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UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

ROBERT HALE, et al.,

Plaintiffs,

v.

GALE NORTON, Secretary of the Interior, et al.,

Defendants.

NATIONAL PARK CONSERVATION
ASSOCIATION, et al.,

Defendant-Intervenors.

No. A03-0257-CV (RRB)

**DECLARATION OF
RAYMOND A. KREIG IN
SUPPORT OF MOTION
FOR RECONSIDERATION**

DEC OF KREIG SUP MOT
FOR RECONSIDERATION

I, Raymond A. Kreig, declare as follows:

1. The facts set forth in this declaration are based on my personal knowledge and, if called as a witness, I could and would competently testify thereto under oath. As to those matters which reflect a matter of opinion, they reflect my personal opinion and judgment upon the matter.

This declaration is organized as follows:

A. Paragraph 2 describes the McCarthy-Green Butte Road chronology, referencing Exhibit (Ex.) A to this Declaration and the accompanying photographs, A1-A8.

B. Paragraphs 3 through 9 describe and compare terrain conditions between the *Vogler* and *Hale* (Pilgrim) cases, referencing Ex. B.

Part A – McCarthy-Green Butte Road chronology and photographs

2. Attached is Ex. A, a McCarthy-Green Butte Road chronology of events and accompanying photographs covering the period 1901 to date. Ex. A also includes certain key events at McCarthy and Kennicott. I prepared Ex. A from many sources and interviews with persons knowledgeable about the history of use of the McCarthy-Green Butte Road. Specifically, this information results from interviews and materials or photographs provided by the following: Rick Kenyon, Doug Miller, Neil Darish, Gary Green, Country Rose Pilgrim, David Pilgrim, Robert Hale Pilgrim, Ron Simpson, Neil MacKinnon, Charlie and Inge Ricci, and Dick Anderson.

Part B – Terrain conditions compared between the *Vogler* and *Hale* (Pilgrim) cases

3. The terrain conditions and sensitivity along the Bielenberg Trail used by Joe Vogler, which was the subject of *United States v. Vogler*, 859 F.2d 638 (9th Cir. 1988), are here compared to those in this case concerning the McCarthy-Green Butte Road.

4. It was understandable for the National Park Service (Park Service) to have concerns in the *Vogler* case where the defendant operated a heavy D-8 Caterpillar and Delta-3 transporter in terrain that was very sensitive to damage from thermal and hydraulic erosion. See Ex. B, photographs B1 and B2. Normally, this type of terrain would be crossed in the winter under

sufficient snow cover to minimize terrain impact and damage to the insulating “tundra” vegetative mat that protects underlying permafrost from summer thaw. *See* Ex. B, photograph B5.

5. However, Vogler was insisting on summer travel over some of the most sensitive (to damage) terrain in the State of Alaska. Much of Vogler’s route traversed hills and ridges covered with thick, perennially frozen organic silt. This same terrain type along the Alyeska Pipeline corridor was found to contain shallow massive ice up to 50 feet thick. *See* Ex. B, photograph B4. Vogler crossed extensive areas of stunted black “swamp” spruce in poorly drained “muck” and tundra permafrost terrain. *See* Ex. B, photograph B3.

6. When surface sheet flow is intercepted by an ablating trail in the type of permafrost terrain traversed by Vogler, extensive terrain modification and damage can result. *See* Ex. B, photograph B6.

7. In my professional opinion, there is no chance for anything remotely like this level of terrain impact to occur along the McCarthy-Green Butte Road. There is no comparison between the two settings. The terrain on and surrounding the McCarthy-Green Butte Road is thaw-stable gravel and dense till. It is a very safe and resistant terrain for any type of tracked vehicular travel, whether in summer or in winter, especially over an existing road surface.

8. This conclusion is underscored by comparing Mr. Vogler’s testimony of conditions surrounding the Bielenberg trail to those along the McCarthy-Green Butte Road:

He noted that the marshy condition of the trail in the summer made it necessary to travel with the Caterpillar alongside the transport vehicle, off the trail. He acknowledged that this process “raises Cain” with the trail.

One expert noted that some of the areas could require up to 100 years to return to their original condition.

Vogler, 859 F.2d at 640. Similar damage, if any at all, will not result from the Pilgrims’ use of the McCarthy-Green Butte Road. The Pilgrims will not leave the existing road limits, in contrast to Vogler running his Caterpillar in natural, undisturbed terrain alongside his Delta transporter. Unlike in *Vogler*, no bridging of streams with logs or other material will be necessary. The Pilgrims’ use

will slightly impact only small, low brush that has regrown in places on the existing road surface. The Pilgrims will not impact any natural, undisturbed terrain with their tracked vehicle emergency access request.

9. Even though the terrain crossed by Vogler in the Yukon-Charley Rivers National Preserve was of the highest sensitivity to potential damage, Superintendent Dave Mahalic offered same day service to issue a permit for winter Caterpillar travel,

You know, if Mr. Vogler came in here this morning and he asked me for a permit, he could be driving that Cat to his mine this afternoon. [at 9:54 of 29:19 total minutes; BATTLE OF WEBBER CREEK, DVD Disk – KUAC-TV Alaska One, University of Alaska Fairbanks, 1985]

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed this 26th day of November, 2003, at Anchorage, Alaska.

RAYMOND A. KREIG