

J. P. TANGEN, AK Bar No. 7507051
1600 A Street, Suite 310
Anchorage, Alaska 99501-5148
Telephone: (907) 222-3985
Facsimile: (907) 274-6738

JAMES S. BURLING, AK Bar No. 8411102
Pacific Legal Foundation
10360 Old Placerville Road, Suite 100
Sacramento, California 95827
Telephone: (916) 362-2833
Facsimile: (916) 362-2932

RUSSELL C. BROOKS (Pro Hac Vice)
Pacific Legal Foundation
10940 NE 33rd Place, Suite 109
Bellevue, Washington 98004
Telephone: (425) 576-0484
Facsimile: (425) 576-9565

Attorneys for Plaintiffs

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)

**PLAINTIFFS' MOTION
FOR RECONSIDERATION**

PLAINTIFFS' MOTION FOR RECONSIDERATION

Upon the supporting Memorandum of Points and Authorities filed herewith, Plaintiffs (Pilgrims) respectfully move this Court to reconsider its Order issued November 18, 2003, denying the Pilgrims' requested injunctive relief and dismissing their Complaint for Declaratory and Injunctive Relief.

This Court should reconsider its decision and grant relief because the Pilgrims have established conclusively certain significant facts demonstrating the balance of the hardships tips sharply in the Pilgrims' favor and also raising sufficiently serious legal questions to make them a fair ground for litigation.

The Pilgrims respectfully contend that this Court should have granted the Pilgrims relief because, under the test employed in this Circuit, the Pilgrims did indeed establish that they have suffered and will continue to suffer serious hardships and irreparable injury absent injunctive relief. The Pilgrims contend the Order constitutes an abuse of discretion because it is based on erroneous factual findings and commits clear legal error. The Pilgrims presented an overwhelming amount of substantiated factual evidence concerning their past, present, and future injuries. In addition, the Pilgrims presented facts and evidence supporting the legal merits of their case regarding the existence of the McCarthy-Green Butte Road as a valid, existing right-of-way sufficient to raise serious questions concerning their right to continue use of the road.

In contrast, the Defendants (Park Service) presented little contradicting evidence and only sparse, questionable support for its assertions. Nonetheless, the Order, without meaningful analysis, appears to accept as fact the Park Service's bald assertions while ignoring or disregarding the Pilgrims' clearly established evidence.

In addition, the Order consists of clear legal error in ruling the Pilgrims failed to raise sufficiently serious questions concerning the legal merits of the case. Rather than apply the correct legal standard concerning injunctive relief, the Order apparently applies a standard which requires the Pilgrims to establish they will "ultimately prevail" on the merits of the case. Moreover, not only does the Order contain an incorrect legal standard for injunctive relief, it also contains error by

applying as the “rule of law” a case which significantly differs factually from the Pilgrims’ circumstances.

Accordingly, the Pilgrims respectfully ask the Court to reconsider its Order and grant injunctive relief.

DATED: November 26, 2003.

Respectfully submitted,

J.P. TANGEN

JAMES S. BURLING
RUSSELL C. BROOKS
Pacific Legal Foundation

By _____
RUSSELL C. BROOKS

Attorneys for Plaintiffs