

N.W.T. government turns to courts to stop Nahanni Butte road construction

Gov't says road has done serious damage, seeks injunction against 'trespassing'

By Mark Rendell, [CBC News](#) Posted: Mar 31, 2017 3:57 PM CT Last Updated: Apr 05, 2017 7:05 AM CT

The N.W.T. government is taking Nahanni Butte to court in an attempt to halt unauthorized road work near the community.

Since January, the band has been clearing an old logging road across the river from the community. It says they need the firewood. The government alleges the work is an attempt to speed up the development of Canadian Zinc's Prairie Creek Mine.

Last week, the government filed a notice of motion with the N.W.T. Supreme Court seeking an injunction to prevent community members "trespassing" with heavy equipment on territorially managed Commissioner's land.

- [Growing impatient, Nahanni Butte starts building own road to mine](#)

"The impacts from the construction of the road are serious and cannot be mitigated or satisfied by the payment of money," the government said in court documents.

The band has been clearing the trail with heavy equipment, without the required land use permit from the Mackenzie Valley Land and Water Board.

The band's manager Mark Pocklington told CBC the band had applied for a permit back in February, but the process stalled.

He said the band didn't have time to wait for the permit.

"Our 'dozer, our D6 Cat, which weighs about 10 tons, has to cross the ice bridge. So we only had a short window of a few months when we could bring our cat across and start working this road."

Ignoring stop work orders

As the road crosses both territorially managed Commissioner's land and federally-managed Indian Affairs Branch land (set aside for Nahanni Butte), both governments have issued stop-work orders.

"To date, the defendant has failed, refused, or neglected to comply with the stop-work orders," territorial government lawyers wrote in court documents.

Laurie Nadia, regional superintendent for the Dehcho region with the territorial Department of Lands, says she first told the band to stop using heavy equipment back in January, and repeatedly since.

"I was told... that the band's work on the road would not stop without a court-ordered injunction," Nadia said in an affidavit.

This was echoed by Pocklington himself.

"Hopefully we'll have our day in court," Pocklington told CBC News, following an earlier stop-work order issued by the federal department of Indigenous and Northern Affairs.

"If it gets to a court order, then obviously you have a right to challenge or explain your version of events. And I think a judge would be much more understanding."

Emergency situations

According to Pocklington, the band doesn't need a permit because the Mackenzie Valley Act allows people to contravene the rules around permitting in emergency situations.

"We told them that the elders needed firewood and the only standing dead trees were along that road," said Pocklington.

The government, for its part, doesn't buy that argument.

"Even if the lack of firewood is an emergency... there are other less destructive means to obtain firewood for elders than the use of equipment to clear territorial land of all trees and vegetation," wrote government lawyers.

Moreover, the government says the firewood issue is a cover.

"The defendant is constructing the road in an attempt to circumvent the ongoing (environmental assessment) review in order to accelerate the development of Prairie Creek Mine."

Road to the mine?

Both Pocklington and Nahanni Butte chief Peter Marcellais have stated publicly that they're interested in using their road to facilitate the construction of a longer road to Prairie Creek Mine.

The proposed road to the mine, roughly 100 kilometres away from Nahanni Butte, has been moving slowly through the Mackenzie Valley Review Board's environmental assessment process since mid-2014.

- [Prairie Creek Mine road to get environmental assessment](#)

The band is "genuinely keen to let everyone know that we believe the road is beneficial to everyone in the region, and we don't see anything wrong with an access trail to get things started," Pocklington [said in January](#), when the issue first arose.

"Sometimes you got to go to court to get them to understand that if nothing is happening in these communities, no work is happening, no progress is being made, it's because these regulations are in desperate need to be modernized," he added during an interview in late March.

The parties are expected to appear in court on April 7.

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