

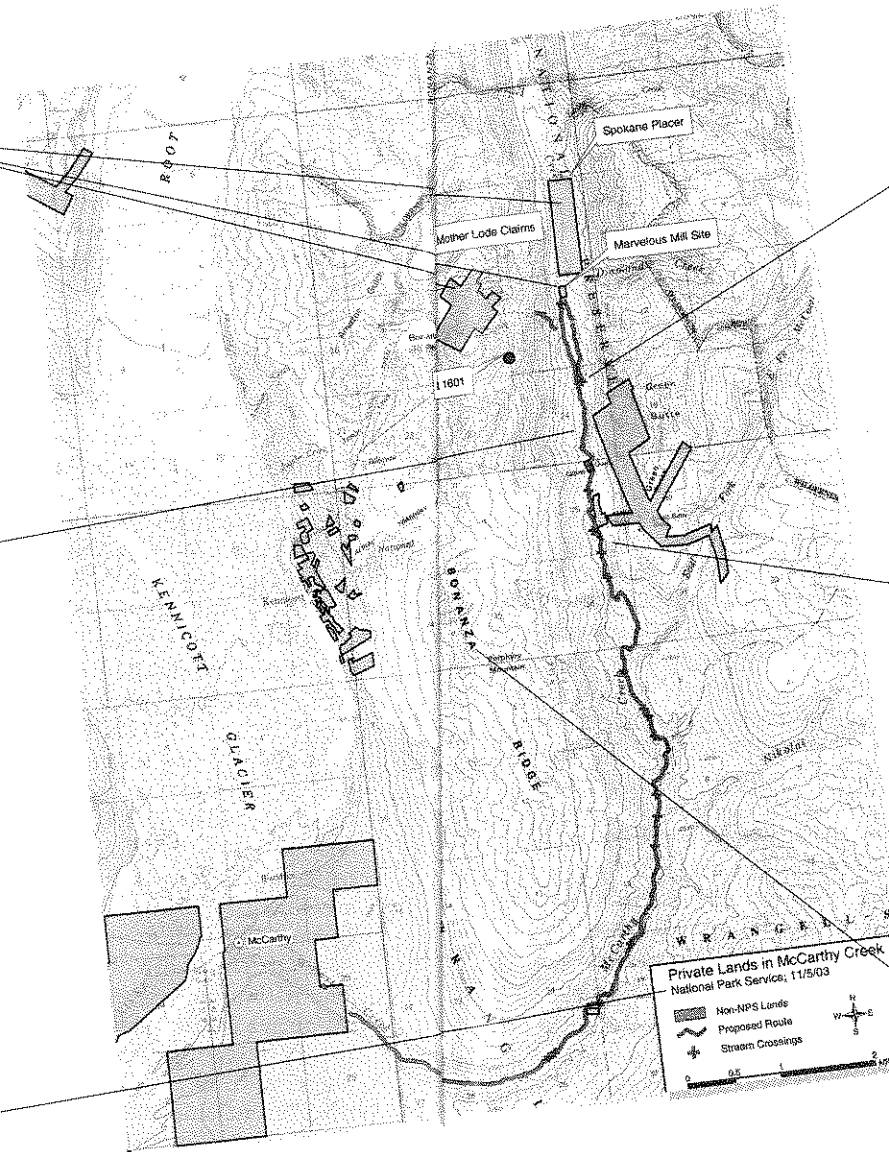
UNHAPPY TRAILS

A repealed, Civil War-era law still threatens the wilderness, by *Bryant Urstadt*

Robert and Kurina Hale own 410 acres of land, spread over these three parcels, on a steep glacial valley deep in America's largest national park, the Wrangell-St. Elias National Park and Preserve in Alaska. The Hales call their land "Hillbilly Heaven" and themselves an "honest, old-fashioned Jesus family." In 2002, Robert Hale started up his 1941 D4 Caterpillar, a nine-ton bulldozer with a nine-foot blade, and cut a thirteen-mile road through parkland to the town of McCarthy. Hale claimed he had the right to do so under R.S. 2477, an obscure, one-sentence federal law from 1866 that was repealed in 1976. His is not an isolated case. With the support of the Bush Administration, and against the pleas of wilderness advocates, tens of thousands of newly cleared roads may crisscross the nation's parks, preserves, and forests, all on the basis of a defunct, 138-year-old law.

Hale's route followed, more or less, an overgrown trail known as the McCarthy-Green Butte road. Under R.S. 2477, which stated simply that "the right-of-way for the construction of highways over public lands, not reserved for public uses, is hereby granted," Hale contends that he is allowed to use this trail in any way he pleases, because it was a road at some point during the 110 years while the law was in effect. Says Hale, who currently is in the process of legally changing his name to "Pilgrim": "It's just part of a state network of roads, same as the highways. . . . It's how we get home." Although many other such claims have been made by individual landowners, the great majority have been made by state and local governments. Last January, the Bush Administration issued a rule that offers "disclaimers of interest" to essentially anyone who claims a grandfathered route under R.S. 2477, enabling thousands of new claims to decades-old roads.

Alarmed that a bulldozer was being driven through parkland, the National Park Service padlocked Hale's Cat and closed his road. Legal wrangling followed. The Hales' case was quickly taken up by various conservative groups, for whom the Hales and their fifteen children—who all live in a small cabin, play traditional instruments, and have taken biblical names, including Bethlehem, Moses, Noah, Job, and Psalms—seem to represent the pioneer ideal. Local supporters organized an "airlift" that delivered more than sixty planeloads of food, fuel, and supplies to an airstrip on the Spokane Placer. The family has received particular help from the Pacific Legal Foundation, whose mission "against overreaching government" is funded in part by industry, including the paper/lumber giants Georgia-Pacific and Weyerhaeuser. The foundation has provided its lawyers to the Hales pro bono and has termed the N.P.S.'s actions "another chapter in the federal government's ongoing land grab."



These pluses are the seventeen points where Hale's path crosses McCarthy Creek. Because the original bridges washed out long ago, the N.P.S. argues that the route no longer exists, and that any new road would have to deviate from it. Other R.S. 2477 "roads" nationwide are even harder to find. When a Utah wilderness group tried to verify some of the state's 20,000 claimed roads—which include every hiking trail in Zion National Park—it found faint paths that followed wash bottoms, went up waterfalls, or ended at canyon walls. In California's San Bernardino County, which has claimed 5,000 miles of R.S. 2477 roads, volunteers found routes following old cattle paths and dry streambeds; some could not be located at all. The haziness of these routes is hardly discouraging to the Blue Ribbon Coalition, an off-road enthusiasts' group that identified and proposed claims for San Bernardino. Once established, the roads might find use among the mining, gas, and timber companies that help fund Blue Ribbon.

Here, an N.P.S. field team found a 145-year-old tree that had been toppled by Hale's bulldozer. Environmental groups are aghast at the scope of the damage that could be done by R.S. 2477 roads nationwide. Much of the worry is over endangered animal populations: for example, nearly half of the roads claimed by San Bernardino County run through "critical habitat" areas of the desert tortoise, a threatened species. Also in danger are wilderness areas that have yet to be protected by the government. In some cases, municipalities have been filing for claims precisely to forestall such federal protection, which could ban mining and industry on the protected lands. Last year, when the board of Moffat County, Colorado, petitioned for more than 2,000 miles of R.S. 2477 roads, it did so with the stated intention of protecting oil, gas, coal, and gravel interests there.

"Bonanza" is, for those with personal or professional reasons to clear a road though public land, an apt term to describe the Bush Administration's attitude toward R.S. 2477. Since releasing its new disclaimer rule last January, the administration has also expedited the process of approving claims for roads. The already favorable climate, fostered by Interior Secretary Gale Norton—formerly of the Mountain States Legal Foundation, which specializes in suing the government on behalf of ranchers, miners, and others seeking to use federal land—will only be more so now that Mike Leavitt, the staunchly pro-R.S. 2477 governor of Utah, is running the E.P.A. Robert Hale, for his part, is confident that he will prevail: the office of Frank Murkowski, Alaska's governor (who himself wants to use R.S. 2477 to build fourteen new highways on federal land), recently sent Hale a letter assuring him that his road was a recognized R.S. 2477 route. "I really believe God is with us," says Hale, adding, "It's a really beautiful road."

Bryant Urstadt's last article for Harper's Magazine, "One-Act Farce," appeared in the June 2003 issue.