

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

STATE OF ALASKA, DEPARTMENT
OF NATURAL RESOURCES and
DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES,

Plaintiffs,

vs.

UNITED STATES OF AMERICA, *et al.*,

Defendants.

Case No. 4:13-cv-00008-RRB

**ORDER REGARDING MOTION
TO DISMISS (MOOTNESS)
AT DOCKET 75**

I. PENDING MOTION

At **Docket 75** Defendant Dena' Nena' Hanash, a/k/a Tanana Chiefs Conference (hereinafter "TCC"), filed a Motion to Dismiss (Mootness) under Federal Rule Civil Procedure 12(1). At Docket 81 Plaintiff State of Alaska through its agencies, Department of Natural Resources and Department of Transportation and Public Facilities (hereinafter "State"), has opposed the motion, and at Docket 94 TCC has replied. Neither party has requested oral argument and the Court has determined that oral argument would not be of any material benefit in deciding the issue presented.¹ Accordingly, the matter is submitted for decision on the moving and opposing papers.²

¹ D.Ak. LR 7.1(a)(3).

² D.Ak. LR 7.1(j)(2).

II. NATURE OF ACTION/BACKGROUND

The State brought this action under the Quiet Title Act (28 U.S.C. § 2409a), seeking to quiet title in various trails under the Act of July 26, 1866, ch. 262, §8, 14 Stat. 251, 253, which was later codified as Revised Statute 2477, subsequently recodified as 43 U.S.C. § 932 (repealed October 21, 1976, with a savings provision recognizing the validity of rights-of-way already established), commonly referred to as “R.S. 2477.” It also seeks declaratory relief under the Declaratory Judgment Act (28 U.S.C. § 2201) against individual defendants concerning the existence of the R.S. 2477 rights-of-way over property owned by them. The State asserts ownership of these rights-of-way. Included in that action is the existence of a right-of-way over that portion of Native Allotment 50-2008-0437 held by Defendant Agnes Purdy and Native Allotment 50-2013-0004 held by Defendant Anne L. Purdy to the extent that they are crossed by the Chicken Ridge Alternate, Myers Fork Spur, Chicken to Franklin, and Chicken Ridge Trails. The State’s claim against TCC is based upon the action of TCC in appearing as a co-plaintiff with Agnes Purdy in another action pending in this Court, *Purdy v. Busby*,³ and in posting no-trespassing signs on the property limiting the public’s rights to use the rights-of-way.

³ Case No. 4:12-cv-00031-RRB. This Court takes judicial notice of that action. Fed. R. Evid. 201. In that action, TCC is appearing under its contract with the Bureau of Indian Affairs to act in *parens patriae* to preserve and protect the rights of the holder of the allotment, Agnes Purdy. TCC does not claim any right title or interest itself in the Native Allotment.

III. BASIS FOR MOTION/OPPOSITION

TCC has filed a disclaimer of any right, title, or interest in the Purdys' Native Allotments, and has removed the no-trespassing signs. TCC further contends that it has moved to dismiss itself as a party plaintiff in *Purdy v. Busby*.⁴ Therefore, according to TCC, there is no effective relief that may be rendered against it, and this matter should be dismissed.

In opposing the motion, the State argues that where a party to a quiet title action disclaims any interest in the property the subject of a title quiet action the appropriate procedure is to enter judgment accordingly; i.e., quieting title as to the disclaiming party. Alternatively, the State contends that dismissal, if granted, should be with prejudice. In its reply TCC concurs in dismissal with prejudice.

IV. APPLICABLE STANDARD

This Court may dismiss an action on the motion of a party when it appears that the Court lacks subject-matter jurisdiction.⁵ "Article III of the Constitution limits federal courts to adjudicating actual, ongoing controversies between litigants. Generally, an action is moot when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome. The basic question in determining mootness is whether there is a present controversy as to which effective relief can be granted."⁶

⁴ Resolution of that motion is still pending before this Court.

⁵ Fed. R. Civ. P. 12(b)(1).

⁶ *Ruiz v. City of Santa Maria*, 160 F.3d 543, 548–49 (9th Cir. 1998) (citations and internal quotation marks omitted).

V. DISCUSSION

There is no question that, as between the State and TCC, acting on in its own behalf, there is no longer a live controversy. That is, TCC does not claim an interest held by itself in the rights-of-way at issue in this case adverse to the State. This Court agrees with the State that the appropriate resolution of the matter between the State and TCC is not by dismissal of the action; rather, the appropriate resolution is to enter a judgment affirmatively quieting the State's title in the real property against any claim by TCC.

That does not, however, necessarily resolve all of the issues that may be presented to this Court in this action. As is more fully explained in this Court's Order directing further briefing in *Purdy v. Busby*, TCC occupies an unique position as *parens patriae* to the holders of Native Allotments, and as such must act to preserve and protect the interests of the allotment holder. While it has no reason not to terminate this action as to any claims that TCC may have in its own right, this Court is not inclined to enter an Order that may be construed as relieving TCC of those duties and obligations it has, or may have, as *parens patriae*.⁷

VI. ORDER

Accordingly, it is hereby **ORDERED** as follows:

⁷ This Court notes that in its reply in this case TCC contends that it has no obligation to act to preserve and protect the interest of the allotment holders citing authority that it did not cite in *Purdy v. Busby*. The Court hastens to note that in the case *sub judice* it does not express any opinion as to validity of TCC's position; resolution of that question will be addressed in *Purdy v. Busby* to the extent necessary and appropriate.

ORDER [Re: Motion at Docket 75]
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1. Unless either party serves and files an objection by **September 18, 2013**, the

Court will enter the following Order:

WHEREAS Defendant Dena' Nena' Hanash, a/k/a Tanana Chiefs Conference, has disclaimed any right, title or interest in the real property described in the Complaint, including, but not limited to, the Chicken-Franklin Trail, Chicken Ridge Alternate Trail, and Myers Fork Spur Trail.

IT IS THEREFORE ORDERED that at the conclusion of this case, Plaintiff State of Alaska may enter judgment as against Defendant Dena' Nena' Hanash, a/k/a Tanana Chiefs Conference, consistent with the disclaimer of interest; provided, however, that nothing in this order is to be construed as precluding Defendant Dena' Nena' Hanash, a/k/a Tanana Chiefs Conference from appearing in this case in any other capacity.

IT IS FURTHER ORDERED that neither party is entitled to recover attorney's fees or costs.

2. In the event either party files an objection, the other party may serve and file a response thereto within **fourteen (14) days** of service of the objection.

3. Unless otherwise ordered by the Court, no further objection, reply, or response will be entertained by the Court.

IT IS SO ORDERED this 27th day of August, 2013.

S/RALPH R. BEISTLINE
UNITED STATES DISTRICT JUDGE