

Pilgrims' music proves to be big hit outside Alaska where they are in a

Judge says Pilgrim family needs permit to drive bulldozer on road in McCarthy

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By Tom Kizzia — Anchorage Daily News

The National Park Service has the right to require a permit before the Pilgrim family can use a bulldozer to haul supplies up a historic mining route near McCarthy, a federal judge in Anchorage ruled Tuesday afternoon.

U.S. District Judge Ralph Beistline said legal precedents make it clear the government has a right to regulate access through Wrangell-St. Elias National Park, even where some kind of access is guaranteed by law. He urged the Pilgrims to apply for park permits to reach their homestead and return to court if they are unhappy with the outcome.

In dismissing the Pilgrims' case challenging the permit requirement and requesting emergency access, Beistline admonished both sides in the high-profile dispute to show more respect and communicate more openly.

"The showmanship and emotionalism that have characterized their interactions in the past must cease. After all, they are neighbors," the judge wrote in a paragraph highlighted in boldface type.

Several Pilgrim family members and their supporters were closeted Tuesday night in Anchorage to consider their next move. They had argued they needed no permit to use the historical access route.

Among their options: reviving the permit application process, appealing in federal court or seeking a rehearing before Beistline. A press release from the group said Beistline's 18-page decision included what they termed factual inaccuracies that appeared to come from assertions made in court by the park.

"This is round one of a 15-round fight," said Chuck Cushman, executive director of the American Land Rights Association, who has been touting the family's cause on the Internet. He called the family's bid for emergency access "a long shot."

Environmental groups said the decision will protect the public's parks.

"People cannot bulldoze first and ask permission later," said Eleanor Huffines, Alaska Director of The Wilderness Society, in a statement issued by groups that intervened in the case. Beistline, a former Fairbanks judge appointed to the court last year by President Bush, expressed some sympathy for the access needs of rural landowners. He said Congress, in passing epic Alaska parks legislation in 1980, sought to preserve pristine wilderness "while not significantly compromising the lifestyle of those who resided there, who pioneered the land, and who contributed to its unique and colorful character."

The 17-member Pilgrim family moved to McCarthy early last year and bought 410 isolated acres of mining land that they dubbed "Hillbilly Heaven." The Pilgrims' effort to bulldoze open a historic 13-mile mining road to town provoked a strong reaction from the Park Service, which closed the route to further mechanized access.

With little progress in talks over permits and winter closing in, the Pilgrims had gone to federal court seeking emergency relief. Their cause was taken up by state and national land-rights activists, and their case was handled for free by the Pacific Legal Foundation, a conservative public-interest law firm.

Pilgrim backers had said their case could be a landmark ruling on access in Alaska. But in his decision, Beistline dismissed that idea, saying legal precedents were clear. He cited in particular the case of a famous Alaska political activist who owned more than a dozen Caterpillar D-8 and D-4 bulldozers when he died.

In 1988, the 9th U.S. Circuit Court of Appeals decision found that miner and Alaskan Independence Party founder Joe Vogler needed a permit for a bulldozer route across the Yukon-Charley Rivers National Preserve.

The lawyer who won the Vogler case for the federal government, Bruce Landon, also argued the Pilgrim case on behalf of the Park Service during Monday's hearing. Beistline was the presiding judge in the murder trial of the man who killed the cantankerous 80-year-old Vogler in 1993 in a bungled burglary.

Cushman said Tuesday that Beistline had sidestepped some key legal arguments involving historic RS 2477 rights of way, which Pilgrim lawyers argued pre-empted the park's regulations. But Beistline spent several pages discussing congressional debates over Alaska access before concluding that a permit could be required as a "reasonable regulation." Beistline then dismissed the rest of the case, saying he did not have jurisdiction until after the Pilgrims had gone through the permit process. He noted: "They may well be granted some form of motorized access to their property."

The judge concluded the McCarthy Creek road had not been fully used for 65 years, and an environmental study seems appropriate before it is "reactivated." Pilgrim backers contend the road remained in use until recent years.

The 13-mile route twists up a narrow mountain valley. It was once a mining road used by trucks, but the bridges are gone, some sections have washed away, and much of it was overgrown with young trees when the Pilgrims moved there. The route was cleared by a bulldozer run by family patriarch Robert Hale, who goes by the name Papa Pilgrim. The Park Service then closed the road and began preparing a damages case against the family. Pilgrim said he needed a tracked vehicle to get supplies to his homestead, where one of two family cabins had burned to the ground the previous winter. Supporters have helped fly materials to the large family this fall, accusing the park of a "blockade." Environmentalists noted the family has access by airplane, horse and snowmachine.

The park says it needs to do an expedited environmental assessment of the Pilgrims' bulldozer access proposal if they want to get a permit. The process would take 60 days, with a decision possible a week after that, said spokeswoman Jane Tranel.

The Pilgrims got a boost from state officials Tuesday, even as they were losing in federal court. The state Department of Natural Resources said it does not consider McCarthy Creek to be an anadromous stream, despite a recent Park Service effort that turned up some Dolly Varden, including one that appeared to come from the sea. Unless that changes, the Pilgrims won't need to get stream-crossing permits from the state as part of the national park permit process, Tranel said.

[Back to Top](#)
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