NO. 14-35051

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

STATE OF ALASKA DEPARTMENT OF NATURAL RESOURCES AND DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES,
PLAINTIFFS-APPELLANTS,

V.

UNITED STATES OF AMERICA, ET AL.,
DEFENDANTS-APPELLEES.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA
Case No. 4:13-cv-00008-RRB

ANSWERING BRIEF OF APPELLEE DENA' NENA' HENASH (TANANA CHIEFS CONFERENCE)

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Corporate Disclosure Statement
Fed.R.App.P. 26.1

Appellee Dena' Nena' Henash (Tanana Chiefs Conference) is a consortium of the forty-two federally-recognized Native Alaskan Villages of Interior Alaska. Dena' Nena' Henash is a tribal governmental organization and has no stock or subsidiary corporations.

Dated: December 10, 2014.

/s/ Richard D. Monkman

Richard D. Monkman

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Jurisdictional Statement

The district court correctly dismissed this matter, finding that it lacked subject matter jurisdiction under the Quiet Title Act, 28 U.S.C. § 2409a, because the United States is an indispensable party and had not waived its sovereign immunity. Excerpt of Record ("ER") 002–010. Final judgment was entered on Dec. 26, 2013. ER 001. The State of Alaska timely filed notice of appeal on Jan. 22, 2014. ER 011–013. The Court of Appeals has jurisdiction under 28 U.S.C. § 1291.

Questions Presented on Appeal

1. Whether the district court lacked subject matter jurisdiction over the State of Alaska's claims because Native allotments are "trust or restricted Indian lands" exempt from the limited waiver of the United States' sovereign immunity in the Quiet Title Act, 28 U.S.C. § 2409a(a)?

2. Whether the district court correctly dismissed the State of Alaska's derivative 25 U.S.C. § 357 "condemnation" claim, in which the State asserted it was not required to compensate the Native allotment holders for taking their property, and where the United States did not consent to the taking?

3. Whether the district court correctly ruled that the Declaratory Judgment Act, 28 U.S.C. § 2201, did not confer jurisdiction in this matter?

Statutory and Regulatory Provisions

The texts of the pertinent statutes and regulations are reproduced in the addendum to this brief.

Statement of the Case

A. Nature of the Case.

The State of Alaska is attempting to take from two Native Alaskan elders their property without payment of compensation, claiming that it has multiple "public highway" rights-of-way through their Native allotments under R.S. 2477, a repealed statute that allowed "the construction of highways over public lands, not reserved for public uses."[1] The State also attempts to use 25 U.S.C. § 357 to condemn the elders' allotted land without payment of compensation or the consent of the United States, contrary to the requirements of that statute, and seeks to use the Declaratory Judgment Act, 28 U.S.C. § 2201, as an independent source of jurisdiction contrary to the requirements of that Act.

These attempts are unavailing: the State's suit is barred by the Indian lands exception to the Quiet Title Act, 28 U.S.C. § 2409a(a).

[1] Section 8 of the Mining Act of 1866, 14 Stat. 253, *redesignated as* Revised Statute 2477 (1873), *recodified* as 43 U.S.C. § 932, *repealed by* the Federal Land Policy and Management Act, Pub. L. No. 94-579, § 706(a), 43 U.S.C. § 1769(a) ("R.S. 2477").

B. Statement of Facts.

Athabaskan elders Agnes Purdy and Anne Lynn Purdy hold restricted Native allotments near Chicken, Alaska, in a sparsely populated area on the Canadian border known as the Fortymile Country.[2] The Purdy families' occupancy and use of the allotments began at least in 1925, when Frank Purdy began mining for gold in Chicken Creek.[3] In May, 1931, long before Alaska became a State, Frank's sons Arthur Purdy, Sr., and Fred Purdy joined their father's mining efforts. ER 031–032. Mining proved uneconomical, but the family continued to occupy and use the property. ER 027–030. As the BLM's decision in Anne's allotment adjudication recites,

> The applicant [Anne] resided on the land on a year-round basis until her father's [Art's] death in 1967. The applicant would spend winters away from the parcel and return every summer after 1967. . . . [T]he applicant was very good at trapping, hunting and fishing. She hunted caribou, rabbits and squirrels. She trapped marten, mink, wolverine and wolves. She would often fish for grayling and white fish and was a very patient fisherman. The applicant picked different kinds of berries for fresh eating and making jams. The applicant was very mechanically minded, good with her hands and at solving problems for life in the bush.

ER 047.

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[2] ER 036–037 (Arthur Purdy Heirs Allotment Certificate); ER 038-039 (Anne Purdy Allotment Certificate).

[3] ER 031 (BLM OHA Decision on Native Allotment Application F-13543 (Sept. 6, 2006)) ("[Arthur Purdy, Sr.'s] father, Frank, began mining for gold on Meyer's Fork in the early 1900s" and "[Arthur Purdy, Sr.] and his brother, Fred, carried on the mining in Myers Fork from the 1930s until the early 1960s").

In 1971, Arthur Purdy, Sr., and Anne Lynn Purdy applied for Native allotments on the property. In 2008, after nearly forty years of administrative proceedings, the BLM issued a Native Allotment Certificate to Arthur's heirs and, in 2012, the BLM issued a Native Allotment Certificate to Anne Lynn Purdy. The State of Alaska was a party to the lengthy BLM process and actively opposed the Purdys' applications on various grounds. The BLM specifically adjudicated the access question the State now seeks to re-litigate, holding the allotments subject to "continued right[s] of public access" along four named trails "not to exceed twenty-five (25) feet in width," and denying the State's land selection claim.[4] The BLM also reserved to the United States "a right-of-way [on the allotments] for ditches or canals constructed by authority of the United States." The State did not appeal the BLM's decisions, despite being given notice of its appeal rights.[5]

Then, in 2013, following litigation between Agnes Purdy and a non-Native neighbor who had excavated minerals and staked mining claims on Agnes' allotment without permission, the State of Alaska filed this quiet title action against the United States, the Purdys and other Fortymile Country property owners. The

[4] ER 040–045 (BLM Adjudication of Arthur Purdy, Sr. Allotment Application); ER 045–052 (BLM Adjudication of Anne Lynn Purdy Allotment Application).

[5] *Id*.; SER 1–3 (BLM Docket for Arthur Purdy, Sr. Allotment Application) ("Case Closed"); SER 4–6 (BLM Docket for Anne Lynn Purdy Allotment Application) ("Case Closed"); *see also* 43 C.F.R. § 4.410–4.411 (requiring appeal of BLM decision be filed within 30 days of the decision being made); ER 043-044 (notifying State of appeal window); ER 050-051 (same).

State asserts it owns 100-foot-wide public highway rights-of-way through the Purdys' allotments that "generally follow part of the historical Valdez–Eagle trail" as illustrated on, *inter alia*, a crudely-drawn map.[6]

Travelers do not use the trails through the Purdys' allotments to travel between Valdez and Eagle if, in fact, they ever did. The State of Alaska maintains a *bona fide* public highway to Eagle, the Taylor Highway, constructed in 1951 by the Territory of Alaska's Road Commission on an entirely different route a few miles to the east, which serves that purpose quite well and does not cross the Purdy's allotments at all.[7] Indeed, as the State's Complaint candidly admits, due to soil conditions it is simply not feasible to build a highway through the Purdys' allotments and, for that reason, the Territory's Road Commission consciously chose a different route for the Taylor Highway.[8] Notably, the State does not allege that it intends to build a "public highway" through the Purdys' allotments; nor does

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[6] Appellant's Br. at 7; ER 140 (drawing of horse-drawn sledge).

[7] *See, e.g.*, BLM *Taylor Highway Travel Guide* (2007), available at: http://www.blm.gov/pgdata/etc/medialib/blm/ak/aktest/brochures.Par.71908.File.dat/Taylor_Highway_brochure.pdf .

[8] ER 096 (Complaint) at ¶ 199 ("Soon after beginning construction of this portion of the Taylor Highway, the ARC discovered that the [Purdy's] area was too wet, boggy, and susceptible to erosion to make further construction of the Taylor Highway along that portion of the route practical. Thereafter, the Taylor Highway was relocated to its present location which lies just south of the historic community of Chicken.").

it explain why it would ever choose to do so, since it continues to maintain the perfectly good Taylor Highway just a few miles east.

The State nonetheless claims "public highway" 100-foot-wide rights-of-way over the 25-foot-wide public access corridors adjudicated by the BLM and reserved in the Purdys' allotment certificates, and additionally over a substantial web of abandoned, unused and mostly forgotten trail fragments that allegedly cross the allotments.[9] As the United States advised the district court, the State's claims through the Purdy allotments are entirely "amorphous R.S. 2477 rights of way, allegedly established by public use over a century ago, with no formal grant and no surveyed course at the time the right allegedly accrued."[10]

And, finally, the State asserts a unique "condemnation" claim against the Purdys' Native allotments under 25 U.S.C. § 357. The State alleges that it need not pay for taking their property since it already "owns" the alleged R.S. 2477 rights-of-way. Therefore, the State asserts, "no compensation is owed" for taking these elders' Native allotments. ER 132 (Complaint) at ¶ 355.

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[9] *See* ER 139 (inset map of Myers Fork/Chicken Creek area); ER 147 (photo showing alleged trail fragments).

[10] Dkt. 123 at 7–8. In its opening brief, the State cites only to its own Complaint as authority for the proposition that: "The public has used the trails at issue here since the late 1800s." Appellant's Br. at 5, citing ER 125 (Complaint).

C. Disposition Below.

The Purdys moved to dismiss under, *inter alia*, Civil Rule 12(b)(1), asserting that the Quiet Title Act's Indian land exclusion barred the State's action.[11] After inviting briefing from the United States and the Tanana Chiefs Conference, *in parens patriae*, the district court dismissed the State of Alaska's claims for lack of subject matter jurisdiction, and entered final judgment in the Purdys' favor. ER 2 (Order on Appeal).

Summary of Argument

1. The Quiet Title Act is the sole means for a claimant to challenge the United States' title to real property and does not apply to "trust or restricted Indian lands." 28 U.S.C. § 2409a(a).

2. 25 U.S.C. § 357 provides a limited waiver of federal sovereign immunity in formal actions by States to condemn interests in allotted lands. But that waiver does not apply to quiet-title claims, and a State may not condemn allotted lands over the United States' objection.

3. The Declaratory Judgment Act does not provide an independent source of federal jurisdiction. Because jurisdiction does not exist under the Quiet Title Act or 25 U.S.C. § 357, the district court lacked jurisdiction to adjudicate the State's declaratory judgment claims.

[11] Dkt. 91 (Mot. to Dismiss for Lack of Subject Matter Jurisdiction) (citing 28 U.S.C. § 2409a(a)).

ARGUMENT

I. Standard of Review.

Review of the district court's dismissal for lack of subject matter jurisdiction under Rule 12(b)(1) of the Federal Rules of Civil Procedure is *de novo*. *Mills v. United States*, 742 F.3d 400, 404 (9th Cir. 2014).

II. The Quiet Title Act is the Exclusive Remedy for the State of Alaska in this Action and Does Not Allow the State's Claims to Proceed.

The Quiet Title Act is a limited waiver of sovereign immunity by the United States permitting suits "to adjudicate a disputed title to real property in which the United States claims an interest[.]" 28 U.S.C. § 2409a(a). The Act is the exclusive remedy for a party seeking to quiet title against the United States. *Block v. North Dakota ex rel. Bd. of Univ. and Sch. Lands*, 461 U.S. 273, 275-76 (1983).

This includes R.S. 2477 claims: the Quiet Title Act "provide[s] the exclusive means by which adverse claimants [can] challenge the United States' title to real property … and applies to claims against the United States for rights of access, easements, and rights-of-way, as well as those involving fee simple interests." *Mills*, 742 F.3d at 405 (R.S. 2477 claim in Alaska's Fortymile Country) (internal quotations and citations omitted).

As the State admits, the United States has an interest in all the lands that are the subject of this case. ER 057 (Complaint) at ¶ 15. The State's action here may thus only proceed, if at all, under the Quiet Title Act. *Mills.*

A. The Restricted Indian Lands Exception to the Quiet Title Act.

The Quiet Title Act's waiver of the United States' sovereign immunity does not "apply to trust or restricted Indian lands":

> The United States may be named as a party defendant in a civil action under this section to adjudicate a disputed title to real property in which the United States claims an interest, other than a security interest or water rights. *This section does not apply to trust or restricted Indian lands, . . .*

28 U.S.C. § 2409a(a) (emphasis added). "[W]hen the United States claims an interest in real property based on that property's status as trust or restricted Indian lands, the Quiet Title Act does not waive the Government's immunity." *United States v. Mottaz*, 476 U.S. 834, 843 (1986). Lands need only be "at least colorably" Indian lands to qualify for the Quiet Title Act exception. *State of Alaska v. Babbitt* (*Bryant*), 182 F.3d 672, 675 (9th Cir. 1999) ("Of course the Indian lands exception applies only if the lands at issue are Indian lands, or at least colorably so."). As this Court has observed,

> In the drafting of the statute that became the Quiet Title Act the government insisted on the Indian lands exception to the waiver of sovereign immunity and pointed to its "solemn obligations to the Indians," and to its "specific commitments" to the Indians. The United States "cannot be sued at all without the consent of Congress. A necessary corollary of this rule is that when Congress attaches conditions to legislation waiving the sovereign immunity of the United States, those conditions must be strictly observed, and exceptions thereto are not to be lightly implied."

Wildman v. United States, 827 F.2d 1306, 1309 (9th Cir. 1987) (quoting H.R. REP. NO. 92-1559, at 13 (1972) (Letter to the Comm. on Interior and Insular Affairs on S.216 from Mitchell Melich, Solicitor of the Dep't of the Interior), *reprinted* in 1972 U.S.C.C.A.N. 4547, 4556-57) (citing *Block*, *supra*).

"Restricted Indian lands" include allotments held by individual Indians and subject to federal restraints on alienation. COHEN'S HANDBOOK OF FEDERAL INDIAN LAW § 16.03[1] at 1071 (Nell Jessup Newton et al. eds., 2012 ed.); *cf.* 18 U.S.C. § 1151 (defining "Indian country" to include "all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same"); 25 U.S.C. § 2703(4)(B) (defining "Indian lands" for the Indian Gaming Regulatory Act as including "any lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to restriction by the United States against alienation and over which an Indian tribe exercises governmental power."); *and* 25 C.F.R. § 152.1(c) (Bureau of Indian Affairs defines "restricted land" as "land or any interest therein, the title to which is held by an individual Indian, subject to Federal restrictions against alienation or encumbrance").

B. The Purdys' Allotments Are Restricted Indian Lands.

The Purdy allotments fit entirely within the definitions of "restricted Indian lands" set out above. The allotments cannot be alienated without the United

States' consent. The United States has retained interests in the allotments. Both Native Allotment Certificates provide that the lands "shall be inalienable and nontaxable" until Congress provides otherwise or until the Secretary of the Interior "approves a deed of conveyance vesting in the purchaser *a complete title* to the land."[12] This has not occurred and thus the exception applies. 28 U.S.C. § 2409a(a) (Quiet Title Act "does not apply to trust or restricted Indian lands"); *Mottaz*, 476 U.S. at 843 (1986) ("[W]hen the United States claims an interest in real property based on that property's status as trust or restricted Indian lands, the Quiet Title Act does not waive the Government's immunity.").

The Act "actively *retains*" the Government's immunity from Quiet Title Act claims against trust and restricted Indian lands. *Mesa Grande Band of Mission Indians v. Salazar*, 657 F. Supp. 2d 1169, 1175 (S.D. Cal. 2009) (emphasis original); *Mottaz*, 476 U.S. at 842 (Quiet Title Act "retain[s] the United States' immunity from suit by third parties challenging the United States' title to land held in trust for Indians."). Regardless of how the claim is framed, the Quiet Title Act

[12] ER 040-045 (Arthur Purdy, Sr. Native Allotment Certificate); ER 045-052 (Anne Lynn Purdy Native Allotment Certificate); *State of Alaska v. 13.90 Acres of Land*, 625 F. Supp. 1315, 1320-21 (D. Alaska 1985) *aff'd sub nom. Etalook v. Exxon Pipeline Co.*, 831 F.2d 1440 (9th Cir. 1987) (ruling in a case involving a grant to a company under the Trans-Alaska Pipeline Act, which excepted "lands held in trust for an Indian," that "[t]he court finds that once Arctic John's allotment had vested and he had equitable title to it, the United States' legal title was held in trust for him" and "[a]ccordingly, neither the Trans-Alaska Pipeline Act nor 30 U.S.C. § 185 could serve to pass any title to Alyeska.")

is the sole avenue by which the State can prove the existence of R.S. 2477 rights in court. *Montanans for Multiple Use v. Barbouletos,* 568 F.3d 225, 228-29 (D.C. Cir. 2009) (citing *Block*, *supra*). Since the Purdys' allotments are restricted Indian lands, Quiet Title Act jurisdiction is not present here, regardless of the State's characterization of its claims. *Wildman*, 827 F.2d at 1309 ("Nothing in the statute or its history suggests that the United States was to be put to the burden of establishing its title when it has a colorable claim and has chosen to assert its immunity on behalf of land of which the government declares that it is the trustee for Indians.").

C. The *Bryant* Case is Easily Distinguishable.

Here, as it did before the district court, the State argues otherwise based on *Bryant*, *supra*. That case addressed the requirement that the lands must be "colorably" Indian lands in order for the Act's "trust or restricted Indian lands" exception to apply. *Id.*, 182 F. 3d at 675-77. Under the convoluted facts of that case—very different from those here—this Court held that the lands at issue were not "colorably" restricted Indian lands. *Id*. at 677.

Bryant concerned an entirely different situation, and actually supports the district court's decision in this matter. In 1961, the United States issued a 500 acre grant to the State of Alaska for a right-of-way to mine gravel along what eventually became the Parks Highway, which runs from Anchorage to Fairbanks.

Id. at 673. Nine years later, William Bryant, a Native Alaskan, submitted an allotment application for 120 acres that overlapped the State's grant in all but about eight acres. *Id.*; *see also State of Alaska v. Norton (Bryant 2)*, 168 F. Supp. 2d 1102, 1109 (D. Alaska 2001) (on remand). The BLM granted Bryant's application; the State contested the BLM's grant; the Interior Board of Land Appeals (IBLA) upheld the BLM's determination; and the district court—with some reluctance—upheld the IBLA. *Bryant*, 182 F.3d at 673–74.

This Court reversed, holding that because the State received its grant in 1961 the property was not "vacant, unappropriated and unreserved" when Bryant began to use the land in 1964, and therefore the land not eligible for allotment under the Alaska Native Allotment Act. 43 U.S.C. § 270-1, *repealed with savings clause by* Sec. 18(a) of the Alaska Native Claims Settlement Act of 1971, 43 U.S.C. § 1617(a). Thus, the Court found, there was not even a "colorable basis" to find that the overlapping portion of the land was restricted Indian land under the Quiet Title Act. *Id.* at 676-77. On remand, the district court ruled that the allotment was "void as to all land within the original boundaries" of the State's 1961 grant. *Bryant 2*, 168 F. Supp. 2d at 1109.

In contrast to *Bryant*, there is no dispute that the Purdys' allotments *are* restricted Indian land. The State explicitly and unequivocally concedes this point. *See*, ER 057 (Complaint) at ¶ 15 ("Defendant United States also holds restrictions

on alienation for Alaska Native allotments, two of which are at issue in this case as further set forth below") and at ¶ 279 ("Defendant, the United States, may also claim an interest in the Agnes Purdy and Anne L. Purdy Native Allotments based upon its continuing obligation to control restrictions on alienation associated with the two parcels."). There is no prior grant or appropriation from the United States to the State of Alaska of any part of the Purdys' allotments, including the alleged R.S. 2477 trails and footpaths. Indeed, the State's attempted land selection claims over the allotments were affirmatively denied by the Bureau of Land Management in its adjudication proceedings. ER 042; ER 049.

Again in contrast to *Bryant*, Arthur Purdy, Sr.'s and Lynn Purdy's use and occupancy of their allotments began at least in 1931 and 1955, respectively. ER 040–052. An allotment holder's use and occupancy of the property relates back to the original occupancy date.[13] The Purdys' occupancies pre-dated the State's existence and began decades before the State asserted any R.S. 2477 claims. In

[13] *Bryant*, 182 F.3d at 674 (explaining that under BIA rulings an allotment "application 'relates back' to the commencement of the use and occupancy, so the land need only be vacant and unappropriated at that earlier time, not the later time when the application for native allotment is filed"); ER 040 (BLM Adjudication of Arthur Purdy, Sr.'s Allotment Application) ("The application indicates use and occupancy since May 15, 1931."); ER 047 (BLM Adjudication of Lynn Purdy's Parcel A) (ruling that January 1955 was the earliest date that Lynn Purdy could have commenced independent use and occupancy of Parcel A of her allotment application); *Shultz v. Dep't of Army, U.S.*, 10 F.3d 649, 656 (9th Cir. 1993) ("Valid pre-existing claims upon the land traversed by an alleged right of way trump any RS 2477 claim."), *opinion withdrawn and superseded on reh'g sub nom, Shultz v. Dep't of Army*, 96 F.3d 1222 (9th Cir. 1996).

Bryant, the United States granted prior right-of-way and gravel rights to the State of Alaska, without reservation. Here, the United States has granted nothing to the State of Alaska and retains important possessory and supervisory interests in the Native allotments. The United States controls alienation and taxation of the land, and retains direct rights "for ditches or canals constructed by the authority of the United States." ER 040–045 (Arthur Purdy, Sr., Native Allotment Certificate); ER 045–052 (Anne Lynn Purdy Native Allotment Certificate). These retained interests are more than sufficient for the Quiet Title Act to apply.[14]

And, there was nothing "arbitrary or frivolous" in the Purdy allotment grants that would preclude the allotments being considered "colorably" trust or restricted Indian lands. The BLM record reflects careful, considered and well-documented actions by the Government. Extensive testimony was taken; federal examiners visited the land described in the allotment applications; geologists examined the land for mineral character. *See* Dkts. 79-3, 79-4. Finally, nearly 40 years after the first allotment application was filed, the Government determined that the lands were non-mineral in character and available for allotment, adjudicated and approved the Purdys' allotment applications, subject to certain public rights of

[14] As the Government pointed out to the district court, the State does not "merely" seek to enforce the public rights of access recognized on the face of the Purdys' allotment certificates: "Because the State seeks to quiet title to trails not listed as existing rights on the Purdys' allotment certificates, and seeks rights of way of greater scope than those specified, the State unquestionably seeks to quiet title to portions of the allotments that are restricted Indian lands." Dkt. 123 at 10.

access stated in the allotment certificates, and rejected the State of Alaska's competing land selection claims. *Id.* The State was a party to and an active participant in the BLM proceedings, was clearly and plainly notified of its appeal rights, and did not appeal the BLM decisions. *See,* e.g., ER 040-44.

The Purdy allotments are indisputably restricted Indian lands. *Bryant* does not assist the State.

D. The State's R.S. 2477 Claims Are Subject to the Quiet Title Act.

The State tries to avoid the restricted Indian lands exception by arguing that it "owns" R.S. 2477 rights-of-way that predate both the Purdy's use and occupancy of the allotments and the State of Alaska's own existence. Because of this "ownership," the State argues, the property was not "vacant, unappropriated and unreserved" land eligible for allotment under the Alaska Native Allotment Act, former 43 U.S.C. § 270-1.

We pause to briefly discuss R.S. 2477, a "short, sweet, and enigmatic" statute.[15] The statute states, in full: "And be it further enacted, that *the right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted*."[16] Where land was withdrawn from the public domain,

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[15] *S. Utah Wilderness Alliance v. Bureau of Land Management ("SUWA")*, 425 F.3d 735, 761 (10th Cir. 2005), as amended on denial of reh'g (Jan. 6, 2006).

[16] Until its repeal by Pub. L. 94–579, title VII, §706(a), Oct. 21, 1976, 90 Stat. 2793, R.S. 2477 allowed the construction of highways over unreserved public lands. *SUWA*, 425 F.3d at 740-41; *see also* Thomas E. Meacham, *Public Roads*

however, R.S. 2477 did not apply.[17] After repeal in 1976, no new R.S. 2477 rights-of-way could be asserted, although rights-of-way "heretofore issued, granted, or permitted" were retained. 43 U.S.C. § 1769(a). And, as this Court recently confirmed, the Quiet Title Act applies to all R.S. 2477 claims against property in which the United States holds an interest:

> The Quiet Title Act (QTA), 28 U.S.C. § 2409a, allows a plaintiff to name the United States as a defendant in a civil action "to adjudicate a disputed title to real property in which the United States claims an interest." This statute "'provide[s] the exclusive means by which adverse claimants [can] challenge the United States' title to real property,'" and applies to claims against the United States for rights of access, easements, and rights-of-way, as well as those involving fee simple interests. Therefore, Mills' claim against the United States for a right of access over the Fortymile Trail [under R.S. 2477] must proceed, if at all, under the QTA.[18]

Over Public Lands: The Unresolved Legacy of R.S. 2477, 40 ROCKY MTN. MIN. L. FND. (ANNUAL INST. PROCEEDINGS) 2-1, 2-6 (1994); *Hamerly v. Denton*, 359 P.2d 121, 123 (Alaska 1961) (under Alaska law, "before a highway may be created, there must be either some positive act on the part of the appropriate public authorities of the state, clearly manifesting an intention to accept a grant, or there must be public user for such a period of time and under such conditions as to prove that the grant has been accepted").

[17] *Adams v. United States*, 3 F.3d 1254, 1258 (9th Cir. 1993) ("To establish an easement [under R.S. 2477 through national forest lands], the [plaintiffs] must show that the road in question was built before the surrounding land lost its public character in 1906."); *cf. Hamerly*, 359 P.2d at 123 (explaining that "[w]hen a citizen has made a valid entry under the homestead laws, the portion covered by the entry is then segregated from the public domain . . . [and] is not included in grants made by Congress under 43 U.S.C. § 932.").

[18] *Mills*, 742 F.3d at 405 (quoting *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians*, 132 S. Ct. 2199, 2203 (2012) (quoting *Block*, 461 U.S. at 286) and citing, *inter alia*, *Bryant*, 38 F.3d at 1074 and *McMaster v. U.S.*, 731 F.3d

Thus, the State's R.S. 2477 claims against the United States "must proceed, if at all, under the QTA." *Id.*, 742 F.3d at 405. Since the Quiet Title Act does not waive the United States' immunity from suits involving restricted Indian land, the State's R.S. 2477 argument is fundamentally in error.

Even if that hurdle could be overcome, others remain that block the State's R.S. 2477 claims. Notably, the State does not explain how Gold Rush-era public use gave title to the State. It is correct that in 1998 the Alaska Legislature asserted that the State "claims, occupies, and possesses each right-of-way granted under former 43 U.S.C. [§] 932 that was accepted either by the state or the territory of Alaska or by public users." Alaska Stat. 19.30.400(a). But this legislative assertion occurred twelve years after the repeal of R.S. 2477. As Senator Haskell stated in the 1976 debate over repeal:

> *[I]f a strip of land is being used for a highway over public land in accordance with state law at the time of enactment of this bill*, then that grant of right-of-way is preserved by reason of Section 502 of the bill. If, on the other hand, at the time this bill is enacted, a strip of land is not being used for a public highway, of course, the state will be unable to get a right-of-way under this R.S. 2477.[19]

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881 (9th Cir. 2013)); *accord Alleman v. United States*, 372 F. Supp. 2d 1212, 1226 (D. Or. 2005) (Quiet Title Act applied to R.S. 2477 right-of-way action).

[19] Meacham, *supra.*, at 2-21 (emphasis added) (quoting 93 Cong. Rec. S11871-11907 (July 8, 1974), *reprinted in* S. Comm. on Energy and Natural Resources, 95th Cong., Legislative History of the Federal Land Policy and Management Act of 1976. U.S. G.P.O. No. 95-99 (1978); *see also Board of Comm'rs of Catron County, N.M. v. United States*, 934 F.Supp.2d 1298, 1302 (D.N.M. 2013) ("When

Certainly, the Purdy allotments were not being used for "a highway over public land in accordance with state law" when R.S. 2477 was repealed – the Taylor Highway served that function in 1976 as it does today. And, the Purdys had used and occupied the allotments for decades by the time the Alaska Legislature first asserted its R.S. 2477 claims in 1998—the properties were no longer vacant and unappropriated federal lands or, as phrased in R.S. 2477, "public land not reserved for other uses" open to R.S. 2477 entry.[20] Moreover, to the extent rights-of-way were needed, the BLM decision had expressly reserved a right of public access across the Purdys' Native allotments. The public has already received the benefit purportedly sought by the State in this action.

Congress … repealed R.S. 2477, it preserved 'any valid' right-of-way 'existing on the date of approval of this Act.' Accordingly, rights-of-way under R.S. 2477 that were perfected before the repeal of the 1866 statute, and which have not lapsed, remain valid today. States or local governments may file suits to quiet title against the United States *if they can demonstrate that the grant of a right-of-way was accepted prior to the statute's repeal in 1976*.") (citing Pub. L. No. 94–579, §§ 702(a), 706(a), 90 Stat. 2743, 2786, 2793 (1976)) (emphasis added).

[20] *See* Meacham, *supra*, at 2-35; *cf. Fitzgerald v. Puddicombe*, 918 P.2d 1017, 1019 (Alaska 1996) ("RS 2477 granted rights-of-way over 'public lands' only. Once the land had passed into private hands, the grant could no longer be accepted.") (quoting *Hamerly*, 359 P.2d 123) ("When a citizen has made a valid entry under the homestead laws, the portion covered by the entry is then segregated from the public domain.... Consequently, a highway cannot be established under the statute during the time that the land is the subject of a valid and existing homestead claim.")).

Turning now back to the State's argument. First, there is a fundamental flaw in its position. The State pretends that it "*owns*" any land over which it *asserts* an R.S. 2477 claim, a proposition without support in the law and no support in the record. Appellant's Br. at 25 ("The district court had jurisdiction to confirm the State's *ownership* of the trails under the Quiet Title Act because the trails predated the Native allottees' use and occupancy.") (emphasis added); *but see Bd. of Comm'rs of Catron County, N.M., supra.*, n.19, 934 F. Supp. 2d at 1308. But, the State provides no authority for the proposition that public use of a trail over a century ago gives it title or otherwise constitutes "appropriation" of public land preventing the United States' later allotment from being "under color of law" under the Alaska Native Allotment Act.

Second, as the United States aptly informed the district court, the State's R.S. 2477 claims are at best "amorphous." Dkt. 123. The supposed "public highway" rights-of-way were never surveyed, never mapped and never formally granted by the United States to Alaska at any time. The State asserts that it "owns" 100-foot-wide highway rights-of-way based on a statute enacted in 1963, Alaska Stat. 19.10.015(a) (which simply states that "highways on public land not reserved for public uses are 100 feet wide"), and the 1998 list of "legislatively accepted" trails, Alaska Stat. 19.30.400. But, as noted above, both these statutes post-date by decades the Purdys' 1931 and 1951 use and occupancy of their Native allotments,

and cannot provide a basis for right-of-way claims not perfected before R.S. 2477's repeal.[21]

Third, according to the late Senator Ted Stevens during the debate on repeal, the R.S. 2477 "savings clause" on which the State relies for its claims, 43 U.S.C. § 1769(a), was meant to protect highways and roads actually built or actually maintained by public authorities at the time of repeal:

> Mr. STEVENS. . . . . [I]n many areas we have actually de facto public roads in the sense that there are trails that have become wider and have been graded and then graveled and then they are suddenly maintained by the State. The State takes over. . . . [P]erhaps we can make sufficient legislative history to make sure of what we were doing, because I know that in my State there are many highways, many roads, where the State just gradually assumed authority, finally extended the road out, and that road was never formally applied for . . . would the Senator from Colorado agree that if a State has accepted an obligation to maintain a road or trail, if it has partially constructed or reconstructed it, or has indicated an exercise of its police authority by virtue of posting signs at to speed limits, for example, which demonstrate it is a public highway—if the state has taken actions that would normally be taken by a state in furtherance of its normal highway program, and those roads were on such a right-of-way public lands, would the Senator agree that we have no intent of wiping those out, but those would be valid, existing rights under the one-sentence statute [(R.S. 2477)] the Senator mentioned previously?
>
> Mr. HASKELL. I agree with the Senator 100 percent.

[21] *Kane County, Utah v. United States,* No. 13-4108, 2014 WL 6788144, at *16 (10th Cir. Dec. 2, 2014) ("R.S. 2477 rights-of-way were preserved as they existed on the date of the passage of the FLPMA, October 21, 1976.") (citations and internal quotations omitted).

93 Cong. Rec. S11871-11907, *supra*, at n. 12; *cf*. *Hamerly*, 359 P.2d at 123 (Alaska 1961) ("But before a highway may be created, there must be either some positive act on the part of the appropriate public authorities of the state, clearly manifesting an intention to accept a grant, or there must be public user for such a period of time and under such conditions as to prove that the grant has been accepted.").[22]

And last, most importantly, the critical fact remains: by asserting a web of 100-foot-wide highway-rights-of-way across restricted Native allotments, the State seeks to quiet title to property in which the United States holds an undisputed interest. Its sole route is the Quiet Title Act, *Mills*, 742 F.3d at 405, and the Quiet Title Act does not waive the United States' sovereign immunity for suit over restricted Indian lands such as the Purdy allotments.

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[22] The alleged trail fragments would be unlikely to qualify as R.S. 2477 rights-of-way under any scenario—they were not "legislatively accepted" before the statute was repealed, go nowhere, reach dead-ends and were not "public highways" at all: "a valid R.S. 2477 road established by a public user must have a demonstrated 'terminus' at each end." Meacham, *supra*, at 2-48. Simply stated, this action is in a classic Alaska political tradition: these are "Trails to Nowhere." *See e.g.*, Carl Hulse,

Two "Bridges to Nowhere" Tumble Down in Congress, N.Y. TIMES, November 17, 2005, *available at* http://www.nytimes.com/2005/11/17/politics/17spend.html.

III. The State's Condemnation and Declaratory Judgment Claims are Equally Precluded by the Quiet Title Act.

To avoid the fatal effect of the Quiet Title Act on its action, the State makes two additional arguments. First—and its brief misstates what it actually requests in the Complaint—the State suggests that it can condemn 100-foot-wide rights-of-way wherever trail fragments are found on the Purdys' allotments without paying any compensation because it already "owns" those alleged rights-of-way.[23] Second, the State asserts that the district court had 28 U.S.C. § 2201 declaratory judgment jurisdiction over this matter because Agnes Purdy and Tanana Chiefs Conference brought suit earlier against a third party, the trespassing Busbys, "to enforce Agnes's rights to her allotment." Appellant's Br. at 51.

A. Condemnation. Although federal law provides a limited waiver of sovereign immunity for condemnation actions over Native allotments, 25 U.S.C. § 357, the Quiet Title Act remains the sole means for the State to bring a title challenge to property interests in Native allotments in which the United States retains substantial interests. In addition, the State may not condemn Native allotments over the objection of the United States.

[23] *Compare*, *e.g.*, ER 132 (Complaint) at ¶ 355 ("Given the State's pre-existing rights-of-way over the allotments, *no compensation is owed to any individual or entity* who may claim an interest adverse to the State's rights-of-way.") (emphasis added) with Appellant's Br. at 4 ("Here the State sued to condemn rights-of way over Native allotments, seeking to confirm preexisting rights-of-way and compensate the allottees if the State's claim exceeded what it already owned . . . .").

It is correct that Section 357 provides that allotted lands may be "condemned for any public purpose under the laws of State or Territory where located in the same manner as land owned in fee may be condemned[.]" 25 U.S.C. § 357. This provision provides a limited waiver of U.S. sovereign immunity for *formal* condemnation proceedings regarding allotted lands. *See State of Minnesota v. United States*, 305 U.S. 382, 388 (1939); *Jachetta v. United States*, 653 F.3d 898, 907 (9th Cir. 2011). But, under Section 357 as interpreted by the courts, there must be a formal condemnation proceeding and the United States must not express objection to it. The statute nowhere allows condemnation of Native allotments over the United States' objection. *United States v. Pend Oreille County Pub. Util. Dist. No. 1*, 135 F.3d 602, 614 (9th Cir. 1998) ("The consent of the United States is required before the lands can be condemned."); *cf.* 25 C.F.R. § 152.22(a) ("Trust or restricted lands, . . . or any interest therein, may not be conveyed without the approval of the Secretary [of the Interior].").

Neither this Circuit nor the Supreme Court has ever permitted a State to proceed with a condemnation suit under § 357 over the United States' affirmative objection to the proposed condemnation. *Pend Oreille County*, 135 F.3d at 614 (noting that the Secretary's consent was required before an allottees' lands were flooded, and the United States as "a party to this appeal strongly opposing [the utility's] condemnation of the land certainly does not consent"); *Minnesota*, 305

U.S. at 391 (expressly declining to reach the question of whether, as a matter of substantive law, "the lack of assent by the Secretary of the Interior precluded maintenance of the condemnation proceeding"). As in *Pend Oreille County*, the Government has "certainly" not consented to the State's condemnation of the Purdy allotments.[24]

Further, § 357 requires that the condemnation must be for a public purpose, must take the form of a formal condemnation proceeding and, contrary to the State's position, must provide payment of just compensation. As the Supreme Court explained in *Clarke*, another instance in which an Alaska government took a questionable approach to condemnation of a Native allotment: "We further believe that the word 'condemned,' at least as it was commonly used in 1901, when 25 U.S.C. § 357 was enacted, had reference to a judicial proceeding instituted for the purpose of acquiring title to private property *and paying just compensation for it*." *United States v. Clarke*, 445 U.S. 253, 254–258 (1980) (§ 357 requires a "formal condemnation proceeding") (emphasis added); *see also Minnesota*, *supra*. Here, the State denies that it has any obligation whatsoever to compensate the Native allotment holders or the United States. ER 131-132 (Complaint) at ¶¶ 346-355 (alleging that no compensation is owed to any "individual or entity who may claim

[24] By contrast, this Circuit has permitted States to condemn rights-of-way for electric transmission lines over allotted lands when the Government has *not* objected. *See S. Calif. Edison Co. v. Rice*, 685 F.2d 354, 355-56 (9th Cir. 1982); *Nicodemus v. Washington Water Power Co.*, 264 F.2d 614, 618 (9th Cir. 1959).

an interest adverse to the State's rights-of-way" over approximately 24 acres of the Purdys' allotments because the State already owns those "pre-existing" rights-of way); Appellant's Br. at 44 (arguing Section 357 allows the district court to "confirm" the State's alleged title to the rights-of-way as part of the condemnation proceeding). This is not a "formal condemnation" claim at all. The State can hardly "condemn" property that it already "owns," as it proposes here.

In sum, the State's Section 357 claim is a quiet title claim disguised by artful pleading, entirely a matter of form over substance. To grant the relief requested requires determining that the State "owns" the asserted rights-of-way against competing claims of the federal government: in other words, quieting title against the United States. But the Quiet Title Act is the "exclusive means by which adverse claimants c[an] challenge the United States' title to real property." *Block*, 461 U.S. at 284-85 (rejecting suggestion that the Quiet Title Act's provisions could be avoided by "artful pleading") (internal quotations and citations omitted); *Mottaz*, 476 U.S. at 841-42 (Quiet Title Act applies regardless of form of relief requested when plaintiff seeks to "adjudicate a disputed title to real property in which the United States claims an interest") (citing 28 U.S.C. § 2409a(a)) (internal quotations omitted); *Mills*, 742 F.3d at 405.

The district court correctly ruled that "irrespective of whether the State seeks to establish a right-of-way under R.S. 2477 or to condemn under Section 357, the

failure of the United States to have waived its sovereign immunity bars this action as against the Purdy Native Allotments." ER 009 (Dismissal Order).

B. Declaratory Judgment. The district court correctly dismissed the State's declaratory judgment claims because the Declaratory Judgment Act, 28 U.S.C. § 2201, is not an independent source of jurisdiction and no other statute brings this case within the court's jurisdiction.

First, as the State concedes, the federal declaratory judgment statute, 28 U.S.C. § 2201, "does not confer jurisdiction by itself if jurisdiction would not exist on the face of a well-pleaded complaint brought without the use of 28 U.S.C. § 2201." *Janakes v. U.S. Postal Serv.*, 768 F.2d 1091, 1093 (9th Cir. 1985); *Calif. Shock Trauma Air Rescue v. State Comp. Ins. Fund*, 636 F.3d 538, 542 (9th Cir. 2011) ("'[T]he operation of the Declaratory Judgment Act is procedural only' and does not confer arising under jurisdiction.") (quoting *Skelly Oil Co. v. Phillips Petroleum Co.*, 339 U.S. 667, 671 (1950)).

Second, the State's argument that "independent declaratory judgment jurisdiction" exists over this action based on the Busby trespass case is incorrect. Appellant's Br. at 52. In asserting that an Athabaskan elder can adequately represent the interests of the United States in this action, the State relies almost entirely on *Lyon v. Gila River Indian Community*, 626 F.3d 1059 (9th Cir. 2010), which applied this Court's holding in *Puyallup Indian Tribe v. Port of Tacoma*,

717 F.2d 1251, 1254 (9th Cir.1983), that "in a suit *by an Indian tribe* to protect its interest in tribal lands, regardless of whether the United States is a [required] party under Rule 19(a), it is *not* [a] party in whose absence litigation cannot proceed under Rule 19(b)." *Lyon*, 626 F.3d at 1070 (emphasis added).

This action is entirely different. It is not a suit by an Indian tribe at all. It is a suit by the State of Alaska against the United States and two elderly Native Alaskan allotment holders. *Puyallup* simply does not apply. *See id.* at 1071 (*Lyon* was "more similar to 'a tribe seeking to protect Indian land from alienation,'. . . than to a case of 'litigation . . . instituted by non-Indians for the purpose of effecting the alienation of tribal or restricted land'") (quoting *Puyallup*, 717 F.3d at 1255 n.1).[25]

[25] *N.b.*, this action is the opposite. It is, correctly, styled "*State of Alaska v. United States of America*, [et al.]," ER 053 (Complaint) (emphasis added), and expressly alleges, *inter alia*, that "Defendant United States of America holds title to portions of the servient real property. . . traversed by some of the rights-of-way that are the subject of this action [and] also holds restrictions on alienation for Alaska Native allotments, two of which are at issue in this case," *id*. at ¶ 15; that "Defendant, the United States, claims an interest in the lands at issue as the servient owner of the underlying fee interest in the real property [over which many of the claimed trails pass], specifically including portions of the Chicken to Franklin, Hutchinson Creek and Montana Creek Spur Trails" and that the United States "may also claim an interest in the [Native allotments] based upon its continuing obligation to control restrictions on alienation associated with the two parcels, ER 114-115 (Complaint) at ¶¶ 277, 279; and that "The United States' management of its fee lands underlying the Chicken to Franklin, Hutchinson Creek and Montana Creek Spur Trails has occurred in a manner inconsistent with the State's ownership interests in these R.S. 2477 rights-of-way" ER 124 (Complaint) at ¶ 301.

Third, the United States is a necessary and an indispensable party in this action, where the "relief sought might interfere with its obligation to protect Indian lands against alienation." *Carlson v. Tulalip Tribes of Washington*, 510 F.2d 1337, 1339 (9th Cir. 1975); *see also Paiute-Shoshone Indians of Bishop Community of Bishop Colony, Calif. v. City of Los Angeles*, 637 F.3d 993, 997 (9th Cir. 2011) (United States necessary party in suit by tribe to recover land transferred by the United States); *Lyon*, 626 F.3d at 1069 (quoting *Minnesota*, 305 U.S. at 386-87, 386 n.1.)

The district court could not grant the relief requested—whether described as quieting title, "confirming ownership," or "condemning" rights-of-way—in the absence of the United States. Fed. R. Civ. P. 19(a). Because the United States is an indispensable party that cannot be joined due to the Indian lands exception to the Quiet Title Act, and in the absence of any independent jurisdictional source, the district court correctly concluded that the Declaratory Judgment Act did not confer jurisdiction over this matter. *Bishop Community*, 637 F.3d at 997 (citing *Yellowstone County, Mont. v. Pease*, 96 F.3d 1169, 1172 (9th Cir.1996)).[26] The

[26] The State also relies on *Janakes v. U.S. Postal Service*, 768 F.2d 1091 (9th Cir. 1985), for its "coercive action" theory. *Janakes* is inapposite. This Circuit subsequently modified *Janakes*, abandoning that approach and holding that jurisdiction was appropriate because of a direct statutory grant of jurisdiction from Congress. *Flamingo Indus. (USA) Ltd. v. U.S. Postal Serv.*, 302 F.3d 985, 993 (9th Cir. 2002), *rev'd on other grounds*, 540 U.S. 736 (2004) ("[T]he United States district courts shall have original but not exclusive jurisdiction over all actions

State's argument that it can create "independent declaratory jurisdiction" plainly and simply, is without merit.

Conclusion

For the foregoing reasons, the judgment of the district court should be affirmed.

Dated December 10, 2014.

Respectfully submitted,

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brought by or against the Postal Service.") (citing 39 U.S.C. § 409(a)). The opposite is true here. The Quiet Title Act expressly *precludes* jurisdiction where Indian allotments are concerned.

Statement Regarding Oral Argument

Dena' Nena' Henash (Tanana Chiefs Conference) requests oral argument.

Dated: December 10, 2014. By: */s/ Richard D. Monkman*

Richard D. Monkman

Certificate of Compliance Pursuant to Fed. R. App. P. 32(a)(7)(C) and Circuit Rule 32-1

I certify that pursuant to Fed. R. App. P. 32(a)(7)(C) and Ninth Circuit Rule 32-1, the Answering Brief of Appellee Dena' Nena' Henash (Tanana Chiefs Conference) is proportionately spaced, has a typeface of 14 point and contains 7,357 words.

By: */s/ Richard D. Monkman*

Richard D. Monkman

Statement of Related Cases

Counsel is not aware of any related cases pending in this Court within the meaning of Ninth Circuit Rule 28-2.6.

Dated: December 10, 2014. By: */s/ Richard D. Monkman*

Richard D. Monkman

ADDENDUM

ADDENDUM TABLE OF CONTENTS

18 U.S.C. § 1151. Indian country defined

Except as otherwise provided in sections 1154 and 1156 of this title, the term "Indian country", as used in this chapter, means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

25 U.S.C. § 357. Condemnation of lands under laws of States

Lands allotted in severalty to Indians may be condemned for any public purpose under the laws of the State or Territory where located in the same manner as land owned in fee may be condemned, and the money awarded as damages shall be paid to the allottee.

28 U.S.C. § 2201. Creation of remedy

(a) In a case of actual controversy within its jurisdiction, except with respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue Code of 1986, a proceeding under section 505 or 1146 of title 11, or in any civil action involving an antidumping or countervailing duty proceeding regarding a class or kind of merchandise of a free trade area country (as defined in section 516A(f)(10) of the Tariff Act of 1930), as determined by the administering authority, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.
(b) For limitations on actions brought with respect to drug patents see section 505 or 512 of the Federal Food, Drug, and Cosmetic Act, or section 351 of the Public Health Service Act.

28 U.S.C. § 2409a. Real property quiet title actions

(a) The United States may be named as a party defendant in a civil action under this section to adjudicate a disputed title to real property in which the United States claims an interest, other than a security interest or water rights. This section does not apply to trust or restricted Indian lands, nor does it apply to or affect actions which may be or could have been brought under sections 1346, 1347, 1491, or 2410 of this title, sections 7424, 7425, or 7426 of the Internal Revenue Code of 1986, as amended (26 U.S.C. 7424, 7425, and 7426), or section 208 of the Act of July 10, 1952 (43 U.S.C. 666).
(b) The United States shall not be disturbed in possession or control of any real property involved in any action under this section pending a final judgment or decree, the conclusion of any appeal therefrom, and sixty days; and if the final determination shall be adverse to the United States, the United States nevertheless may retain such possession or control of the real property or of any part thereof as it may elect, upon payment to the person determined to be entitled thereto of an amount which upon such election the district court in the same action shall determine to be just compensation for such possession or control.
(c) No preliminary injunction shall issue in any action brought under this section.
(d) The complaint shall set forth with particularity the nature of the right, title, or interest which the plaintiff claims in the real property, the circumstances under which it was acquired, and the right, title, or interest claimed by the United States.
(e) If the United States disclaims all interest in the real property or interest therein adverse to the plaintiff at any time prior to the actual commencement of the trial, which disclaimer is confirmed by order of the court, the jurisdiction of the district court shall cease unless it has jurisdiction of the civil action or suit on ground other than an independent of the authority conferred by section 1346(f) of this title.
(f) A civil action against the United States under this section shall be tried by the court without a jury.
(g) Any civil action under this section, except for an action brought by a State, shall be barred unless it is commenced within twelve years of the date upon which it accrued. Such action shall be deemed to have accrued on the date the plaintiff or his predecessor in interest knew or should have known of the claim of the United States.
(h) No civil action may be maintained under this section by a State with respect to defense facilities (including land) of the United States so long as the lands at issue are being used or required by the United States for national defense purposes as determined by the head of the Federal agency with jurisdiction over the lands involved, if it is determined that the State action was brought more than twelve

years after the State knew or should have known of the claims of the United States. Upon cessation of such use or requirement, the State may dispute title to such lands pursuant to the provisions of this section. The decision of the head of the Federal agency is not subject to judicial review.

(i) Any civil action brought by a State under this section with respect to lands, other than tide or submerged lands, on which the United States or its lessee or right-of-way or easement grantee has made substantial improvements or substantial investments or on which the United States has conducted substantial activities pursuant to a management plan such as range improvement, timber harvest, tree planting, mineral activities, farming, wildlife habitat improvement, or other similar activities, shall be barred unless the action is commenced within twelve years after the date the State received notice of the Federal claims to the lands.

(j) If a final determination in an action brought by a State under this section involving submerged or tide lands on which the United States or its lessee or right-of-way or easement grantee has made substantial improvements or substantial investments is adverse to the United States and it is determined that the State's action was brought more than twelve years after the State received notice of the Federal claim to the lands, the State shall take title to the lands subject to any existing lease, easement, or right-of-way. Any compensation due with respect to such lease, easement, or right-of-way shall be determined under existing law.

(k) Notice for the purposes of the accrual of an action brought by a State under this section shall be--

(1) by public communications with respect to the claimed lands which are sufficiently specific as to be reasonably calculated to put the claimant on notice of the Federal claim to the lands, or

(2) by the use, occupancy, or improvement of the claimed lands which, in the circumstances, is open and notorious.

(l) For purposes of this section, the term “tide or submerged lands” means “lands beneath navigable waters” as defined in section 2 of the Submerged Lands Act (43 U.S.C. 1301).

(m) Not less than one hundred and eighty days before bringing any action under this section, a State shall notify the head of the Federal agency with jurisdiction over the lands in question of the State's intention to file suit, the basis therefor, and a description of the lands included in the suit.

(n) Nothing in this section shall be construed to permit suits against the United States based upon adverse possession.

25 U.S.C. § 2703. Definitions

For purposes of this chapter--
(1) The term "Attorney General" means the Attorney General of the United States.
(2) The term "Chairman" means the Chairman of the National Indian Gaming Commission.
(3) The term "Commission" means the National Indian Gaming Commission established pursuant to section 2704 of this title.
(4) The term "Indian lands" means--
(A) all lands within the limits of any Indian reservation; and
(B) any lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to restriction by the United States against alienation and over which an Indian tribe exercises governmental power.
(5) The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians which--
(A) is recognized as eligible by the Secretary for the special programs and services provided by the United States to Indians because of their status as Indians, and
(B) is recognized as possessing powers of self-government.
…
(10) The term "Secretary" means the Secretary of the Interior.

Former 43 U.S.C. § 270-1.

The Secretary of the Interior is authorized and empowered, in his discretion and under such rules as he may prescribe, to allot not to exceed one hundred and sixty acres of vacant, unappropriated, and unreserved nonmineral land in Alaska, or, subject to the provisions of sections 270-11 and 270-12 of this title, vacant, unappropriated, and unreserved land in Alaska that may be valuable for coal, oil, or gas deposits, to any Indian, Aleut or Eskimo of full or mixed blood who resides in and is a native of Alaska, and who is the head of a family, or is twenty-one years of age; and the land so allotted shall be deemed the homestead of the allottee and his heirs in perpetuity, and shall be inalienable and nontaxable until otherwise provided by Congress: *Provided*, That any Indian, Aleut, or Eskimo, who receives an allotment under this section, or his heirs, is authorized to convey by deed, with the approval of the Secretary of the Interior, the title to the land so allotted, and such conveyance shall vest in the purchaser a complete title to the land which shall be subject to restrictions against alienation and taxation only if the purchaser is an Indian, Aleut, or Eskimo native of Alaska who the Secretary determines is unable

to manage the land without the protection of the United States and the conveyance provides for a continuance of such restrictions. Any person qualified for an allotment as aforesaid shall have the preference right to secure by allotment the nonmineral land occupied by him not exceeding one hundred and sixty acres.

R.S. 2477, Section 8 of the Mining Act of 1866, 14 Stat. 253.
And be it further enacted, that the right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted.

Federal Land Policy and Management Act, Pub. L. No. 94-579, § 706(a), 90 Stat. 2743.

Nothing in this Act, or in any amendment made by this Act, shall be construed as terminating any valid lease, permit, patent, right-of-way, or other land use right or authorization existing on the date of approval of this Act.

25 C.F.R. § 152.1.

As used in this part:
(a) Secretary means the Secretary of the Interior or his authorized representative acting under delegated authority.
(b) Agency means an Indian agency or other field unit of the Bureau of Indian Affairs having trust or restricted Indian land under its immediate jurisdiction.
(c) Restricted land means land or any interest therein, the title to which is held by an individual Indian, subject to Federal restrictions against alienation or encumbrance.
(d) Trust land means land or any interest therein held in trust by the United States for an individual Indian.
(e) Competent means the possession of sufficient ability, knowledge, experience, and judgment to enable an individual to manage his business affairs, including the administration, use, investment, and disposition of any property turned over to him and the income or proceeds therefrom, with such reasonable degree of prudence and wisdom as will be apt to prevent him from losing such property or the benefits thereof. (Act of August 11, 1955 (69 Stat. 666)).
(f) Tribe means a tribe, band, nation, community, group, or pueblo of Indians.

25 C.F.R. § 152.22.

(a) Individual lands. Trust or restricted lands, except inherited lands of the Five Civilized Tribes, or any interest therein, may not be conveyed without the approval of the Secretary. Moreover, inducing an Indian to execute an instrument purporting to convey any trust land or interest therein, or the offering of any such instrument for record, is prohibited and criminal penalties may be incurred. (See 25 U.S.C. 202 and 348.)
(b) Tribal lands. Lands held in trust by the United States for an Indian tribe, lands owned by a tribe with Federal restrictions against alienation and any other land owned by an Indian tribe may only be conveyed where specific statutory authority exists and then only with the approval of the Secretary unless the Act of Congress authorizing sale provides that approval is unnecessary. (See 25 U.S.C. 177.)

43 C.F.R. § 4.410.

(a) Any party to a case who is adversely affected by a decision of the Bureau or Office or an administrative law judge has the right to appeal to the Board, except:
(1) As otherwise provided in Group 2400 of Chapter II of this title,
(2) To the extent that decisions of Bureau of Land Management officers must first be appealed to an administrative law judge under § 4.470 and Part 4100 of this title,
(3) Where a decision has been approved by the Secretary, and
(4) As provided in paragraph (e) of this section.
(b) A party to a case, as set forth in paragraph (a) of this section, is one who has taken action that is the subject of the decision on appeal, is the object of that decision, or has otherwise participated in the process leading to the decision under appeal, e.g., by filing a mining claim or application for use of public lands, by commenting on an environmental document, or by filing a protest to a proposed action.
(c) Where the Bureau or Office provided an opportunity for participation in its decision making process, a party to the case, as set forth in paragraph (a) of this section, may raise on appeal only those issues:
(1) Raised by the party in its prior participation; or
(2) That arose after the close of the opportunity for such participation.
(d) A party to a case is adversely affected, as set forth in paragraph (a) of this section, when that party has a legally cognizable interest, and the decision on appeal has caused or is substantially likely to cause injury to that interest.

(e) For decisions rendered by Departmental officials relating to land selections under the Alaska Native Claims Settlement Act, as amended, any party who claims a property interest in land affected by the decision, an agency of the Federal Government or a regional corporation shall have a right to appeal to the Board.

43 C.F.R. § 4.411.

(a) A person who wishes to appeal to the Board must file a notice that the person wishes to appeal.
(1) The notice of appeal must be filed in the office of the officer who made the decision (not the Board).
(2) Except as otherwise provided by law:
(i) A person served with the decision being appealed must transmit the notice of appeal in time for it to be received in the appropriate office no later than 30 days after the date of service of the decision; and
(ii) If a decision is published in the Federal Register, a person not served with the decision must transmit the notice of appeal in time for it to be received in the appropriate office no later than 30 days after the date of publication.
(b) The notice of appeal must give the serial number or other identification of the case. The notice of appeal may include a statement of reasons for the appeal, and a statement of standing if required by § 4.412(b).
(c) No extension of time will be granted for filing the notice of appeal. If a notice of appeal is filed after the grace period provided in § 4.401(a), the notice of appeal will not be considered and the case will be closed by the officer from whose decision the appeal is taken. If the notice of appeal is filed during the grace period provided in § 4.401(a) and the delay in filing is not waived, as provided in that section, the notice of appeal will not be considered and the appeal will be dismissed by the Board.
(d) After receiving a timely notice of appeal, the office of the officer who made the decision must promptly forward to the Board:
(1) The notice of appeal;
(2) Any statement of reasons, statement of standing, and other documents included with the notice of appeal; and
(3) The complete administrative record compiled during the officer's consideration of the matter leading to the decision being appealed.

Alaska Stat. 19.10.015.

(a) It is declared that all officially proposed and existing highways on public land not reserved for public uses are 100 feet wide. This section does not apply to highways that are specifically designated to be wider than 100 feet.
(b) Notwithstanding (a) of this section, a municipality may designate the width of a road that is not a part of the state highway system if the municipality maintains the road.

Alaska Stat. 19.30.400.

(a) The state claims, occupies, and possesses each right-of-way granted under former 43 U.S.C. 932 that was accepted either by the state or the territory of Alaska or by public users. A right-of-way acquired under former 43 U.S.C. 932 is available for use by the public under regulations adopted by the Department of Natural Resources unless the right-of-way has been transferred by the Department of Natural Resources to the Department of Transportation and Public Facilities in which case the right-of-way is available for use by the public under regulations adopted by the Department of Transportation and Public Facilities.
(b) The Department of Natural Resources shall conduct the necessary research to identify rights-of-way that have been accepted by public users under former 43 U.S.C. 932 and that have not been previously identified and shall annually report to the legislature by the first day of each regular session of the legislature on rights-of-way that have been identified and that are not listed in this section.
(c) The rights-of-way listed in (d) of this section have been accepted by public users and have been identified to provide effective notice to the public of these rights-of-way. The failure to include or identify a right-of-way under (d) of this section does not relinquish any right, title, or interest the public has in a right-of-way.
(d) The following rights-of-way are identified by the name of the right-of-way and the identification number the right-of-way has been assigned by the Department of Natural Resources in the Historic Trails Database, known as the "RST" number, which contains a complete description of the right-of-way:

RIGHT-OF-WAY NAME	RST NUMBER
Cobb Lakes Trail	0001
Taylor—Humboldt	0002
Hajducovich--Macomb Plateau Trail	0003
Jualin Mine Road	0004
Marvel Creek Cat Trail	0005
Taylor Creek--Serpentine Hot Springs	0006
Eureka—Rampart	0007
Harrison Creek--Portage Creek	0008
Coldfoot--Chandalar Lake Trail	0009
Chicken--Franklin	0010
Eagle--Alder Creek Trail	0011
Nabesna--Chisana	0012
Poorman--Ophir Route 1	0013
Unuk River Road	0014
Long--Birch Creek Road	0015
Aurora Trail (Dahl-Deering)	0016
Knik Glacier Trail	0017
Bettles--Wild Lake River Trail	0018
Poorman--Ophir Route 2	0019
Wrong Way Lane (Harding Lake Trail)	0020
Akiak--Crooked Creek	0021
Akiakchak/Akiak--Phillips Bro-Russian Mis	0022
Aniak—Tuluksak	0024
Beaver—Caro	0027
Bennett's Cutoff	0028
Bethel--Quinhagak	0030
Bethel—Kasigluk	0031
Bethel—Tuluksak	0032
Bluff--White Mountain	0034
Boulder Creek Trail	0036
Tramway Bar	0038
Candle—Kiwalik	0042
Rex Creek Trail	0043

Chena Hot Sprgs--East Fork (Van Curlers)	0046
Chickaloon--King River Road	0047
Chistochina--Slate Creek	0048
Chulitna Trail	0052
Telaquana Trail	0057
Dahl Creek Tractor Trail #1	0058
Crooked Creek--Aniak	0059
Davidson's Landing--Taylor	0060
Stephan Lake--Murder Lake	0061
Dime Landing--Haycock Trail	0062
Dishkaket--Kaltag	0063
Donnelly--Washburn	0064
Dunbar--Brooks Terminal	0066
Eagle--Circle Mail Trail	0067
Egegik—Kanatak	0068
Elliot—Kotsina	0069
Ester—Dunbar	0070
Flat—Georgetown	0076
Flat--Holy Cross--Anvik	0077
Fortymile--Franklin	0078
Murder Lake North to Ridgeline	0080
Meiers Lodge--Dickey Lake	0082
Batzulnetas--Suslota Pass Trail	0083
Golovin—Council	0084
Christian--Arctic Village	0085
Goodnews Bay--Togiak	0086
South Spit Goodnews Bay--Platinum Creek	0087
Nakeen--Igiugig Winter Trail	0090
Holy Cross--Kaltshak (Kalskag)	0092
Hooper Bay--Scammon Bay	0093
Houston--Willow Creek	0095
Iditarod--Dishkaket	0097
Iditarod--Shageluk--Anvik (southern route)	0098
Indian River--Portage Creek Trail	0100
Iron Creek--American Creek	0101
Alatna--Shungnak	0105

Katalla--Yakataga	0106
Girdwood--Eagle River via Crow Pass	0110
Indian Pass Trail	0111
Kiana--Klery Creek	0114
Kiana--Selawik--Shungnak	0115
Kinak—Kipnuk	0116
Kiwalik—Noorvik	0117
Knik—Susitna	0118
Kobi--Bonnifield Trail to Tatlanika Creek	0119
Kotlik—Marshall	0120
Kotsina Trail	0121
Kotzebue--Noatak	0122
Nimiuk Point--Shungnak	0124
Lakeview--McDougal	0126
Larsen Bay--Karluk River	0127
Lewis Point--Naknek	0128
Lewis Landing--Dishkaket	0129
Lillywig Creek Winter Sled Road	0130
Lynx Creek Spur	0132
McCarthy--Green Butte	0135
McDougal--Peters Creek (Cache Creek)	0136
McGrath--Candle Creek	0137
McGrath--Takotna (Winter)	0138
Millard Trail	0139
McGrath—Telida	0140
Johnson Pass	0142
Gilmore Trail Branch--Smallwood Creek	0144
Mills Creek--Cache Creek	0145
Naknek—Egegik	0148
Nancy Lake--Susitna	0149
Nenana--Tanana (serum run)	0152
Nixon Fork--Nixon Mine	0153
Nizina--Bremner Sled Road	0155
Nizina--Chitina River	0156
Nome--Teller Coastal Trail	0158
Lillywig Creek Summer Pack Trail	0159

Nuka Bay	0160
Nulato--Dishkaket	0161
Batzulnetas--Nabesna River	0162
Ophir—Dishkaket	0164
Ophir—Iditarod	0165
Otter Creek Towpath	0167
Paimute--Marshall	0168
Penny River Trail	0170
Quinhagak--Goodnews Bay	0173
Rainy Pass--Big River	0174
Kiagna River Trail	0179
Skagway--Glacier	0186
Slana--Tanana Crossing	0188
Snowshoe--Beaver	0189
St. Michael--Kotlik	0190
Strelna--Kuskulana	0194
Dillingham--Lewis Point	0195
Susitna--McDougal	0198
Susitna--Rainy Pass	0199
Susitna—Tyonek	0200
Takotna--Flat (Winter, via Moore Creek)	0201
Takotna--Flat (Summer)	0202
Takotna--Nixon Fork (Winter)	0203
Takotna--Nixon Fork	0204
Takotna--Twin Peaks	0206
Taku River	0207
Bettles—Coldfoot	0209
Barnum--Slate Creek	0211
Teller--American River	0212
Teller--Cape Prince of Wales	0213
Teller--Pilgrim Hot Springs	0214
Togiak--Nushagak	0215
Topkok—Candle	0216
Unalakleet--St. Michael	0218
Upper Landing--Bear Creek	0220
Egegik--Cold Bay	0221

Vault Creek--Treasure Creek	0224
Woodchopper--Coal Creek	0226
Yentna--Mills Creek	0228
Yukon--Kuskokwim Portage	0229
Bielenberg Trail	0230
North Fork Chena River	0231
Swede Lake--Little Swede Lake--Denali Hwy	0232
Tok River Road	0233
Circle--Fairbanks Trail	0237
Candle--Independence Trail	0239
Kaiyuh Hills (Galena)	0245
Paxson--Slate Creek	0248
O'Connor Creek Trail	0251
Ahtell Creek Trail	0253
Wiseman--Chandalar	0254
Anvik—Kaltag	0255
Beaver Lake via Bryan Creek	0256
Beaver--Horse Creek--Chandalar Lake	0257
Dome Creek--Steel Creek	0258
Canyon Creek--Walkers Fork	0260
Caro--Big Creek	0261
Caro—Coldfoot	0262
Caro--Chandalar Mine	0263
Old Mail Trail (Nenana--Minto)	0264
Chisana--Horsfeld	0265
Sleetmute--Taylor Mountains	0266
McCord Bay Trail	0267
Ouzinki Trail	0268
Circle--Ft. Yukon	0270
Khayyam Mine Trail	0272
Monashka Mountain Trail	0274
Ewan Lake Seismic Trail	0275
Chisana--Big Eldorado Creek	0277
Young Bay Trail	0279
Chatanika--12 Mile Summit (Winter)	0280
Island Bay--Salmon Creek Trail	0282

Franklin Steele Creek	0284
Fourth of July Creek Trail	0286
Ft. Gibbon--Kaltag Trail	0287
Lawrence Creek--Claybluff Point	0288
Tanana--Allakaket	0289
Goat Trail	0290
Telaquana Trail--Nondalton	0291
Gulkana--Denali (Winter)	0294
Gulkana--Valdez Creek (Summer)	0295
Dewey Lake Trail	0298
Kaltag--Topkok--Solomon--Nome Trail	0299
Windy Bay--Port Chatham Portage	0300
Liberty Cabin--Dome Creek	0302
Manley Hot Springs--Sullivan Creek	0303
Wilson Creek Trail	0304
McClaren River Trail	0305
Mentasta--Tetlin Trail	0307
Hughes--Mile 70	0308
Montana Creek Trail (Juneau quad)	0309
Portage Creek Trail	0311
Paimut Portage	0317
Paxson--Denali (Valdez Creek)	0318
Platinum Creek Trail	0319
Nabesna--Northway	0321
Salcha--Caribou Sled Road	0322
Scammon Bay--Hamilton--St. Michael (Winter)	0323
Nizina--Chisana (Skolai Pass)	0325
Goodnews--Arolik River	0326
Tanunak--Umkumiut	0327
Talkeetna--Iron Creek	0331
Togiak--Ungalikthluk	0332
Tanana Crossing--Grundler Trail	0333
Tuluksak--Kalskag	0335
Tanunak--Tooksook Bay	0336
Copper Mountain	0337
White River Trail	0338

Dahl Creek Tractor Trail #2	0339
Lignite--Stampede	0340
Roosevelt--Kantishna	0341
Roosevelt--Glacier	0342
Kobi-Kantishna	0343
Lignite--Kantishna	0344
Kobi--McGrath (via Nikolai and Big River)	0345
Nenana--Kantishna	0346
Spruce Creek Trail	0348
Nizina--Chisana (Glacier Trail)	0361
Tana River Trail	0363
Cape Yakataga--White River	0366
Portage Bay--Mt. Demian Oil Camp	0367
Haycock—Candle	0368
Nikolai Mine Trail	0372
Nabesna River--Canadian Border	0374
Paint River Trail	0375
Stephen, Murder and Daneka Lake Connector	0377
North Fork of Fortymile--Big Delta	0379
Moore Creek--Sleetmute	0380
Ruby Creek--Doherty Creek Trail	0381
Mt. Lazier Trail	0383
Kotzebue--Kiwalik (Winter Coast Trail)	0387
Merrill River--Stony River Trail	0388
Flat—Aniak	0389
Dahl Creek Tractor Trail #3	0390
Tanacross--Ketchumstuk	0391
Trail #52--Black Mt.	0392
Dahl Creek Tractor Trail #4	0393
Chignik Lagoon--Aniakchak River	0394
Iliamna--Pile Bay	0396
Fosters Camp--Grass Valley	0397
Orange Hill Trail	0400
Tasnuna Route	0404
King's County Trail	0405
Johnson River--Kinak Trail	0406

Groundhog Basin	0408
Jack Wade--Steel Creek (Winter)	0409
Jack Wade--Steel Creek (Summer)	0410
Chandalar--Chandalar Mine Trail	0411
Slate Creek	0412
Eldorado Sled Road	0414
Dago Creek Road	0415
Caribou Lane (Back Road)	0419
Slate Creek--Johnson Creek	0420
Ketchumstuk--Chicken	0421
Ptarmigan Creek Trail	0423
Hanagita Trail	0425
Hicks Creek Trail (a/k/a Pinochle Creek)	0426
Chickaloon River Trail	0427
Styx River Trail	0428
Bear Creek--Saw Pit Creek	0430
Marvel Creek--Beaver Creek Trail	0431
Caribou Creek Trail	0433
Tolsona Lake Trail	0434
Windy Creek Tractor Trail #1	0436
Chistochina--Mankomen Lake Trail	0437
Nabesna--Chisana (Route 2)	0439
Mentasta--Slate Creek	0440
Healy Creek Trail	0444
Ft. Yukon--Birch Creek	0446
Wolverine Lake Trail	0447
Goodpastor River Trail	0449
Hickel Highway	0450
Golden Fleece Mine Trail	0451
Ungalik—Candle	0455
Unalakleet--Beeson Slough	0456
Beeson Slough--Second Creek (Winter)	0457
Norton Bay--Eschscholtz Bay	0458
Cosjacket--Kuskokwim Mountains	0460
Bonnifield Trail	0462
Nation River--Rampart House	0466

Central--Circle Pack Trail	0467
Hunter Creek--Livengood	0468
McWilliams--Gold Creek Trail	0469
Serpentine Hot Springs--Shishmaref	0470
Teller--Shishmaref (Winter)	0471
Teller--Shishmaref (Winter--Easterly route)	0472
Anikovik River--Potato Mountain	0473
Hetta Inlet--Jumbo Basin	0475
Circle--Chalkytsik--Yukon Border	0476
Ft. Yukon--Christian	0477
Ft. Yukon--Beaver	0478
Little Gerstle River--Sheep Creek	0480
Ear Mountain Spur	0481
Copper Creek Trail (McCarthy quad)	0483
Katmai--Savonoski	0490
Rex—Roosevelt	0491
Glacier--Kantishna via Caribou Creek	0492
Quigley Ridge Road	0493
Discovery--Prince Creek (Slate Creek)	0495
Iniskin Peninsula Road	0496
Prince Creek	0497
Michigan Creek Trail	0500
Stuyahok--Tuckers Slough	0504
Nilumat Creek--Towak Mountain	0505
Shageluk--Holikachuk Winter Trail	0506
Stuyahok—Cabin	0507
Holy Cross--Travis Cabins	0508
Mouth of Windy Creek--Landing Strip	0510
Long Creek--Mine on Bird Creek	0511
Willow Creek Trail (Talkeetna quad)	0512
Dutch Crk--Bear Crk--Peters Crk (Winter)	0513
Camp Crk Lndg--Collinsville--Black Crk	0514
Treasure Crk Lndg--Camp Crk Lndg Strip	0515
Black Creek Winter Trail	0516
Windy Creek Access Road	0517
May-Be-So Creek Trail	0519

Karta River Trail	0520
Sulzer Portage Trail	0521
Hadley--Kasaan Bay Trail	0526
Iniskin Bay--Oil Bay Trail	0529
Montana Loop Trail	0536
Otter--Swinging Dome Cabins--Reindeer Riv	0538
Otter Creek--Iditarod River	0539
Otter Creek Tramway--Moose Creek	0540
Willow Creek--Mine	0541
Little Creek Trail	0542
Murray Creek Trail	0543
Butte Creek--Chicken Creek Trail	0544
Return Creek--Crooked Creek	0545
Return Creek Landing--Crooked Creek Ruins	0546
Donlin Creek--Dome Creek--Crooked Creek via Omega	0547
Dome Creek--Anaconda--Bell Creek	0548
Anaconda--Snow Gulch	0549
Crooked Creek Cabin--American Creek	0550
Big Yetna River--Winter Ridge--Little Yetna Lake--Big Yetna River	0551
	0552
Big Creek--Takotna Roadway	0553
Return Creek--Haystack Butte--Flat--Crooked Creek	0554
First Chance Creek--Bonanza Creek Loop	0555
First Chance Creek across Glacier--Horsefly	0556
Dikeman--First Chance Creek Tr.	0557
Rampart House--Demarcation Point	0560
Willow Creek--Prince Creek	0562
Chickaloon--Knik--Nelchina	0564
Copper Center--Nelchina	0565
Green Monster Mine Trail	0566
Windham Bay Trail	0567
Chuck River Trail	0568
Sumdum Mines Trail	0569
Portage Pass Trail (Portage--Whittier)	0572
Resurrection Pass Trail	0579

Palmer Creek Lakes Trail	0580
Squaw Creek Trail	0589
Coldfoot--Junction Trail 49 (east route)	0591
Chilkoot Trail	0592
Perseverance Trail	0597
Sheep Creek Trail	0599
Lemon Creek Trail	0601
Nugget Creek Trail (Juneau quad)	0602
Spaulding Meadows Ski Circuit Trail	0603
Peterson Lake Trail	0604
Eagle River Trail	0606
Yankee Basin Trail	0607
One Mile Trail	0609
Highway--Gakona River Short-cut	0611
Bessie Mine Trail	0612
Hadjukovich--Horn Mountain Trail	0613
Colorado--Fox Creek	0614
Summit Creek Trail	0615
Pass Creek Trail (Seward quad)	0616
Windy Creek Tractor Trail #2	0617
Central--Deadwood Creek Trail	0618
Stetson Creek Trail	0619
Tanana--Rampart along Yukon River	0620
Bear Creek Trail (Hope)	0621
Fink Creek--Candle Trail	0623
Falls Creek Mine Trail	0626
Copper Center--Valdez	0633
Explorers Kenai River Trail	0634
Beeson Slough--Shaktoolik Roadhse--Ungalik	0635
Noorvik—Selawik	0639
Chena Lowlands Winter Trail Connections	0641
Gilmore Trail--Fairbanks Creek Connector Trail	0650
Moores Lake Trail	0680
Jarvis Creek Trail	0687
Lake George Trail	0688
Windy Creek Trails (Cantwell)	0707

Healy--Diamond Coal Mine Dirt Road	0709
Cripple Landing--Innoko River	0729
Cripple Landing--Rennie's Landing	0730
Cripple Landing--North Fork Innoko River	0731
Gambell--Boxer Bay	0738
Cape Woolley--Teller	0740
Osborn/Buster Creek--Iron Creek Trail	0741
Tonsina Trail (Tonsina L--Richardson Hwy)	0746
Norton Bay--McKinley Creek	0747
Shaktoolik River--Junction Creek	0752
Koyuk--Bald Head Trail	0755
Lake Minchumina--Kuskokwim River	0758
Ketchumstuk Winter Trail	0789
Boundary--Lassen Landing Strip	0792
Trout Creek Trail	0803
Boulder Creek Trail	0810
Graveyard Creek--Cabins	0823
Alfred Creek Trail	0824
Thanksgiving Creek Trail	0836
Grant Creek--Moran Dome Trail	0837
Palisades Portage	0840
Elliot Creek Trail	0844
Ninemile Point--Choris Peninsula	0869
Killeak Lake Trail	0870
Shungnak River Trail	0873
Ross Creek and Jackson Lake--Twin Lakes	0879
Alexanders Village--Veh--Tenjerlow Lakes	0881
Middle Fork--Chandalar Trail	0890
Hammond River Trail	0899
Ninemile Hills--Midas Creek	0904
Gordon--U.S. Border Tractor Trail	0912
Nuvagapak Pt Landing Strip--Kogatpak River	0913
Poker (Pokok) Lagoon Southeast	0914
Tarnayariak River--Camden Bay	0916
Anderson Point East	1042
Bullen--Staines River	1043

Jack Wade Landing--Boundary	1065
Snettisham--Mines	1137
Treadwell Ditch	1169
Kanatak--Becharof Lake Road	1176
Dalton Trail	1225
Malaspina Glacier Trails	1232
Horsveldt--Canadian Border	1304
Nizina River--Dan Creek Road	1343
Sawmill Gulch Trail	1344
Long Lake--Chitina River	1345
Glacier Creek--Mines	1346
Harris Dome Trail	1348
Kennicott Mine Trails	1349
Kuskulana River--McDougall Creek cabins	1350
Nikolai Mine--Nizina River	1354
Kimball Pass Trail	1355
Hurtle Creek Trail (Squaw Creek Trail)	1365
Red Mountain Trail	1369
Klutina Boat Landing	1372
Willow Lake Trail	1373
Copper River Bluff Trail	1374
Hudson Lake Trail	1380
Slide Mountain Trail	1383
O'Brien Creek Trail	1392
Copper River--Kotsina Connections	1393
Tiekel River--Klutina River Trail	1395
Bence Mountain Loop Trail	1396
Tonsina River--Klutina River Trail	1397
Mt. Simpson Loop Trail	1398
Tonsina Trail (Richardson Hwy--Copper River)	1413
Chitina--Elliot Trail	1416
Eklutna Lake Spur	1419
Eska Strip Mine Trail	1420
Belanger Pass Trail	1426
Tahneta Pass Trail	1427
Startup Lakes Trail	1428

Lake Leila Trail	1429
Eureka--Nelchina--Barnette Trail	1431
Jackass Canyon Trail	1433
Gypsum Creek Mine Trail	1435
Index Lake Trail	1438
Muddy Creek Trail	1439
Matanuska River Trail	1441
Old Man Creek Trail	1456
Herning Trail	1467
Willow Creek--Flat Creek Trail	1475
Homestake Creek--Serpentine Hot Springs	1482
Sourdough Creek Trail	1491
Akulurak—Kotlik	1495
Radio Tower Trail	1510
Lake Louise Road to Ewan Lake	1511
Lake Louise Trail	1522
Crater Lake Access Trail	1533
Jerky (Gergle) Lake Trail	1534
Arizona Lake Trail	1537
Mae West Lake Trail	1539
Lost Cabin Lake Trail (Atlasta House)	1540
Indian Creek Trail	1554
Canyon Creek Trail	1555
Copper River Trail	1567
Pass Creek Trail (Nabesna quad)	1571
Lick Creek Spur	1584
Scotty Creek Lodge--High Cache	1586
Northway Airport--Jatahmund Lake	1588
Paradise Hill--Cabin	1589
Gardiner Creek Trail	1590
Deadman Lake Campground Trail	1591
Tanada Lodge--Copper Lake Drainage	1592
Fortymile Station--Eagle	1594
Dunbar--Minto--Tolovana	1595
Eldorado Creek Trail	1596
Chena Lakes Trail	1598

Crooked Creek Trail	1601
Macklin Creek--Washington Creek Trail	1603
Leech Cutoff	1607
Youngstown--Home Lake	1608
Richardson Hwy--Gerstle River	1609
Macklin Creek Spur	1617
Talkeetna River Trail	1620
Wales--Shishmaref Coastal Winter Trail	1623
Tamarack Spur	1639
Cripple--Cripple Mountain (Winter)	1640
Newhalen River Portage	1641
Boulder Trail	1643
U.S. Creek--Nome Creek Tr. off Steese Hwy	1647
Gordon--U.S. Border (coastal)	1648
Tamayariak River--Simpson Cove	1649
Goodnews--Barnum	1658
Redwood Creek Trail	1659
Tokun Lake Trail	1660
Shepherd Creek--Lake Charlotte Trail	1661
Carbon Creek--Kusktaka Lake Tr.	1662
Bering River--Fourth Lake Trail	1663
Katalla--Clear Creek Trail	1666
Mt. Drum Trail	1668
Strelna Creek--Rock Creek	1669
Pass Creek Trail (McCarthy--Valdez quads)	1670
Kluvesna Creek--Clear Creek Loop	1671
Young Creek Loop Trail	1672
Sourdough Hill--Nizina River	1673
Delta River Trail	1674
Buck Creek Trail	1675
Manker Creek Trail	1676
Quartz Creek Trail (Tonsina L--Tiekel R)	1677
Slatka Creek Trail	1684
Clear Creek Trail	1685
Porcupine Creek Trail (Kuskulana)	1686
Nugget Creek Trail (McCarthy quad)	1687

Berg Creek Trail (McCarthy quad)	1689
Herning Trail--Question Creek	1691
Sikonsina Pass	1693
Iron Creek--North Fork Kaskwitna River	1694
Roaring Creek Trail	1695
Dixie Pass Trail	1696
Copper Creek Trail (Valdez quad)	1697
East Fork Creek Trail	1698
Middle Fork Trail	1699
Nevada Creek Trail	1700
Nugget Creek--Porcupine Creek	1704
Walls Creek--Clear Creek	1705
Wet Gulch Trail	1710
Gustavus Rink Trail	1711
St. Anne Lake Trail	1712
Mitchell--McPherson Mine Trail	1713
Lake Minchumina--Kuskokwim Portage Trail	1714
Bartholf Creek	1715
Richardson Highway--Fish Lakes Trail	1717
Kobuk--Dahl Creek Trail	1718
Dahl Creek--Wesley Creek Trail	1720
Kashwitna River Trail	1721
Fielding Lake Trail, North Shore	1722
Fielding Lake Trail, South Shore	1723
Candle--Deering Trail	1737
Kotzebue--Nimiuk Point Trail	1738
California Creek Trail	1741
Kobuk River--California Creek Mine	1742
Kobuk--Dahl Creek Landing Field	1745
Old Man Lake Trail	1746
Tonsina Trail--Old Edgerton Hwy	1747
Tok Dog Mushers Trail	1759
Ophir Creek--Bear Creek Trail	1783
Burles Creek Trail	1784
Canoe Landing--Kushtaka Lake Tr.	1785
Bering R.--Kushtaka Glacier Tr.	1786

Trout Creek--Clear Creek Trail	1787
Stillwater Creek Spur Trail	1788
Canyon Creek--First Berg Lake	1789
Boulder Creek--Mill Creek Trail	1790
Bellum's Crossing--Kotsina R. Tr.	1791
Redwood Bay--Strawberry Point	1792
Bellum's Crossing--Taral	1794
Circle Hot Springs--Medicine Lake	1800
Willow Creek--Elliot Creek Trail	1804
Chitina River--Strelna Trail	1805
Sevenmile Lake Trail (Denali Highway)	1814
Hudson Camp Trail	1843
Hutlinana Hot Springs Trail	1845
Tetlin--Alaska Highway Trail	1852
Ladue River Trail	1854
Steele Creek--Border	1871
Manley Hot Springs--Sullivan Creek	1872
Dry Bay Trail	1873
Cottonwood Bay--Old Iliamna	1876
Bear Creek--Eagle Creek	1884
Little Minook Creek--Troublesome Creek	1885
Hodanza River Trail	1889
Mission Creek Trail	1891
The Government Route--Fortymile Station to Eagle Supply Route	1892
Canyon Creek--Hanagita River	1894
Bremner River Trail	1895
Chickaloon--Coal Creek	1896
Purgatory--Stevens Village	1897
Lost Creek Trail (Yukon Flats)	1898
Minook Creek--Pioneer Creek	1899

Federal Rules of Civil Procedure Rule 12(b).

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(b) How to Present Defenses. Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion:

(1) lack of subject-matter jurisdiction;
(2) lack of personal jurisdiction;
(3) improper venue;
(4) insufficient process;
(5) insufficient service of process;
(6) failure to state a claim upon which relief can be granted; and
(7) failure to join a party under Rule 19.
A motion asserting any of these defenses must be made before pleading if a responsive pleading is allowed. If a pleading sets out a claim for relief that does not require a responsive pleading, an opposing party may assert at trial any defense to that claim. No defense or objection is waived by joining it with one or more other defenses or objections in a responsive pleading or in a motion.

Federal Rules of Civil Procedure Rule 19. Required Joinder of Parties

(a) Persons Required to Be Joined if Feasible.
(1) Required Party. A person who is subject to service of process and whose joinder will not deprive the court of subject-matter jurisdiction must be joined as a party if:
(A) in that person's absence, the court cannot accord complete relief among existing parties; or
(B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may:
(i) as a practical matter impair or impede the person's ability to protect the interest; or
(ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.
(2) Joinder by Court Order. If a person has not been joined as required, the court must order that the person be made a party. A person who refuses to join as a plaintiff may be made either a defendant or, in a proper case, an involuntary plaintiff.
(3) Venue. If a joined party objects to venue and the joinder would make venue improper, the court must dismiss that party.
(b) When Joinder Is Not Feasible. If a person who is required to be joined if feasible cannot be joined, the court must determine whether, in equity and good conscience, the action should proceed among the existing parties or should be dismissed. The factors for the court to consider include:
(1) the extent to which a judgment rendered in the person's absence might prejudice that person or the existing parties;

(2) the extent to which any prejudice could be lessened or avoided by:
(A) protective provisions in the judgment;
(B) shaping the relief; or
(C) other measures;
(3) whether a judgment rendered in the person's absence would be adequate; and
(4) whether the plaintiff would have an adequate remedy if the action were dismissed for nonjoinder.
(c) Pleading the Reasons for Nonjoinder. When asserting a claim for relief, a party must state:
(1) the name, if known, of any person who is required to be joined if feasible but is not joined; and
(2) the reasons for not joining that person.
(d) Exception for Class Actions. This rule is subject to Rule 23.

Certificate of Service

I hereby certify that on December 10, 2014, I electronically filed the foregoing Brief of Appellee Dena' Nena' Henash (Tanana Chiefs Conference) with the Clerk of the Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

By: */s/ Richard D. Monkman*

Richard D. Monkman