

Court won't let Pilgrim family drive to its land

■ **9TH CIRCUIT:** Ruling requires owners to seek Park Service permit.

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A federal appeals court has once again rejected the Pilgrim family's right to drive a bulldozer to its land inside a national park without going through a lengthy permit process and environmental review.

The McCarthy-area family — whose patriarch, Robert Hale, adopted the name Pilgrim — became a celebrated cause for some land-rights groups in 2003 after the National Park Service rejected the Hales' bid to use an old mining road to access private land inside Wrangell-St. Elias National Park. Hale had aggravated park officials by driving a bulldozer over the old route to get building supplies after a cabin burned down in winter.

Represented by the non-profit Pacific Legal Foundation, Hale had battled the Park Service over its permit requirements, but lost in the U.S. District Court and 9th U.S. Circuit Court of Appeals. In March, 2004, the 9th Circuit agreed to reconsider its initial terse dismissal. The administration of Gov. Frank Murkowski filed a brief on the Hales' side, while several environmental groups joined the Park Service.

Two years later, after weighing full briefs and hearing oral arguments, a three-judge panel again rejected the lawsuit last week, reaching conclusions similar to those of District Judge Ralph Beistline in 2003.

The 9th Circuit said the Park Service has the right to exert "reasonable regulation" on access to private land in Alaska's national parks. The Hale family must go through the permit process first, then come back to court to argue about whether the park's rules were "reasonable," the appeals court said in a four-page decision.

The wilderness family has been turned inside-out since the lawsuit was filed. Last fall, Hale was indicted by a grand jury on 30 felony counts of rape, assault and incest involving one of his daughters. He was arrested by Alaska State Troopers after a weeklong manhunt and is now in Mat-Su Pre-Trial Facility. His criminal trial is scheduled for March in Glennallen, but may be delayed.

Hale's wife and 15 children, who have cooperated with investigators, are not living this winter on the park inholding they called Hillbilly Heaven.

None of that affects the access dispute, lawyers representing the family said.

"We don't know what God's plans are for us at this time, but we would still like to be able to access our property with appropriate consideration given for all those involved with the situation," said Kurina Rose Hale, Hale's wife, in a statement released Monday through a friend.

Russell Brooks, a lawyer with the legal foundation that has been representing the family for free, said they will ask the 9th Circuit for an "en banc" hearing involving more justices. Brooks said he would argue that the Park Service erred when it

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sought to impose a lengthy environmental review on the road permit application, and the family should be able to challenge that error in court.

"Sometimes when you need a permit in Alaska, you need it now," he said.

The family members traveled to their land using snowmachines, horses and airplanes while the bulldozer case continued. Most of the land is legally in the name of the eldest children, Brooks said.

At the heart of the case are two issues: what guarantees of access to private inholdings were provided under the Alaska National Interest Lands Con-

servation Act of 1980, and did the presence of an abandoned mining access road guarantee the Hales a right of way?

The 9th Circuit ruled the access rights under ANILCA remain subject to reasonable regulation. The court sidestepped the second issue, saying even if the Hales had a right of way, they would be subject to park rules.

"There's this interesting attitude among certain Alaskans that ANILCA allows access, period. It doesn't," said Jim Stratton, Alaska regional director for the National Parks Conservation Association.



Robert Hale

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