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Landbank Lawsuit Aimed at USACE Regs

By [Ellen Lockyer, Alaska Public Media](#) -
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An obscure lawsuit filed by a Matanuska Susitna wetlands mitigation bank could have national implications. The suit, now in Federal Claims Court, alleges breach of contract by the US Army Corps of Engineers, and land developers are closely watching the outcome.

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Wasilla based Pioneer Reserve, a wetlands mitigation bank, is suing the US Army Corps of Engineers in Federal Claims Court for twelve million dollars, but the court's decision could have further reach regarding the enforceability of wetlands mitigation agreements.

Pioneer Reserve is the first, and possibly the only, family – owned wetlands mitigation bank in Alaska. The land bank was established by Scott Walther, a Wasilla landowner with holdings in the Hatcher Pass area.

Walther worked with the Great Land Trust to place conservation easements on 166 acres of Little Susitna River drainage. The area is considered critical salmon habitat. Pioneer's president, Calli Donn says Pioneer got full Corps of Engineers approval as a wetlands mitigation bank in 2011, and the two entities signed an agreement, called a "wetlands mitigation instrument."

"When we signed our instrument, we had used a scientific methodology to determine how many credits we would get. And then we had a table of credits we expected to have upon signing the instrument."

Donn says Pioneer was initially assessed at 150 credits by the Corps, through a process that involves a federal interagency review team. The credits can be sold to developers. Each of Pioneer's credits is worth \$ 79,000.

The trouble arose when the Mat Su Borough's rail spur project filed with the Corps for wetlands fill permits in 2012. The Corps, in most cases, uses a wetland mitigation bank to offset a project's impact on water resources. The Corps at first directed the Borough to purchase credits for the rail spur project from Pioneer. But then the Corps inexplicably reduced Pioneer's ranking to only 17 credits, Donn says, about a year after the "instrument" was signed.

"We received an email saying that they [the Corps} felt that it had been incorrectly mapped."

Donn says Pioneer attempted to negotiate with the Corps over the downgrade, to no avail.

Pioneer's land, now encumbered by a conservation easement, can't be sold or used for mitigation credits due to the Corps's sudden reversal.

The Borough had to purchase the bulk of the railroad project credits from a different company. Donn says the sudden reduction in credits and the loss of potential sales cost Pioneer twelve million dollars, prompting the breach of contract suit against the Corps.

"It left us with almost nothing, which is why we turned to litigation."

Pioneer filed suit last May. The Corps filed a motion for dismissal of the suit, claiming the wetlands "instrument" is not a binding agreement. But in November of last year, a Federal Claims Court judge denied the Corps' motion, saying that Pioneer's complaint presents enough information to allege the existence of a contract.

Now the court must decide on Pioneer's complaint, and implicit in that decision is whether or not the Corps' initial wetlands instrument with Pioneer is enforceable as a contract.

Land bankers, and land developers, are watching the outcome, since establishment of a land bank is a long term financial commitment, and trust in a bargain with the Corps is a must.

Calli Donn says her company is not holding a grudge against the Corps:

"You know, it's been financially a huge hardship. So if we can get to the end of that suit and we can collect damages, then I think we can continue to work with the Corp on other projects, and we expect to in the future, and I hope that they are working toward a better system that doesn't have some of the pitfalls that the current system does. "

Spokesman for the Corps in Anchorage and in Washington, DC have withheld comment, citing litigation in progress. No court date has been set .

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APTI Reporter-Producer Ellen Lockyer started her radio career in the late 1980s, after a stint at bush Alaska weekly newspapers, the Copper Valley Views and the Cordova Times. When the Exxon Valdez ran aground in Prince William Sound, Valdez Public Radio station KCHU needed a reporter, and Ellen picked up the microphone. Since then, she has literally traveled the length of the state, from Attu to Eagle and from Barrow to Juneau, covering Alaska stories on the ground for the AK show, Alaska News Nightly, the Alaska Morning News and for Anchorage public radio station, KSKA [elockyer \(at\) alaskapublic \(dot\) org](mailto:elockyer@alaskapublic.org) | 907.550.8446 | [About Ellen](#)

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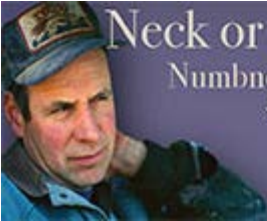
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