers bigger problem

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Dec 11, 2010 | 7979 views | 46  | 19  |  | 

FAIRBANKS — Carey Mills said there's not much doubt that a trail leads to his mining claim 11 miles south of Eagle — a pickup can make it down the rutted path along Teddys Fork Creek to his 880-acre gold prospect. The state of Alaska agrees, and it has charted the Fortymile Station-Eagle Trail as one of more than 600 right-of-way trails in the state.

That view isn't shared by the federal government and some of Mills' neighbors. For the past three years, the Bureau of Land Management has denied Mills access to the 40-mile path, which passes through

property belonging to the federal government, two Native corporations and a neighboring mining claim.

They say using the unrecognized trail amounts to trespassing.

"At this point, there's not an agreement that these things exist," BLM District Manager Bob Schneider said.

### Road leads to the courtroom

With no agreement in sight, Mills filed a lawsuit in U.S. District Court on Nov. 30 to force the federal government to recognize the trail as a public right-of-way and allow him to use it to move equipment to his mine site.

It's the latest chapter in a long-running fight stemming from to Revised Statute 2477, a defunct 1873 federal law that allowed anyone to create a public right-of-way across unreserved federal land. The law was repealed by Congress in 1976, but it grandfathered rights-of-way established before then.

In the early 1990s, then-Gov. Walter Hickel launched a program to document old trails in Alaska to prove they qualified as R.S. 2477 routes. The Legislature followed with a law that claimed 657 routes in the state, including the Fortymile Station-Eagle Trail.

The federal government doesn't recognize many of those routes and others in Western states. Federal land managers contend that a court ruling is necessary to transfer the title of the so-called right-of-way trails to state ownership.

Mills, a union heavy equipment operator who lives in Fairbanks, said he has exhausted administrative claims to use the path and has no choice but to proceed with a lawsuit.

In addition to the federal government, Mills' lawsuit targets five officials in the Department of the Interior, including Secretary Ken Salazar; Doyon Ltd.; Hungwitchin Corp. in Eagle; and Scott Wood, who has a neighboring federal mining claim. Wood has denied Mills' request to move heavy equipment through his claim site.

"This is a public issue," Mills said. "The state should be asserting our rights, and they haven't been."

### Hoping for a class-action lawsuit

Mills filed the lawsuit on his own behalf, and he admits that his legal expertise and personal resources are limited. But he's hoping his effort evolves into a class-action lawsuit with partners that could include the state, mining groups and outdoor organizations.

That approach has attracted a few allies. Rep. Don Young, R-Alaska, sent a letter last week urging the state to intervene in the lawsuit. Rick Schikora, chairman of the state's Citizens' Advisory Commission on Federal Areas, has made the same request. Mills has also asked for support from Sen. Mark Begich, D-Alaska, and Sen. Lisa Murkowski, R-Alaska.

Mills also has allies in the Alaska Department of Natural Resources. Natural Resource Manager Scott Ogan, a former Mat-Su legislator, hopes the state will join the lawsuit. Without right-of-way access to its R.S. 2477 trails, he said, economic development opportunities will be lost.

Ogan said there have been two previous legal attempts by the state to gain quiet titles to the trails Alaska is claiming. Both ended with settlements, which means they don't translate into legal precedents for other areas.

"We've had enough of the state shut down already, and we've got to fight for everything we've got left," Ogan said.

Bill McAllister, a spokesman for the Alaska Department of Law, said in an e-mail that the state isn't currently suing the federal government over R.S. 2477 rights, but wouldn't rule out doing so in the future.

"It's a case-by-case situation, dependent upon the specifics," McAllister said.

It isn't Mills' first run-in with the federal government. He and his father spent more than a year in federal prison after violating the Clean Water Act in 1986 in a controversial Florida case. The pair filled an oceanfront lot designated as wetlands after receiving permission from Florida officials but not the federal government.

Mills said that experience made him cautious to make sure he takes the proper legal steps in his Alaska mining fight.

"The one thing I learned in the previous federal cases is I want to be seen in the best light," he said.

### **Disgruntled neighbors**

Mills' move, however, puzzles Doyon officials, who say he's made no effort to resolve any problems he has with the Fairbanks-based Native corporation. His mining claim, located about three miles from the Taylor Highway, doesn't even require access through Doyon land.

Jim Mery, the vice president of lands and natural resources at Doyon Ltd., said the Native corporation has a history of working out mining-access property issues. He said "dozens, if not hundreds" of federal mining claims exist on Doyon land, and not one has evolved into a lawsuit during the past three decades.

Mery said Mills never approached Doyon officials about finding a resolution to his complaints or applied for an access permit with the corporation. Mery said Doyon looks at access issues on a case-by-case basis and doesn't have blanket opposition to the state's recognition of R.S. 2477 trails.

"It's something we've worked out in the past," Mery said. "So to hear, out of the blue, we're being sued — I was a little taken aback."

Mills agreed that he hasn't had much contact with Doyon officials, but said he got a much different response during his limited dealings with the corporation. He said he was told that R.S. 2477 trails don't exist as far as Doyon is concerned.

Mills said he included Doyon in the suit because it owns property along other portions of the disputed trail, and he wanted to make sure every landowner affected by the right-of-way issue was included.

Neither the neighboring property owner, Wood, who lives in Washington state, nor an official with the Hungwitchin Corp. could be reached to comment on the lawsuit.

BLM Manager Schneider, who is among the defendants in the lawsuit, declined to comment specifically on Mills' litigation. But he said there's an established method for gaining title to an R.S. 2477 route, and it's not a secret to anyone. He said a court ruling is needed to transfer the title, and BLM isn't able to make such a move without that step.

"There needs to be a legal determination that the route exists," Schneider said. "There's a legal process to go through, and everyone knows what it is."