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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ALASKA**

8 Carey Mills)

9 Plaintiffs,)

10 Vs.)

11 UNITED STATES OF AMERICA,
12 KEN SALZAR, in his capacity as Secretary
13 of the Department of Interior, et al.)

14 Defendants,)

) Case No.: 4:10-CV-00033-RRB
)
)
) PLAINTIFF'S MEMORADUM OF POINTS
) AND AUTHORITIES IN OPPOSITION TO
) THE MOTION TO DISMISS/MOTION TO
) SHOW CAUSE OF SCOTT WOOD
) (Docket 160)

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21 **PLANTIFFS' MEMORANDUM**
22 **OF POINT AND AUTHORITIES IN OPPOSITION TO**
23 **THE MOTION TO DISMISS/MOTION TO SHOW CAUSE OF**
24 **SCOTT WOOD**

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REQUEST FOR ORAL ARGUMENT

1 The issues and legal posturing in this case are precedent setting regarding case law for the
2 State of Alaska. The Plaintiff believes that oral argument would facilitate in the expedient and
3 economical administration of Justice. Therefore, I honorable request that this Court allow for
4 oral argument in a hearing of this cases.

INTRODUCTION

5
6 The Plaintiff in this case has amassed volumes of documents proving the validity of
7 the Fortymile Station-Eagle Trail RS 2477 rights-of-way. The evidence submitted thus far is
8 but a fraction anticipated to be offered if this case proceeds to trial. The Plaintiff has created
9 a Timeline of the events and facts believed to be relevant and has attached the Timeline
10 hereto as (Plaintiff's Memorandum Exhibit 05) and made a part hereof by reference as a
11 means for this Court to comprehend and assimilate these facts and how they relate to the
12 allegations in the Plaintiff's Third Amended Complaint and the facts relevant to this case.

13 The Defendant, Scott Wood is the current owner of federal unpatented mining claim in
14 Section 4,5,7,8 and 9, T3S., R32 E., Fairbanks Meridian.

15 Some of the mining claims have been transferred to Doyon Corp., the subsurface owners
16 and some have been reserved by the BLM in the transfer of land to the State of Alaska. These
17 claims have been mined by at least 7 different owners over the last 81 years. Approximately 30
18 of the 81 years of mining have been mechanically done using Caterpillar D-8 bulldozers.
19 Currently, Scott Wood is not mining any of the claims that access is requested across and
20 reclamation work has been accepted by the BLM on all the claims that the Plaintiff seeks access
21 across.

22 Melody Smyth, Mineral Law Specialist, of the BLM verified that the chain of title was
23 unbroken and made the determination that the mining claims qualify as "Pre-1955 Claims. She
24 also created a summary about the claims in which she stated "Mr. Wood's claims have not been
25 proven to be valid, but they have also not been proven to be invalid". She stated: "I further
26 concluded chain of title to be unbroken." Which in fact are in error; the Bureau of Land
Management has made Official determinations regarding the Defendant, Scott Wood's mining

1 claims based in her findings. Most of the federal unpatented mining claims were located after
2 1955.

3 The dispute between the Plaintiff and the Defendant regarding these unpatented mining
4 claims stems from the findings of Melody Smyth and the “exclusive right of possession” the
5 Bureau of Land Management attributed to the Defendant Scott Wood’s unpatented mining
6 claims. The Defendant Scott Wood has used this determination as a legal bar and denied the
7 Plaintiff access to his State mining claims invoking the “exclusive right of possession” and using
8 the Bureau of Land Management as the enforcer of the erroneous “exclusive right of possession”

9 STATEMENT

10 Within this memorandum the Plaintiff will respond to those legal positions and
11 arguments that are unique to Defendant Scott Wood’s Motion to Dismiss/Motion to Show Cause.

12 The Plaintiff adopts as part of this memorandum the PLANITIFF’S MEMORANDUM
13 OF POINT AND AUTHORITIES IN OPPOSITION TO THE MOTION TO DISMISS OF THE
14 UNITED STATES (Docket 163) and PLANITIFF’S MEMORANDUM OF POINT AND
15 AUTHORITIES IN OPPOSITION TO DOYON LIMITED’S MEMORANDUM AND
16 MOTION TO DISMISS with respect to Count One and Count Three of the Plaintiff’s Third
17 Amended Complaint and any parallel legal positions and arguments of non-federal Defendant
18 Scott Wood has made.

19 The federal unpatented mining claims are being attached in the Plaintiff’s Third
20 Amended Complaint under three separate and distinct Claims for Relief.¹

21 The First Claim for Relief is predicated upon the long standing key principle derived
22 from the customary mining law that applied to mining on public lands from 1848 to the late
23 1860s, and which has remained at the heart of American mining law ever since. The primary
24 fundamental and foundational principle is: self-initiated free access to mineral resources on the
25 public domain. This genesis of “free access” in the history of the mining laws makes it clear that
26 Congress intended to give the miners free access to minerals in the public lands.

1 On October 21, 2010, the Plaintiff through the Administrative Procedures made a formal
access complaint to the Bureau of Land Management. (See Third Amended Complaint Plaintiffs
Exhibit 043) And on November 12, 2010 the Bureau of Land Management denied the Plaintiff’s
formal access complaint. See Third Amended Complaint Plaintiffs Exhibit 044)
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3 **Federal Statutes:**

4 **30 USC § 49b - Mining laws relating to placer claims extended to Alaska;**

5 **30 USC § 35 - Placer claims; entry and proceedings for patent under provisions**
6 **applicable to vein or lode claims;**

7 **30 USC § 41 – Intersecting or Crossing Veins;**

8 **“...the subsequent location shall have the right-of-way through the space of intersection**
9 **for the purposes of the convenient working of the mine” this right of way is not an exception, but**
10 **a reservation, which may be inferred from any wording indicating an intention to create an**
11 **easement. It takes nothing from the body of the grant of the first locator, but compels the first**
12 **locator to use or hold his grant or claim subject to a right or privilege to the junior or overlapping**
13 **claimant of reaching the other end of his claim by passage through the senior location.” referred**
14 **to in 30 USC § 41 – Intersecting or Crossing Veins.**

15 **The Second Claim for Relief is established on the legal authority 30U.S.C Chapter 2**
16 **Section 26. The Defendant Scott Wood’s federal unpatented mining claims are unlawfully**
17 **located because they were located on reserved public land where the Fortymile Station-Eagle**
18 **Trail (RST 1594) is located, which was accepted by public use, also reserved for public use and**
19 **documented in the Presidential Executive Order dated May 24, 1905 (See Plaintiffs Exhibit 017).**
20 **These facts being true, then the federal unpatented mining claims are in fact void and illegitimate**
21 **since the mining claims were located on federal land reserved for public use, reserved for the**
22 **United States Army and ultimately the State of Alaska. See Timeline**
23 **(Plaintiff’s Memorandum Exhibit 05).**

24 **The Third Claim for Relief is confirmed on the legal authority 30U.S.C Chapter 2 Section**
25 **26 which states: “...The locators of all mining locations made on any mineral vein, lode, or**
26 **ledge, situated on the public domain, their heirs and assigns, where no adverse claim existed on**
27 **the 10th day of May 1872 so long as they comply with the laws of the United States, and with**
28 **State, territorial, and local regulations not in conflict with the laws of the United States**

1 governing their possessory title...". The Defendant Scott Wood's federal unpatented mining
2 claims are in fact invalid due to the fact that they do not comply with the law:

- 3 ➤ Since discovery of a valuable mineral deposit and nothing else gives a location life. Its
4 existence as a mining claim commences with the date of discovery.
- 5 ➤ Any mining claims previously supported by a valid discovery; may be "lost" due to the
6 exhaustion of the deposit.
- 7 ➤ The absence of mining production over an extended period of time may in and of itself,
8 establish a prima facie case of the invalidity of a mining claim.

9 Since the mining laws are not a subject the Court readily addresses; a succinct synopsis
10 of how a mining claim births into existence would be beneficial.

11 "From the enactment of the general mining laws in the 19th century until 1976, those
12 who sought to make their living by locating and developing minerals on federal lands
13 were virtually unconstrained by the fetters of federal control. The general mining laws,
14 30 U. S. C. § 22 et seq., still in effect today, allow United States citizens to go onto
15 unappropriated, **unreserved public land** to prospect for and develop certain minerals.
16 "Discovery" of a mineral deposit, followed by the minimal procedures required to
17 formally "locate" the deposit, gives an individual the right of exclusive possession of the
18 land for mining purposes, 30 U. S. C. § 26;" *United States v. Locke*, 471 US 84 -
19 *Supreme Court 1985* (Emphasis Added)

20 "A mining claim on public lands is a possessory interest in land that is "mineral in
21 character" and as respects which discovery "within the limits of the claim" has been
22 made. *Cameron v. United States*, 252 U. S. 450, 456. **The discovery must be of such a
23 character that "a person of ordinary prudence would be justified in the further
24 expenditure of his labor and means, with a reasonable prospect of success, in
25 developing a valuable mine."** *Castle v. Womble*, 19 L. D. 455, 457; *Chrisman v. Miller*,
26 197 U. S. 313, 322; *Cameron v. United States*, supra, p. 459. A locator who does not
carry his claim to patent does not lose his mineral claim, though he does take the risk that
his claim will no longer support the issuance of a patent. *United States v. Houston*, 66 L.
D. 161, 165. It must be shown before a patent issues that at the time of the application for
patent "the claim is valuable for minerals," **worked-out claims not qualifying**. *United
States v. Logomarcini*, 60 L. D. 371, 373." *Best v. Humboldt Placer Mining Co.*, 371 US
334 - *Supreme Court 1963* (Emphasis Added)

"A mining location which has not gone to patent is of no higher quality and no more
immune from attack and investigation than are unpatented claims under the homestead
and kindred laws. If valid, it gives to the claimant certain exclusive possessory rights, and
so do homestead and desert claims. **But no right arises from an invalid claim of any
kind. All must conform to the law under which they are initiated; otherwise they
work an unlawful private appropriation in derogation of the rights of the public.**

1 "Of course, the land department has no power to strike down any claim arbitrarily, but so
2 long as the legal title remains in the Government it does have power, after proper notice
3 and upon adequate hearing, to determine whether the claim is valid and, if it be found
4 invalid, to declare it null and void." 252 U. S. 450, 459-460" *Best v. Humboldt Placer*
5 *Mining Co., 371 US 334 - Supreme Court 1963* (Emphasis Added)

6 "**To make the claim valid**, or to invest the locator with a right to the possession, it was
7 essential that the land be mineral in character and that there be an adequate mineral
8 discovery within the limits of the claim as located, Rev. Stats., § 2320; *Cole v. Ralph*,
9 ante, 286;" *Cameron v. United States, 252 US 450 - Supreme Court 1920* (Emphasis
10 Added)

11 "While the two kinds of location — **lode and placer** — differ in some respects,[1a] a
12 **discovery within the limits of the claim is equally essential to both**. But to sustain a
13 lode location the discovery must be of a vein or lode of rock in place bearing valuable
14 mineral (§ 2320), and to sustain a placer location it must be of some other form of
15 valuable mineral deposit (§ 2329), one such being scattered particles of gold found in the
16 softer covering of the earth. A placer discovery will not sustain a lode location, nor a lode
17 discovery a placer location." **A location based upon discovery gives an exclusive right**
18 **of possession and enjoyment, is property in the fullest sense**, is subject to sale and
19 other forms of disposal, and so long as it is kept alive by performance of the required
20 annual assessment work prevents any adverse location of the land. *Gwillim v. Donnellan*,
21 115 U.S. 45, 49; *Swanson v. Sears, 224 U.S. 180*" "Location is the act or series of acts
22 whereby the boundaries of the claim are marked, etc., **but it confers no right in the**
23 **absence of discovery, both being essential to a valid claim**. *Waskey v. Hammer, 223*
24 *U.S. 85, 90-91; Beals v. Cone, 27 Colorado, 473, 484, 495; Round Mountain Mining Co.*
25 *v. Round Mountain Sphinx Mining Co., 36 Nevada, 543, 560; New England &c. Oil Co.*
26 *v. Congdon, 152 California, 211, 213" Cole v. Ralph, 252 US 286 - Supreme Court 1920*
(Emphasis Added)

18 "...it is clear under both the mining law and the regulations that a discovery of valuable
19 mineral is **the sine qua non of an entry to initiate vested rights** against the United
20 States". *Davis v. Nelson, 329 F. 2d 840 - Court of Appeals, 9th Circuit 1964* (Emphasis
21 Added)

22 "In order to validate a mining claim under the mining laws of the United States, **there**
23 **must be a discovery of a valuable mineral deposit within the limits of the claim**. 30
24 U.S.C. §§ 23, 25. The basic test used to determine whether such discovery has been made
25 was stated by the Department in *Castle v. Womble, 19 I.D. 455, 457 (1894)*, to be that:

26 " * * * where minerals have been found and the evidence is of such a character that a
person of ordinary prudence would be justified in further expenditure of his labor and
means, with a reasonable prospect of success, in developing a valuable mine, the
requirements 197*197 of the statute have been met."

1 The standard has been judicially approved. *Chrisman v. Miller*, 197 U.S. 313, 25 S.Ct.
2 468, 49 L.Ed. 770; *Cameron v. United States*, 1920, 252 U.S. 450, 40 S.Ct. 410, 64 L.Ed.
3 659; *Best v. Humboldt Mining Co.*, 1963, 371 U.S. 334, 83 S.Ct. 379, 9 L.Ed.2d 350.

4 All mining claims must meet this test to be valid. An additional element to the test of
5 discovery, that of present marketability, has been imposed by the Department where the
6 mineral in question is one of widespread occurrence. The reason for this additional
7 element was made clear in *Foster v. Seaton*, 106 U.S.App.D.C. 253, 271 F.2d 836, 838
8 (1959):” *Coleman v. United States*, 363 F. 2d 190 - *Court of Appeals, 9th Circuit 1966*
9 (*Emphasis Added*)

10 **BACKGROUND**

11 There were three motions that relate to Scott Wood: (1) at Docket 19 Wood has filed a
12 Motion to Dismiss; (2) at Docket 74 Plaintiffs filed a Motion for Summary Judgment on their
13 claims against Wood; and (3) at Docket 104 has filed a document entitled “Answer to
14 Complaint/Counterclaim/Motion to Dismiss and Affidavit in Support”.

15 The Court’s Tentative Order, Docket 126, p. 45 stated: Plaintiffs’ Third Count is
16 DISMISSED in its entirety, with prejudice. The Court also stated: “Given the complexity of the
17 issues raised, the above is a tentative order. The parties may have until October 14, 2011, to
18 submit objections...”

19 The Plaintiff filed through counsel OBJECTIONS TO COURT’S OCTOBER 3, 2011
20 ORDER REGARDING PENDING MOTIONS (Docket 137) citing regarding Defendant Scott
21 Wood; “The Court erred in granting summary judgment in favor of Wood because it assumed
22 material facts, which are in dispute, namely that Wood has a valid mining claim, and that his
23 claims are governed by the 1872 Mining Act.”

24 The Court’s Final Order, Docket 141, p. 6-9 stated in part; “In responding to the
25 Tentative Order, Plaintiffs argue that Wood should not be granted summary judgment on Count
26 III. In that respect, the Court agrees. Plaintiffs contend that they may amend that count to allege
that Wood does not have a valid mining claim or exclusive rights to the use of the surface estate.
To the extent that Count III is based upon an alleged right-of-way under 30 U.S.C. § 41
(intersecting veins) it is not well pled. This Court should therefore not rule on Count III in a
manner that could be construed as precluding Plaintiffs from raising the validity of Wood's
mining claim or his rights to the surface estate in their amended complaint. Thus, Plaintiffs

1 should be granted an opportunity to plead that theory.” “Plaintiffs' Third Count is DISMISSED,
2 with leave to amend.

3 The Plaintiff filed Pro Se the Third Amended Complaint in compliance with the Court's
4 Order. Subsequently, The Defendant, Scott Wood filed Pro Se; ANSWER TO 3 rd.
5 COMPLAINT/MOTION TO DISMISS/ MOTION TOSHOW CAUSE/ AND AFFIDAVIT IN
6 SUPPORT. (Docket 160)

7 The Defendant, Scott Wood never fully answers the allegations of the Third Amended
8 Complaint except to state;

9 “ Defendant Wood responds to Claim 154, Mr. Wood's claims (7 and 8 above) are tailing
10 piles left by the previous miner and have has valuable gold deposits, and is be reclaimed
11 until further mining of the tailings is conducted.”

12 “The gold in the tailing piles in 7 and 8 above, is enough to pass a current validity test.”

13 Since the Motion to Dismiss and Motion to Show Cause is not accompanied by a separate
14 Memorandum in Support of the Motions. The Plaintiff will assume that the Defendant, Scott
15 Wood's Motion to Dismiss appears to be based upon the affirmative defense claim of “lack of
16 standing” (1) “Mr. Mills lacks standing to maintain this action pro se ...” (2) “Mr. Wood
17 respectfully request that this court to sue sponte order Plaintiff Mills to show cause to this court
18 why and how Mr. Mills has standing to continue to maintain this action”.

19 LEGAL AUTHORITIES

20 **1.RULE 12(b) (6) AND STANDING TO MAINTAIN THIS ACTION PRO SE**

21 28 USC § 1332 - Diversity of citizenship; amount in controversy; costs states: (a)The
22 district courts shall have original jurisdiction of all civil actions where the matter in
23 controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is
24 between—

(1) citizens of different States;

25 30 USC § 53 - Possessory actions for recovery of mining titles or for damages to such title
26 states: No possessory action between persons, in any court of the United States, for the
recovery of any mining title, or for damages to any such title, shall be affected by the fact
that the paramount title to the land in which such mines lie is in the United States; but each
case shall be adjudged by the law of possession.

1 "The courts are always open to private litigants to determine possessory rights in public
2 land. *Gauthier v. Morrison*, 232 U.S. [452] 461, [sic] 34 S.Ct. 384, 58 L.Ed. 680. Not to
3 determine title, however, because they have not title. But the United States having title, the
4 tribunals are always open to it to vindicate its rights therein, either that of the Land Department
5 or that of the courts, at its election if proceedings are initiated by it. See *United States v.*
6 *Sherman*, (8 Cir.) 288 F. 497.' * * *' (Emphasis added)" *United States v. Nogueira*, 403 F. 2d
816 - *Court of Appeals, 9th Circuit 1968*

7 "As we have said on numerous occasions, the Fifth Amendment is violated when land-use
8 regulation "does not substantially advance legitimate state interests or denies an owner
9 economically viable use of his land. " *Agin*, supra, at 260 (citations omitted) (emphasis added)."

10 *Lucas v. South Carolina Coastal Council*, 505 US 1003 - *Supreme Court 1992*

11 **2. RULE 12(b) (6) AND STANDING REGARDING MINING CLAIMS**

12 In Docket # 49 the Plaintiff clearly exhibited the fact that the Plaintiff holds real property
13 interests in State of Alaska Mining Claims ADL 611494-611496 and ADL 611578-611581.

14 "In *North American Uranium v. Johnston*, supra, the joint obligees were co-owners of
15 certain lode mining claims sold under contract." *Cayce v. Carter Oil Co.*, 618 F. 2d 669 - *Court*
16 *of Appeals, 10th Circuit 1980*

17 "A mining claim perfected under the law is property in the highest sense of that term,
18 which may be bought, sold, and conveyed, and will pass by descent. *Forbes v. Gracey*, 94 U.S.
19 762. There is nothing in the act of Congress which makes actual possession any more necessary
20 for the protection of the title acquired to such a claim by a valid location, than it is for any other
21 grant from the United States." *Belk v. Meagher*, 104 US 279 - *Supreme Court 1881*

22 **3. RULE 12(b) (6) AND SUA SPONTE DISMISSALS**

23 "In its view, the District Court had wrongly equated the standard for failure to state a claim
24 under Rule 12(b) (6) with the standard for frivolousness under § 1915(d). The frivolousness
25 standard, authorizing sua sponte dismissal of an in forma pauperis complaint "only if the
26 petitioner cannot make any rational argument in law or fact which would entitle him or her to
relief," is a "more lenient" standard than that of Rule 12(b) (6), the court stated. 837 F. 2d, at

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1 307. Unless there is " `indisputably absent any factual or legal basis' " for the wrong asserted in
2 the complaint, the trial court, "[i]n a close case," should permit the claim to proceed at least to
3 the point where responsive pleadings are required. Ibid. (citation omitted)." *Neitzke v. Williams,*
4 *490 US 319 - Supreme Court 1989*

5 **4. MINING CLAIM VALIDITY CONTEST**

6 "Under 43 C.F.R. § 4.450, any person who claims title to or an interest in land adverse to
7 any other person claiming title to or an interest in such land, or who seeks to acquire a preference
8 right, may initiate a private contest to have the adverse claim of title or interest invalidated for
9 any reason not shown by the records of BLM." *CLARK COUNTY v. NEVADA PACIFIC*
10 *COMPANY, INC., 172 IBLA 316 Decided September 27, 2007*

11 "Appellants acknowledge the established rule that in an action to contest mining claims the
12 government bears the burden of establishing prima facie the invalidity of the claims, the burden
13 then shifting to the claimant to prove that his claims are valid. *United States v. Springer, 9 Cir.,*
14 *491 F.2d 239; Foster v. Seaton, 106 U.S.App.D.C. 253, 271 F.2d 836"*

15 "In a contest proceeding, therefore, the claimant rather than the government is the proponent of a
16 ruling that he has complied with applicable mining laws. The government must go forward with
17 sufficient evidence to establish prima facie the invalidity of contested claims, and the burden
18 then shifts to the claimant to show by a preponderance of the evidence that his claim is valid.
19 *United States v. Springer, supra, 491 F.2d at 242; Foster v. Seaton, supra, 271 F.2d at 838.*

20 "If mining claimants have held claims for several years and have attempted little or no
21 development or operations, a presumption is raised that the claimants have failed to discover
22 valuable mineral deposits or that the market value of discovered minerals was not sufficient to
23 justify the costs of extraction. E. g., *United States v. Humboldt Placer Mining Co., 8 IBLA 407*
24 *(1972); United States v. Ruddock, 52 L.D. 313 (1927); Castle v. Womble, 19 L.D. 455 (1894)*
25 *United States v. Zweifel, 508 F. 2d 1150 - Court of Appeals, 10th Circuit 1975*

5. MINING CLAIM VALIDITY DETERMINATIONS BY INACTIVITY

1 “In the same manner, failure to undertake actual operations may be used as evidence that
2 no prudent man would be justified in so doing. For instance, if mining claimants have held
3 claims for several years and have attempted little or no development of actual operations, a
4 presumption may be raised that there has been no discovery of a valuable mineral deposit. This
5 was the case in *Cameron v. United States*, supra, where six years had elapsed from the date of
6 location to the date of the hearing. There the Supreme Court stated at 457:

7 * * * Sufficient time has elapsed since these claims were located for a fair demonstration of their
8 mineral possibilities.

9
10 For similar holdings, see *United States v. Ruddock*, 52 L.D. 313 (1927), where 17
11 years had elapsed without production; *Starks v. Mackey*, 60 L.D. 309 (1949), 29
12 years; *United States v. White*, 72 L.D. 522 (1965), 38-39 years; and *United States v.*
13 *Flurry*, A-30887 (March 5, 1968), where the Department stated:

14 * * * the most persuasive evidence as to what a man of ordinary prudence would do with a
15 particular mining claim is what men have, in fact, done or are doing, not what a witness is
16 willing to state that a prudent man would do.” *UNITED STATES v. MILTON WICHNER, IBLA*
17 *77-440 Decided May 30, 1978*

6. COURT COMMITTED CLEAR ERROR AND 30 U.S.C. § 41

18 “Reconsideration is appropriate if the district court (1) is presented with newly discovered
19 evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3) if there is
20 an intervening change in controlling law. See *All Hawaii Tours, Corp. v. Polynesian Cultural*
21 *Center*, 116 F.R.D. 645, 648 (D. Hawaii 1987), rev'd on other grounds, 855 F.2d 860 (9th
22 Cir.1988). There may also be other, highly unusual, circumstances warranting reconsideration.”
23 *School Dist. No. 1J, Multnomah County v. ACandS, Inc.*, 5 F. 3d 1255 - Court of Appeals, 9th
24 Circuit 1993 With respect to 30 U.S.C. § 41 and how it applies under the facts of this case.

25
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1 The Court erred in that it did not apply the other Federal Statutes that were applicable to placer
2 mining claims specifically:

3 30 USC § 49b Mining laws relating to placer claims extended to Alaska states: "The
4 general mining laws of the United States so far as they are applicable to placer-mining
5 claims, as prior to May 4, 1934, extended to the Territory of Alaska, are declared to be in
6 full force and effect in said Territory:..." and

7 30 USC § 35 - Placer claims; entry and proceedings for patent under provisions
8 applicable to vein or lode claims; conforming entry to legal subdivisions and surveys;
9 limitation of claims; homestead entry of segregated agricultural land which states:
10 "Claims usually called "placers," including all forms of deposit, excepting veins of
11 quartz, or other rock in place, shall be subject to entry and patent, under like
12 circumstances and conditions, and upon similar proceedings, as are provided for vein or
13 lode claims;..."

14 30 U.S.C Chapter 2 Section 41 states: "... Where two or more veins intersect or cross each
15 other ...the subsequent location shall have the right-of-way through the space of
16 intersection for the purposes of the convenient working of the mine."

17 As well as the case law Calhoun Mining Co. v. Ajax Gold Mining Co., 182 U.S. 499 (1901). In
18 Calhoun Mining, as relevant to this case, in construing R.S. 2336, the predecessor to § 41, in the
19 part quoted by Plaintiffs, the Supreme Court held:

20 Section 2336 imposes a servitude upon the senior location, but does not otherwise affect
21 the exclusive rights given the senior location. **It gives a right of way to the junior**
22 **location.** To what extent, however, there may be some ambiguity; whether only through
23 the space of the intersection of the veins, as held by the supreme courts of California,
24 Arizona, and Montana, or through the space of intersection of the claims, as held by the
25 supreme court of Colorado in the case at bar. It is not necessary to determine between
26 these views. (Emphasis Added)

27 The junior location is the Plaintiff's mining claims² and consequently, the plaintiff has
28 rights-of-way through the senior location, which are Scott Wood's mining claims.

29 The Supreme Court of Colorado held that; "Under section 2322 no rights were given the
30 owner of a location crossing a prior one to invade the latter for any purpose in following

31 ² In Docket # 49 the Plaintiff clearly exhibited the fact that the Plaintiff holds real property
32 interests in State of Alaska Mining Claims ADL 611494-611496 and ADL 611578-611581.
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1 his vein upon its strike. This was an important matter. Without such right, a portion of his
2 claim might be rendered valueless. But, if the expression 'space of intersection' is limited
3 to the intersection of veins as the space through which he should have a right of way for
4 the convenient working of his mine, it would be of no avail, for he would have no right
5 under which he could reach that easement;*20 and so again, in order to recognize one
6 which would be of any value to the junior cross claimant, the space of intersection must
7 also mean the intersection of the claims. Morr. Min. Rights (9th Ed.) 115. The learned
8 author of the work just cited, in treating the subject of title to ore included in the space of
9 intersection as between conflicting cross locations under section 2336, gives the
10 following cogent reasons why, in his opinion, as between such locations, **the owner of**
11 **the junior has a right of way through the senior, but no right to the ore of the claim**
12 **which he crosses: 'It was within the power of congress by a subsequent clause to have**
13 **made the crossing lode an exception carved out of the general grant of the words of the**
14 **previous section, but has it attempted so to do? The only grant of section 2336 is the**
15 **right of way, which of itself implies that it is not a grant of the vein, but of an**
16 **easement, to which the estate of the prior location is made servient.'** 'To give any
17 part of the space of intersection to the holder of the later location would be to take from
18 the older location something already granted to it. To create an exception out of his grant
19 as he originally takes it, under act of congress, would require in the wording of the act
20 expressions as strong as are required to create an exception in a deed. An exception is
21 equivalent to the reconveyance of land already conveyed. **A right of way is not an**
22 **exception, but a reservation, which may be inferred from any wording indicating an**
23 **intention to create an easement. It takes nothing from the body of the grant of the**
24 **first locator, but compels the first locator to use or hold his grant or claim subject to**
25 **a right or privilege to the junior or overlapping claimant of reaching the other end**
26 **of his claim by passage through the senior location.'** Calhoun Gold-Min. Co, v. Ajax
Gold-Min. Co. Nov 20, 1899, 50 L.R.A. 209 Colo. 1, 59 P.607 (Emphasis Added)

ARGUMENT

18 ***Count Two*** claims are specifically targeted towards Defendant Scott Wood. Count Two
19 relies on Federal Statutes:

20 A.) 30 USC § 49b Mining laws relating to placer claims extended to Alaska states: "The
21 general mining laws of the United States so far as they are applicable to placer-mining
22 claims, as prior to May 4, 1934, extended to the Territory of Alaska, are declared to be in
23 full force and effect in said Territory:..."

24 B.) 30 USC § 35 - Placer claims; entry and proceedings for patent under provisions
25 applicable to vein or lode claims; conforming entry to legal subdivisions and surveys;
26 limitation of claims; homestead entry of segregated agricultural land which states:

"Claims usually called "placers," including all forms of deposit, excepting veins of
CAREY MILLS v. UNITED STATES et al Plaintiff Response Memorandum of Points
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1 quartz, or other rock in place, shall be subject to entry and patent, under like
2 circumstances and conditions, and upon similar proceedings, as are provided for vein or
3 lode claims;...”.

4 C.) 30 U.S.C Chapter 2 Section 41 states: “...Where two or more veins intersect or
5 cross each other ...the subsequent location shall have the right-of-way through the
6 space of intersection for the purposes of the convenient working of the mine.”

7 The Federal Defendants have stated the Official position regarding Defendant Scott
8 Wood and the federal unpatented mining claims he owns; that position is: (1) All of the
9 federal unpatented mining claims are “pre-1955” mining claims.(2) Scott Wood has
10 “exclusive surface rights” even against the Federal Defendants.

11 While it is true that the United States retains legal title to certain of the lands subject to
12 his federal unpatented mining claims. For the obvious reason of “exclusive surface rights” the
13 Federal Defendants are powerless and incapable of making any assertions or conditions as to
14 whom Scott Wood allows or this Court determines has the right to cross the federal unpatented
15 mining claims.

16 Consequently, if the federal unpatented mining claims are indeed valid pre-1955 mining
17 claims then even though Doyon has been granted administration of those claims by the United
18 States, and that the Department of the Interior has no further current role in administering them
19 the “valid existing rights” again would take precedence and are superior in title to the non-
20 federal Defendants Doyon Limited and Hungwitchin Corp title.

21 **1. RULE 12(b) (6) AND STANDING TO MAINTAIN THIS ACTION PRO SE**

22 Clearly, 28 USC § 1332 - Diversity of citizenship; amount in controversy;
23 demonstrates the fact this Court has jurisdiction. The case law previously cited also provides
24 for private litigants to determine possessory rights in public lands.

25 30 USC § 53 - Possessory actions for recovery of mining titles or for damages to such
26 title; is additional jurisdiction in this case regarding Count Two.

The question then is there “case and controversy” between the parties? This question
has to be answered in the affirmative. The Defendant Scott Wood has denied the Plaintiff for
all practical purposes full use of his mining claims. Defendant Wood is using the “exclusive

1 right of possession” as the vehicle to deny the Plaintiff access to his State mining claims
2 invoking possible trespass violations and using the Bureau of Land Management as the
3 enforcer of the erroneous “exclusive right of possession”.

4 **2. RULE 12(b) (6) AND STANDING REGARDING MINING CLAIMS**

5 The STAT MINING LOCATION NOTICE / CERTIFICATE exhibits attached to
6 Docket # 49 clearly and unequivocally reveal the fact that the Plaintiff personally holds real
7 property interests in State of Alaska Mining Claims ADL 611494-611496 and ADL 611578-
8 611581.

9 Moreover, a mining claim perfected under the law is property in the highest sense of
10 that term, which may be bought, sold, and conveyed, and will pass by descent.

11 This Court should Strike the Defendant Motion to Dismiss / Motion to Show Cause
12 regarding this issue and if it raised again in further proceeding the Court should invoke
13 sanctions on the party raising this issue.

14 **3. RULE 12(b) (6) AND SUA SPONTE DISMISSALS**

15 The Defendant is seeking to invoke the Court sua sponte so that the Defendant does not
16 have to mount a defense himself. The Plaintiff can only request that Court deny this request since
17 the Plaintiff can make any rational argument in law or fact which would entitle him or her to
18 relief. The Supreme Court unmistakably described that; “Unless there is " indisputably absent
19 any factual or legal basis' " for the wrong asserted in the complaint, the trial court, "[i]n a close
20 case," should permit the claim to proceed at least to the point where responsive pleadings are
21 required. Ibid. (citation omitted).” *Neitzke v. Williams, 490 US 319 - Supreme Court 1989*

22 **4. MINING CLAIM VALIDITY CONTEST**

23 The Plaintiff in anticipation of the defense that he has not exhausted all of the
24 administrative remedies; besides filling the appeal to the Interior Board of Land Appeal
25 regarding the validity of Scott Woods federal unpatented mining claims. Went, even further
26 and filled a separate request asking the Bureau of Land Management charged with making
27 validity determinations to initiate a mining claim contest (validity exam). (See Third

CAREY MILLS v. UNITED STATES et al Plaintiff Response Memorandum of Points
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1 Amended Complaint Plaintiffs Exhibit 043) In the cover letter attached to the compliant are
2 the words: "Additionally, I make this appeal for the record and in order to demonstrate the
3 fact that I have exhausted all my administrative remedies."

4 The United States Supreme Court held nearly fifty years ago that private challenges
5 to the validity of federal mining claims should first be brought before the Department of the
6 Interior. See *Best v. Humboldt Placer Mining Co.*, 371 U.S. 334, 336 (1963) ("The
7 determination of the validity of claims against the public lands was entrusted to the General
8 Land-Office in 1812 (2 Stat. 716) and transferred to the Department of the Interior on its
9 creation in 1849. 9 Stat. 395.").

10 Categorically and undeniably the Plaintiff has exhausted all administrative remedies, this
11 Court must affirm this fact regarding the challenges to the validity of Defendant Scott Wood's
12 federal unpatented mining claims.

13 **5. MINING CLAIM VALIDITY DETERMINATIONS BY INACTIVITY**

14 On February 12, 2008 the Defendant, Scott Wood filed a five (5) year State of Alaska
15 Annual Placer Mining Application. (See Third Amended Complaint Plaintiffs Exhibit 046)
16 The Defendant, Scott Wood stated in the State of Alaska Annual Placer Mining Application
17 that federal unpatented mining claims (No. 7 and 8 Above Discovery) are going to be
18 reclaimed. (See Third Amended Complaint Plaintiffs Exhibit 046) and the federal
19 unpatented mining claims (No. 9, 10, 11 and 12 Above Discovery) are going to be used for
20 access to the actual mining operation located on federal unpatented mining claims (No.14
21 Above Discovery). (See Third Amended Complaint Plaintiffs Exhibit 046).

22 Currently, Defendant Scott Wood is not mining any of the claims that access is
23 requested across and reclamation work has been accepted by the BLM on all the claims that
24 the Plaintiff seeks access across.

25 If this Court follows the Departments lead in examining the validity of the federal
26 unpatented mining claims and uses the following statement regarding the evidence; *United
States v. Flurry*, A-30887 (March 5, 1968), where the Department stated:

***** the most persuasive evidence as to what a man of ordinary prudence would do with a
particular mining claim is what men have, in fact, done or are doing, not what a witness is**

1 **willing to state that a prudent man would do.** UNITED STATES v. MILTON WICHNER,
2 IBLA 77-440 Decided May 30, 1978 (Emphasis Added). Then without any doubt this Court will
3 have to arrive at the conclusion that these claims are in fact invalid.

4 **6. COURT COMMITTED CLEAR ERROR AND 30 U.S.C. § 41**

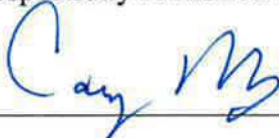
5 No argument presented by the Plaintiff here can be stated better than the Supreme Court of
6 Colorado in Calhoun Gold-Min. Co, v. Ajax Gold-Min. Co. Nov 20, 1899, 50 L.R.A. 209 Colo.
7 1, 59 P.607. The Plaintiff redirects the Courts attention to the case law cited under **LEGAL**
8 **AUTHORITIES** contained herein.

9
10 **CONCLUSION**

11 **NOW AND THEREFORE**, the Plaintiffs prays for Judgment on the Pleadings as follows:

- 12 a. Dismiss in its entirety the non-federal Defendant Scott Wood's Motion to Dismiss /
13 Motion to Show Cause in its entirety. (Docket 160).
14 b. Issue an Order requiring the Federal Defendants to specifically answer each item of the
15 Third Amended Complaint (Docket 149).
16 c. Such other relief as the Court deems appropriate.

17 Respectfully submitted this 16th day of March, 2012

18 

19 Carey Mills

20 PRO SE
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CERTIFICATE OF SERVICE

1 I, Carey Mills, hereby certify that on March 2, 2012, a true copy of the PLANTIFFS'
2 MEMORANDUM OF POINT AND AUTHORITIES IN OPPOSITION TO THE MOTION TO
3 DISMISS OF THE UNITED STATES was served by United States mail, first class, postage paid
4 to the following Defendant and counsel for Defendants.

4 Dean K. Dunsmore , U.S. Department of Justice
5 Environment & Natural Resources Division
6 801 B Street, Suite 504
7 Anchorage, Alaska 99501-3657
8 Bus: (907) 271-5452
9 Bus Fax: (907) 271-5827
10 E-mail: dean.dunsmore@usdoj.gov

8 Brian A. McLachlan, U.S. Department of Justice
9 Environment & Natural Resources Division
10 C/o NOAA/DARC, NW
11 7600 Sand Point Way, N.E.
12 Seattle, Washington 98115
13 Bus: (206) 526-6881
14 Bus Fax: (206) 526-6665
15 E-mail: brian.mclachlan@usdoj.gov

14 James D. Linxwiler Esq.
15 Matt Cooper, Esq.
16 Guess & Rudd P.C.
17 510 L. Street
18 Suite 700
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21 Bus Fax: (907) 793-2299

19 Peter J. Aschenbrenner
20 P.O. Box 110988
21 Anchorage, Alaska 99511
22 Bus: (907) 344-1500
23 Bus Fax: (907) 344-1522
24 E-mail: peter@alolaw.com

23 Scott Wood
24 P. O. Box 31
25 McKenna, Washington 98558
26 Bus: (360) 446-5172
Mobile: (253) 370-0978

26 CAREY MILLS v. UNITED STATES et al Plaintiff Response Memorandum of Points
and Authorities in Opposition to the Motion to Dismiss/Motion to Show Cause
of Scott Wood at Docket 160. Page 19 of 20

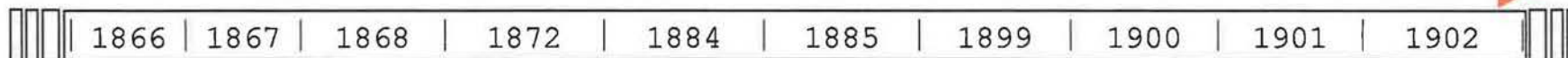
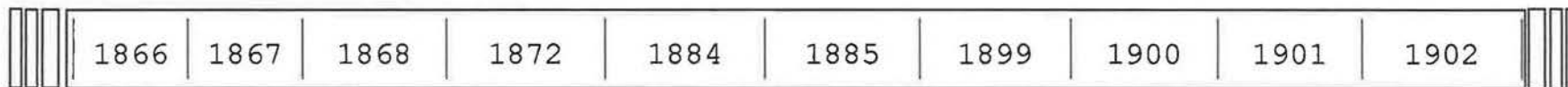
1 Respectfully submitted this 16th day of March, 2012 at Fairbanks, Alaska

2
3 

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RS 2477 Fortymile Station-Eagle Trail Timeline



The Federal Mining Act of 1866 states: "The right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted" (43 U.S.C. 932, 14 Stat 253. Now known as Revised Statute 2477 (RS 2477))

The General Mining Act of May 10, 1872, 17 Stat. 91, 30 U.S.C. §§ 41 states: "...but the subsequent location shall have the right-of-way through the space of intersection for the purposes of the convenient working of the mine."

The Organic Act of May 17, 1884 (23 Stat 24) extends RS 2477 to the Territory of Alaska

RS 2477 (RST 1594) Fortymile Station-Eagle Trail was blazed by Lt. Henry Allen in 1885 and established by continuous use by the Military, freight hauling pack trains and the general public for transportation and access purposes . (Plaintiffs Exhibit 010)

RS 2477 Fortymile Station-Eagle Trail Timeline



On April 23, 1904 Congress authorizes the United States Army to survey a trail for a Wagon Road from Valdez to Fort Egbert (Eagle, Alaska)

BLM admits RS 2477 (RST 1594) Fortymile Station-Eagle Trail began in 1904 and is a portion of the old Washington-Alaska Military Cable and Telegraph System.

(Plaintiff's Exhibit 008)

Title of the Fortymile Station-Eagle Trail (RST 1594) rights-of-way transfers from the Signal Corp, United State Army to the Alaska Road Commission by the Act of January 27, 1905 (P.L. 26 - 33 Stat. 391)

May 24, 1905 President Theodore Roosevelt reserved the 100 foot wide rights-of-way for the Washington-Alaska Military Cable and Telegraph System in Executive Order #10355.

(Plaintiffs Exhibit 017)

August 6, 1906 Federal unpatented mining claims 8, 9 and 10 were located by Evergreen Hydraulic Mining Co. currently owned by Scott Wood.

(Plaintiffs Exhibit 022)

RS 2477 Fortymile Station-Eagle Trail Timeline



On March 12, 1914 Congress passes 28 Stat. 305 which states in part: "terminal and station grounds and rights of way through the lands of the United States in the Territory of Alaska are hereby granted..."

Title of the Fortymile Station-Eagle Trail (RST 1594) rights-of-way transfers from the Alaska Road Commission to the Department of the Interior pursuant to the Act of June 30, 1932 (P.L. 218 - 47 Stat. 446)(48 USC 321a).

On March 21, 1953 Territorial legislature passes law accepting R.S. 2477 grant for section line easements across Federal lands 66 feet width.

On July 23, 1955 the Surface Resources and Multiple Use Act of 1955 ("Multiple Use Act"), Pub.L.No.84-167, 69 Stat. 367 (codified at 30 USC §§ 611-612) has been interpreted that the public is entitled to use the surface of unpatented mining claims for recreational purposes and for access to adjoining lands.

RS 2477 Fortymile Station-Eagle Trail Timeline



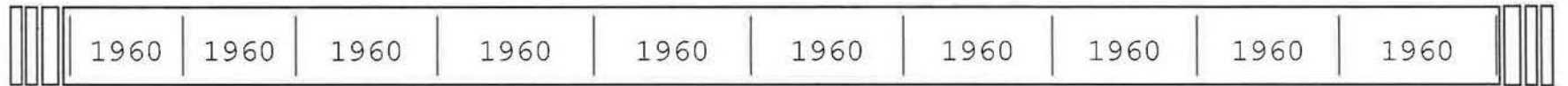
Title of the Fortymile Station-Eagle Trail (RST 1594) rights-of-way transfers from the Department of the Interior's jurisdiction to the Department of Commerce which was reiterated on August 27, 1958, when Congress revised, codified, and reenacted the laws relating to highways as Title 23 of the U. S. Code. (P.L. 85-767, Sect. 119 - 72 Stat. 898).

Title of the Fortymile Station-Eagle Trail (RST 1594) rights-of-way transfers from the jurisdiction of the Department of Commerce to State of Alaska by: The Alaska Omnibus Act, enacted on June 25, 1959 (P.L. 86-70 - 73 Stat. 141)

On September 28, 1960, Federal unpatented mining claim (No. (11) Eleven above Discovery was located by Charles Stout on land reserved by Executive order dated May 24, 1905

On September 29, 1960, Federal unpatented mining claim (No. (12) Twelve above Discovery was located for Charles Stout on land reserved by Executive order dated May 24, 1905

RS 2477 Fortymile Station-Eagle Trail Timeline

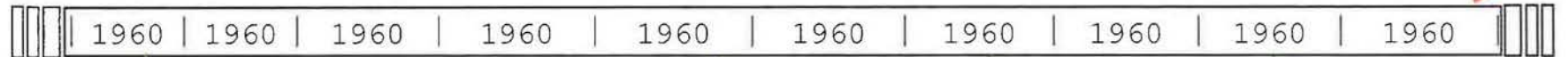


Federal unpatented Mining Claims 8, 9, 10, 11, 12 continue and add 2, 3 below 13, 14, 15 and 16 above

State Ownership of Rights-of-way completed by enactment of Statehood

Presidential Order reserving Rights-of-way Continues

RS 2477 Usage of Historical Trail Continues



On September 30, 1960, Federal unpatented mining claim (No. (2) Two and (3) Below Discovery was located for Wyman Fritsch on land reserved by Executive order dated May 24, 1905

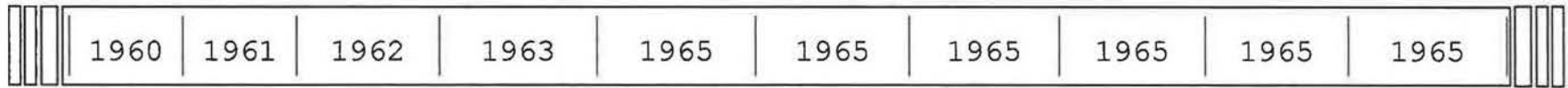
On October 1, 1960, Federal unpatented mining claim (No. (13) Thirteen above Discovery was located for Charles Stout on land reserved by Executive order dated May 24, 1905

On October 1, 1960, Federal unpatented mining claim (No. (15) Fifteen above Discovery was located for Wyman Fritsch on land reserved by Executive order dated May 24, 1905

On October 1, 1960, Federal unpatented mining claim (No. (16) Sixteen above Discovery was located for Wyman Fritsch on land reserved by Executive order dated May 24, 1905

On October 2, 1960, Federal unpatented mining claim (No. (14) Fourteen above Discovery was located for Charles Stout on land reserved by Executive order dated May 24, 1905

RS 2477 Fortymile Station-Eagle Trail Timeline

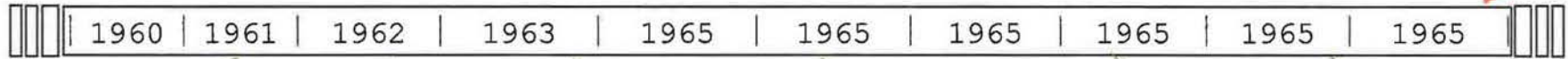


Unpatented Mining Claims 2, 3 below 8, 9, 10, 11, 12, 13, 14, 15, 16 and add 4 below, 3, 4, 5, and 6 above

State Ownership of Rights-of-way completed by enactment of Statehood

1905 Order revoked

RS 2477 Usage of Historical Trail Continues



On September 5, 1961, Federal unpatented mining claim (No. (4) Four below Discovery was located by Charles Stout on land reserved by Executive order dated May 24, 1905.

On January 29, 1962 Executive Order 2042 by Assistant Secretary of the Interior Kenneth Holum revokes 1905 Executive Order reserving Fortymile Station – Eagle Trail.

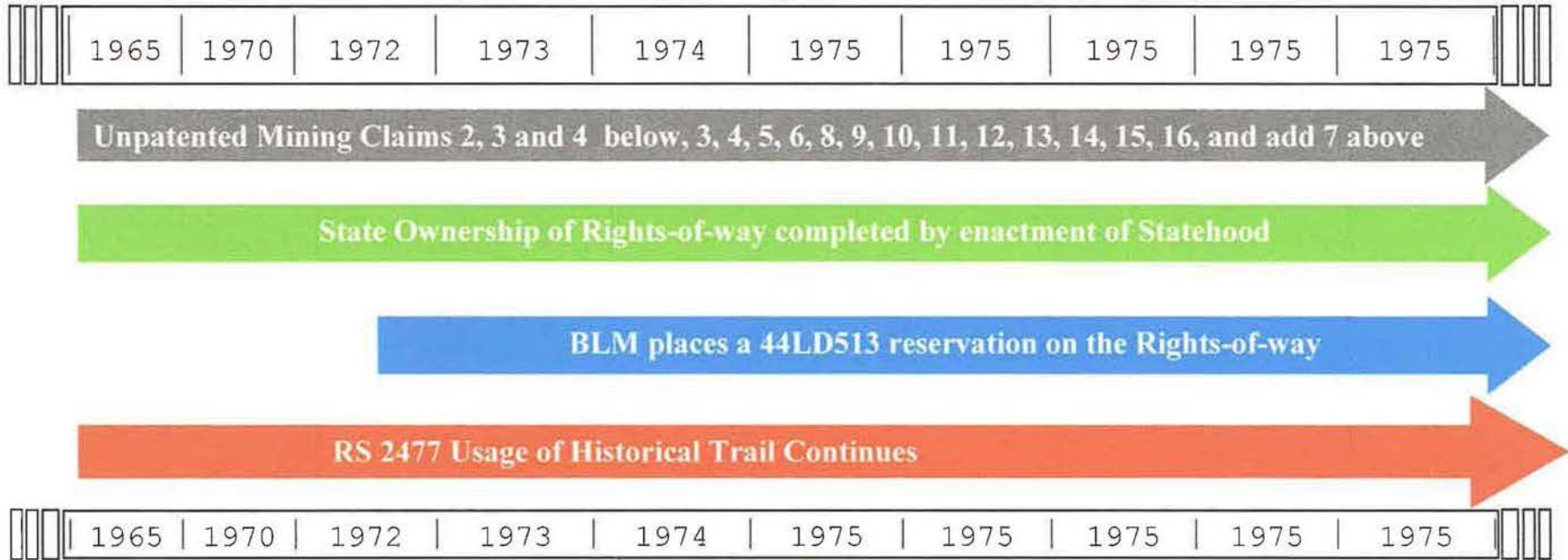
On September 4, 1963, Federal unpatented mining claim (No. (3) Three above Discovery was located by Charles Stout.

On April 29, 1965 Federal unpatented mining claim (No. (4) Four above Discovery was located by Charles Stout

On April 29, 1965 Federal unpatented mining claim (No. (5) Five above Discovery was located by Charles Stout

On May 4, 1965 Federal unpatented mining claim (No. (6) Six above Discovery was located by Charles Stout

RS 2477 Fortymile Station-Eagle Trail Timeline



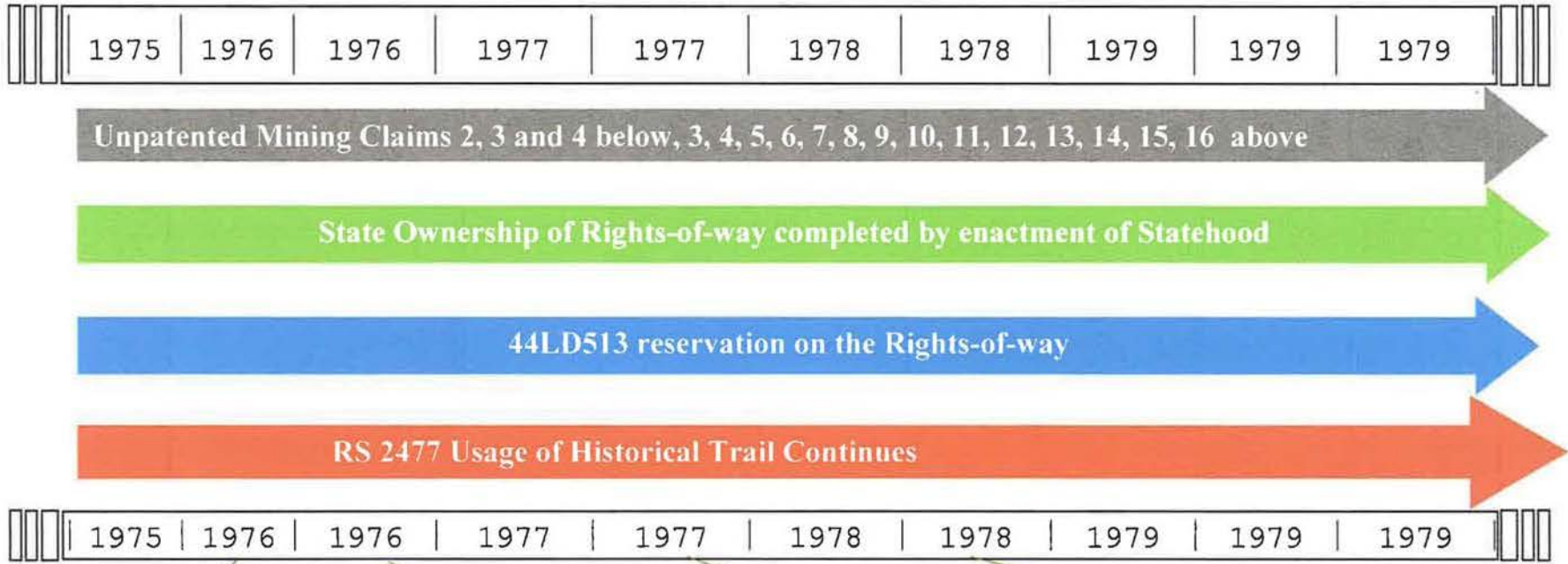
On May 4, 1965 Federal unpatented mining claim (No. (7) Seven above Discovery was located by Charles Stout

On November 17, 1972 the BLM requests that a 44 LD 513 easement be made to reflect a public right-of-way on Eagle-Valdez and Goodpaster Telegraph Lines (including the Fortymile Station – Eagle Trail).

On April 8, 1974, the State of Alaska, Commissioner of Highways transmitted to the BLM a trails inventory list detailing specifically Trail 178, which starts from the Taylor Highway – Int. 35 R. 32 E, near head of Teddy Forks, thence running slowly to Little Champion Creek, thence following same to Champion Creek gradually turning slowly to JCT with Trail 52 at mouth of Bullion Creek in North Fork of Fortymile River.

April 2, 1975 Regional Selection, Doyon, Inc. for 17(b) Easement preserving public access necessary to access otherwise land locked public lands. New easement EIN 62 C5 created for the sole purpose of linking with Fortymile Station – Eagle Trail (aka EIN 53 C1, C5) for purpose of protecting access to otherwise land locked State land.

RS 2477 Fortymile Station-Eagle Trail Timeline



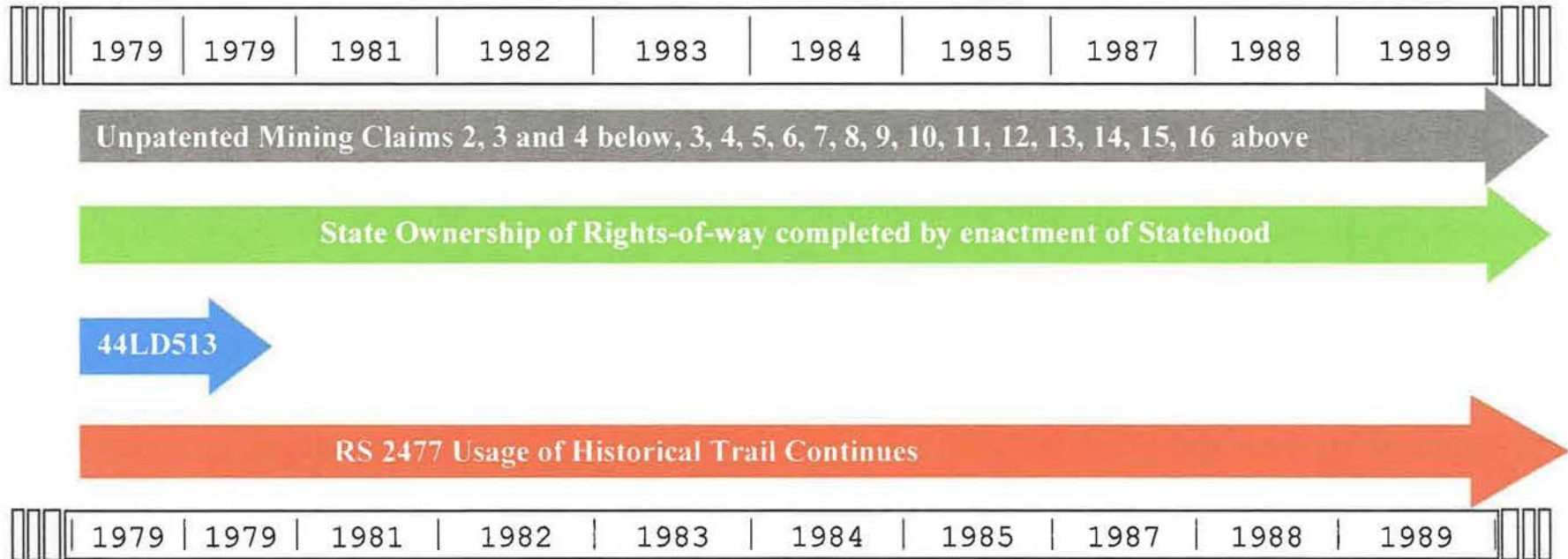
February 17, 1976
The Eagle-Valdez Trail and Goodpaster Telegraph Lines' historic values and public access are guaranteed a 100 foot right-of-way so as not to obscure its nomination as a historic place.

On October 21, 1976
The Federal Land and Policy Management Act repeals RS 2477s, however, rights-of-way established under RS 2477 are still valid (FLPMA), 90 Stat. 2744, 43 U. S. C. § 1701 et seq..

1977 the Washington-Alaska Military Cable and Telegraph System is nominated for placement on National Register of Historic Places.

1978 43 CFR § 2650.4-7(a)(1-3) requires easements be reserved to guarantee access to land locked tracts of public land.

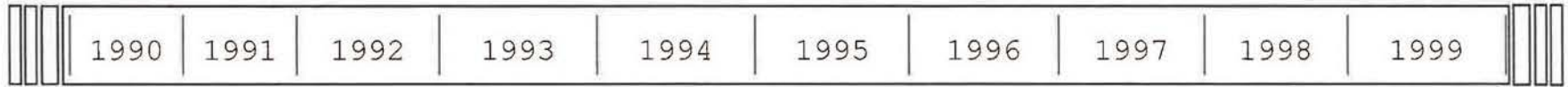
RS 2477 Fortymile Station-Eagle Trail Timeline



On or about April 10, 1979, without public comment, the Bureau of Land Management, District Manager removed the 44LD513 designation; "The 44LD513 notation should be removed from our records and case file F-19336 be closed." (See Plaintiffs Exhibit 051)

It wasn't until December 13, 1984 the BLM recorded receiving the April 8, 1974, Trails Atlas that the State of Alaska, Commissioner of Highways transmitted to the BLM. The trails inventory list detailed specifically Trail 178, which starts from the Taylor Highway – Int. 35 R. 32 E, near head of Teddy Forks, thence running slowly to Little Champion Creek, thence following same to Champion Creek gradually turning slowly to JCT with Trail 52 at mouth of Bullion Creek in North Fork of Fortymile River.

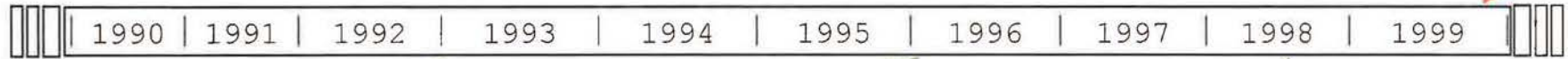
RS 2477 Fortymile Station-Eagle Trail Timeline



Unpatented Mining Claims 2, 3 and 4 below, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 above

State Ownership of Rights-of-way completed by enactment of Statehood

RS 2477 Usage of Historical Trail Continues

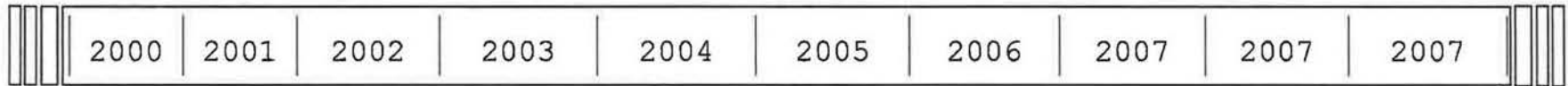


1992-1993 the Alaska Department of Natural Resources is funded to identify, research, and document up to 500 rights-of-way established under RS 2477. Included in this extensive list is Fortymile Station-Eagle Trail.

September 30, 1996 Appropriations Bill (100 Stat. 3009) passed by both the House of Representatives and the Senate includes a provision that states: "no rule or regulation of any agency of the Federal Government pertaining to the recognition, management, or validity of a right-of-way pursuant to Revised Statute 2477 shall take effect unless expressly authorized by an Act of Congress subsequent to the date of enactment of this Act.

In May 1998, the Alaska State Legislature passed a new law (AS 19.30.400) entitled "An Act Relating to State Rights-of-Way," that declares that more than 600 routes have been accepted as RS 2477 rights-of-way by public use and mandates that DNR record them in the respective recording districts. The Fortymile Station-Eagle Trail is listed in AS 19.30.400.

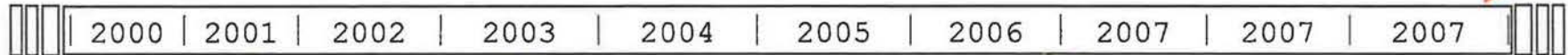
RS 2477 Fortymile Station-Eagle Trail Timeline



Unpatented Mining Claims 2, 3 and 4 below, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 above

State Ownership of Rights-of-way completed by enactment of Statehood

RS 2477 Usage of Historical Trail Continues



On November 28, 2001 the BLM document, "State Selection Rejected in Part, Native Allotment, Parcel D, Subject to Forty Mile Station-Eagle Trail", states; "According to the information in the case file, public use of the Forty Mile Station-Eagle Trail began in 1904". Additionally, the Native Allotment Parcel D shall be subject to: "The continued right of public access along the non-exclusive use Fortymile Station-Eagle Trail not to exceed on hundred (100) feet in width".

A Supplemental Native Allotment Certificate No.50-2002-0125, recorded on April 9, 2002, specifically making the Allotment subject to "the continued right of public access along the non-exclusive use Forty Mile Station-Eagle Trail".

Carey Mills started the process to gain access to Alaska State land in 2006 in order to stake State Mining Claims on State land.

RS 2477 Fortymile Station-Eagle Trail Timeline



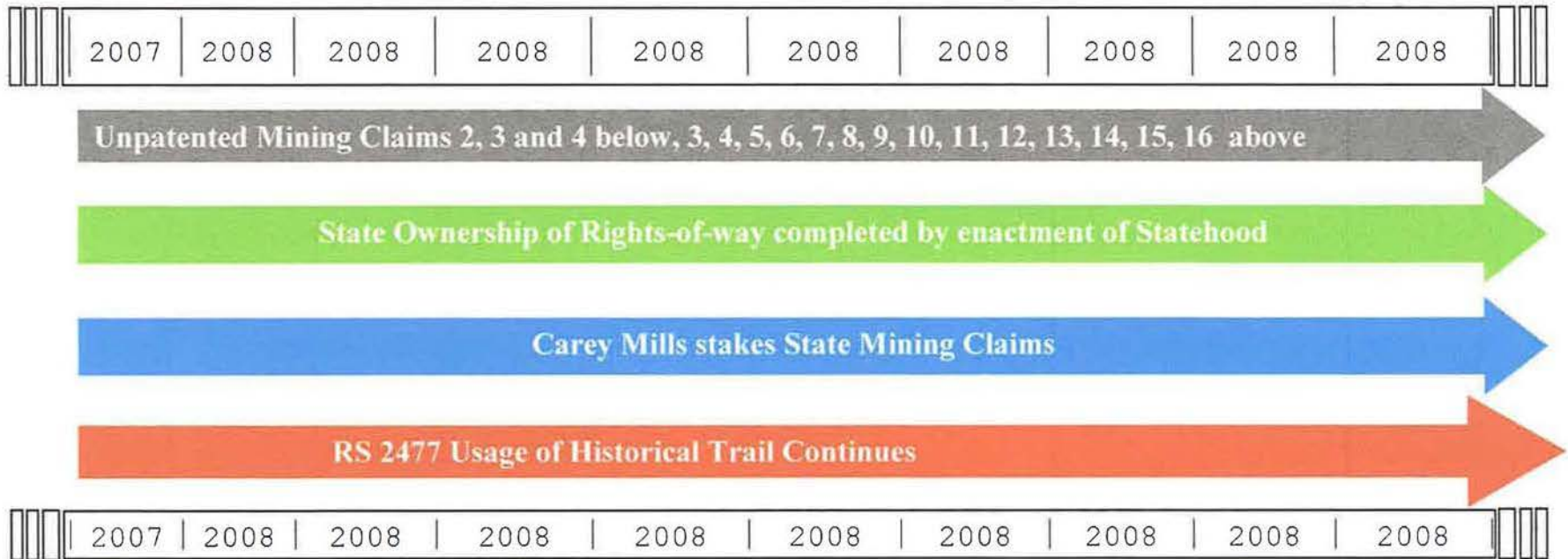
On May 11, 2007 the Defendant, Scott Wood stated in the State of Alaska Annual Placer Mining Application that Federal unpatented mining claims (No. 9, 10, 11, 12, 13, 14, 15, and 16 Above Discovery) are going to be explored and used for access.
(Plaintiffs Exhibit 045)

On July 7, 2007, the Defendant, Scott Wood, specifically denied lawful and reasonable mechanical access rights to the Plaintiff's mining claims by parking a bulldozer in the R.S. 2477 rights-of-way, Fortymile Station-Eagle Trail (RST 1594).
(Plaintiffs Exhibit 038)

On September 2, 2007, the Defendant, Scott Wood, has specifically denied lawful and reasonable mechanical access rights to the Plaintiff's mining claims by constructing an earthen berm in the R.S. 2477 rights-of-way, Fortymile Station-Eagle Trail (RST 1594)
(Plaintiffs Exhibit 039)

September 2007 Carey Mills stakes the State of Alaska Mining Claims ADL 611494 – 611496 and ADL 611578 – 611581 intersect, cross and overlap the Fortymile Station-Eagle Trail and the Federal unpatented mining claims owned by Scott Wood.

RS 2477 Fortymile Station-Eagle Trail Timeline



In 2007 and 2008 Carey Mills physically explored two other rights-of- way options in order to demonstrate that this RS-2477, known as RST 1594 Fortymile Station – Eagle Trail is the most environmental conservative and economically feasible access route.

On February 12, 2008 Scott Wood stated in the State of Alaska Annual Placer Mining Application that Federal unpatented mining claims (No. 7 and 8 Above Discovery) are going to be reclaimed.. Scott Wood further stated in the State of Alaska Annual Placer Mining Application that Federal unpatented mining claims (No. 9, 10, 11 and 12 Above Discovery) are going to be used for access to the actual mining operation located on federal unpatented mining claims (No.14 Above Discovery). (Plaintiffs Exhibit 046)

The BLM, specifically Larry P. Jackson and J. Rego conducted a 3715 & 3809 Field Compliance Inspection on 6-12-2008 and took photographs. The comment in section 2 Access: states; "Historic access road re-established extending road to Doyon claims truck access via Taylor." Also, in section 5 "Access road activity re-established trail with a minimum amount of disturbance." (Field Compliance Inspection sheet dated 6-12-2008)

RS 2477 Fortymile Station-Eagle Trail Timeline

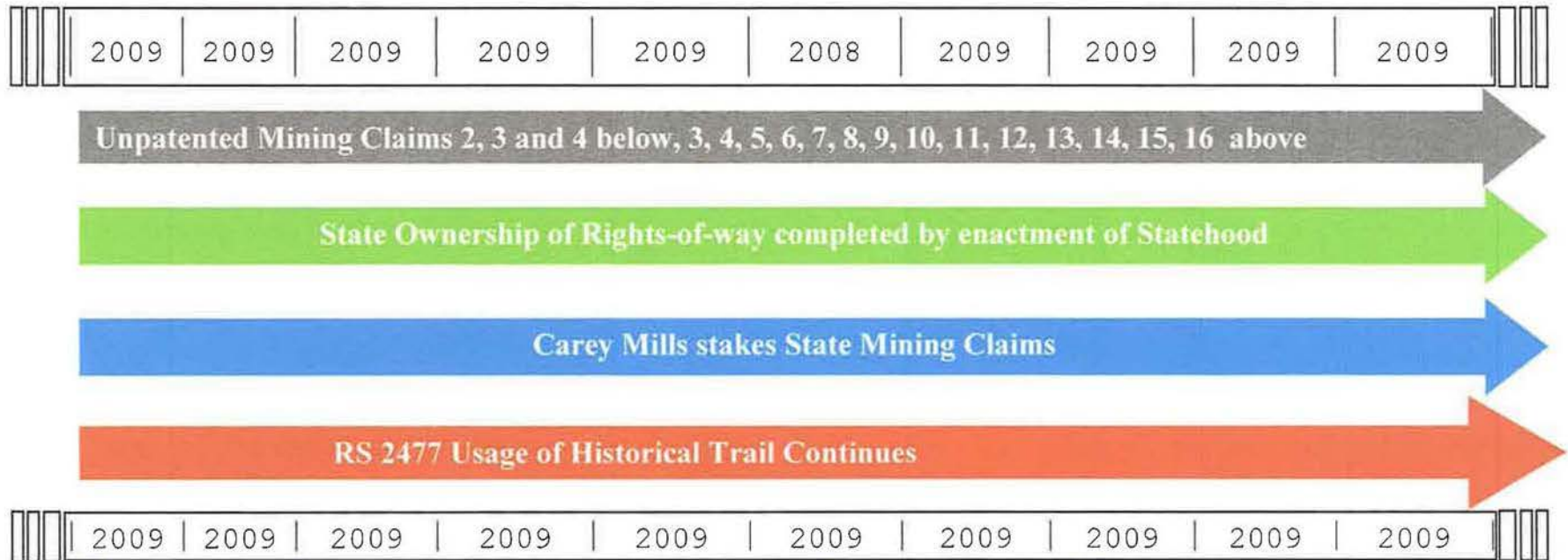


On October 10, 2008 Carey Mills received an e-mail from Scott Ogan, Natural Resource Manager II, Alaska Department of Natural Resources, stating in part, "Thank you for your calls concerning access on RST 1594 Fortymile Station – Eagle Trail .I want to assure you that this trail is a legally recognized trail under AS 19.30.400."

On May 28, 2009 the Carey Mills was issued a Multi-Year 2009-2011 Miscellaneous Land Use Permit for Mining & Reclamation Winter Cross County Travel Permit # 9861.

On or about September 25, 2009 Carey Mills constructed a gravel ramp off of the existing Taylor Highway at the location of the RST1594 trail. He also began construction of the State of Alaska approved camp location, by excavating out the hillside within 50' of the existing road and within the 100' RST1594 trail right of way.

RS 2477 Fortymile Station-Eagle Trail Timeline



On October 28, 2009 Carey Mills was informed that the BLM does not recognize the RS 2477 trial known as the Fortymile Station-Eagle Trail (RST 1594).

During the month of October 2009, Carey Mills had various contacts with the BLM about their concerns regarding the camp location, access to the mining claims and the future road construction to where the proposed mining is to start. The conclusion of the various meeting was that Carey Mills needed to file a Right of Way Permit for the construction activities as well as the future activities due to the fact that the BLM maintained jurisdiction over the federal mining claims in the transfer of the land to the State of Alaska.

On November 4, 2009 Carey Mills filed an application for a Right-of-Way Permit, in order to gain access to the State mining claims located on State of Alaska lands.

On December 17, 2009, Melody Smyth, Mineral Law Specialist of the BLM made the determination that Defendant Scott Wood's Federal mining claims (4 thru 12 Above Discovery) qualify as pre July 23, 1955 even though determination is claims is clearly flawed, inaccurate and erroneous since the mining claims were located on land that was reserved. (See Plaintiffs Exhibit 017)

RS 2477 Fortymile Station-Eagle Trail Timeline



On March 24, 2010 The State of Alaska informed the Plaintiff that any mining activity had to be suspended because "...the BLM does not (sic) recognize the RS 2477..." (See Plaintiff's Exhibit 019)

On June 15, 2010, Larry P. Jackson, an employee of the Federal Defendants denied Carey Mills the right to use the Fortymile Station-Eagle Trail (RST 1594) rights-of-way.

On July 29, 2010, the Defendant, Scott Wood, claiming exclusive surface rights and has specifically denied lawful and reasonable mechanical access rights to Carey Mills' mining claims. (See Plaintiffs Exhibit 40, 41 and 42)

On September 9, 2010, the Federal Defendants through the Interior Board of Land Appeal denied the ROW Rights-of-Way permit and acknowledge that: "An R.S. 2477 ROW arises by operation of the law as the result of public usage or other means, and its existence is determined as a matter of State law." (See Plaintiffs Exhibit 016)

RS 2477 Fortymile Station-Eagle Trail Timeline



On November 30, 2010 Carey Mills filed a Federal Complaint against the United States, BLM, Doyon Ltd, Hungwitchin Corp and Scott Wood Case No: 4:10-cv-00033-RRB

On May 31, 2011 the Interior Board of Land Appeal states in its Decision; Doyon argues that there are R.S. 2477 trails on public land that provide reasonable alternatives that the reservations of some easements unnecessary. SOR at 39, 44-47; Reply at 14-15". IBLA 2009-203 DOYON, LIMITED Decided May 31, 2011 at 181 IBLA 154. (See Plaintiffs Memorandum Exhibit 04)

On March 14, 2011 the State of Alaska informed the Federal District Court as well as all parties, that the State was unwilling to assert and defend the public's rights to use the Fortymile Station-Eagle Trail (RST 1594) rights-of-way at this time. (Plaintiff's Exhibit 020)