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UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

ROBERT HALE, JOSHUA HALE,
NAVA S. SUNSTAR, and
BUTTERFLY SUNSTAR,

Plaintiffs,

vs.

GALE NORTON, Secretary of the
Interior; GARY CANDELARIA,
Superintendent, Wrangell-
St. Elias National Park and
Preserve; HUNTER SHARP, Chief
Ranger, Wrangell-St. Elias
National Park and Preserve;
DEPARTMENT OF THE INTERIOR;
NATIONAL PARK SERVICE; FRAN
MAINELLA, Director of the
National Park Service;
MARCIA BLASZAK, Acting
Regional Director of the
National Park Service, all
in their official capacities,

Defendants.

Case No. A03-0257 CV (RRB)

ORDER DENYING PLAINTIFFS'
MOTION RE RECONSIDERATION

33

Before the Court is Plaintiffs' Motion for Reconsideration (Docket 29). Plaintiffs have supplied the Court with additional evidence, including photographs and declarations, and have taken issue with the Court's findings and conclusions entered in its Order of November 18, 2003. The Court, nevertheless, after review of all the pleadings filed to date, reaffirms its previous decision in this matter.

It is important that the parties not read more into the Court's Order than is there. Both seem to have done so. The Court recognizes the access rights provided by ANILCA and believes that they must be acknowledged and respected, subject to reasonable regulation. Congressional intent and subsequent case law make it clear, however, that the regulator is the Park Service and not the in-holders. If the Park Service abuses its discretion with regard to the permitting process, Plaintiffs may seek redress in the courts.

The Court will clarify and briefly summarize its findings and conclusions in this matter.

1. The Plaintiffs, by virtue of their ownership of property surrounded by the Wrangell-St. Elias National Park (the "Park"), have certain rights of access to their property which were guaranteed by ANILCA when the Park was created.

2. Plaintiffs' access rights, whether under 16 U.S.C. § 3169 or 16 U.S.C. § 3170, are subject to reasonable regulation by the Park Service.

3. Reasonable regulation includes the right to establish a permitting process for motorized land travel within the Park. U.S. v. Vogler, 859 F.2d 638 (9th Cir. 1988). The Court is well aware of both the distinctions and similarities between the Vogler case and this one. Vogler, however, stands for the proposition that reasonable regulation includes the right of the Park Service, in its discretion, to require persons desiring to use motorized land vehicles (other than snow machines) within the Park to first obtain a permit.

4. The access route that Plaintiffs now seek to re-open and utilize did, at one time, provide vehicular access to Plaintiffs' property. This route, however, has fallen into disrepair and has not been used in its customary fashion for decades. Whether the last truck traveled it 30 years ago or 65 years ago is of little significance, for the roadway itself has degenerated significantly since ANILCA was enacted and is now better characterized as a trail. Plaintiffs admit that the most practical means of utilizing the route currently is by bulldozer, although four-wheel drive and/or all-terrain vehicles would likely be able to traverse the trail during certain times of the year.

5. Clearly within the Park Service's regulatory function is the requirement for reasonableness. This includes the obligation to expeditiously address and fairly resolve permit applications, and to recognize that, at least as it applies to this portion of the Park, people are part of the environment. To date, it appears that the Park Service has been reasonable in its efforts to deal with Plaintiffs and in its desire to fairly regulate the manner and means of motorized access Plaintiffs seek. The Court would be quick to say so if it felt otherwise. The challenge has been Plaintiffs' lack of cooperation.

6. Whether the Park Service is required to follow the National Environmental Policy Act (NEPA) has not been fully briefed by the parties or addressed by the Court. However, if the Park Service, in good faith, believes that a NEPA study is needed and can be performed in a reasonably expeditious fashion, such a study may well be appropriate regardless of whether it is mandated by law.

7. On the other hand, there is evidence in the record to suggest that much, if not all, of the access route in question is on stable ground and can be used, with reasonable regulation, without significantly injuring the surrounding terrain. The Court has yet to visit the site and cannot therefore render a personal opinion with regard to the reasonableness of various modes of travel. There may be a number of options that would provide

Plaintiffs with reasonable and adequate motorized access to their property without significantly compromising Park Service interests. The issue here is - who is in charge? Plaintiffs believe that it is for them to determine what is appropriate access, unfettered by the Park Service. The law, however, requires the Park Service to reasonably regulate access routes within the Park.

8. Property owners seeking access rights within the Park have an implicit obligation to be reasonable as well. Plaintiffs' confrontational attitude, their refusal to read Park Service letters and/or their return of Park Service letters unopened, Plaintiffs' refusal to speak with Park Service representatives who attempted to communicate with them in person, and Plaintiffs' occasional efforts to intimidate Park Service employees, were not reasonable and have served only to delay resolution of this matter and make the Park Service's task more difficult. Plaintiffs' expectation that they alone can regulate their activities within the Park is unreasonable. Plaintiffs' efforts to forego Park Service regulation by directly bringing this matter to the Court prematurely is unreasonable as well.

9. It is highly unlikely that Plaintiffs will prevail on their claim to use a tracked vehicle on the McCarthy Green Butte Road without first obtaining Park Service approval. Given the clear precedent of Vogler, the subject is not a "fair ground for litigation."

10. The "hardships" experienced by Plaintiffs as a result of the delay associated with obtaining a permit, when viewed in the context of "bush living" in Alaska, are not so substantial or unexpected that an exception to the permitting process or the entry of an injunction is justified. Many Alaskans who choose a wilderness lifestyle routinely experience similar hardships, without the benefit of a large scale air lift of goods. This is verified not only by affidavits submitted on behalf of Defendants, but is common knowledge in the State. In this case, the fire that created the hardship occurred in April but the lawsuit was not filed until November 3, 2003. Plaintiffs cannot avoid the permitting process by failing to timely act. Furthermore, the Plaintiffs have been able to freely travel to and from their property within the Park and have chosen to spend the winter there. Additionally, there is evidence in the record that a substantial amount of goods was delivered to the property by air prior to winter.¹

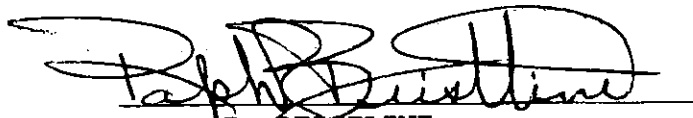
11. The Court cannot be any clearer regarding its interpretation of the law. Plaintiffs must follow established Park Service rules and seek a permit to utilize the access route in question. The Park Service must be given reasonable time to

¹ The Court has not relied on newspaper accounts for any of its findings in this matter.

evaluate and rule upon the permit application. Once a final ruling has been entered, the matter becomes ripe for Court review pursuant to 5 U.S.C. § 702 et seq. Until that time, the Court lacks jurisdiction to proceed or interfere with the administrative process. Plaintiffs' request for an emergency permit made on August 30, 2003, does not satisfy this requirement, for no final order has been entered by the Park Service with regard to Plaintiffs' request to use a tracked vehicle on the McCarthy-Green Butte Road.

In its prior Order (Docket 27), the Court suggested that the best way to resolve this dispute was for the parties to communicate in good faith and respect one another's needs and concerns. This continues to be the case. If it is Plaintiffs' desire to continue the battle, the appellate process is very much available to them. If, on the other hand, they wish to obtain some form of motorized access to their property in the reasonably near future, there is a permit process that they can pursue.

ENTERED at Anchorage, Alaska, this 15 day of December, 2003.


 RALPH R. BEISTLINE
 UNITED STATES DISTRICT JUDGE

A03-0257--CV (RRB)

B. LADDON (AUSA)
 J. BURLING
 R. RANDALL

MAILED ON 12/15/03

BY RRB

ORDER DENYING MOTION FOR RECONSIDERATION - 7
 A03-0257 CV (RRB)