

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 DENYING MOTION TO  
DISMISS COUNTS II - V**

**I. PENDING MOTION**

At Docket 79 Defendants Agnes and Anne Purdy (hereinafter collectively “Purdys”) moved to dismiss Counts II – V for failure to exhaust administrative remedies.<sup>1</sup> At Docket 89 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 90 Purdy has replied. Neither party has requested oral argument and the Court has determined that oral argument would not be of any material benefit in

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<sup>1</sup> Concurrently with the Motion to Dismiss, the Purdys filed an Answer and Cross-Claim at Docket 77.

deciding the issue presented.<sup>2</sup> Accordingly, the matter is submitted for decision on the moving and opposing papers.<sup>3</sup>

## 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§8, 14 Stat. 251, 253, which was later codified as Revised Statute 2477, subsequently recodified as 43 U.S.C. § 932 (repealed October 21, 1976 with a savings provision recognizing the validity of rights-of-way already established), commonly referred to as “R.S. 2477.”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 right-of-ways over property owned by them. The State asserts ownership of these rights-of-way. Included in that action is the existence of rights-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.

Native Allotment 50-2008-0427 is subject to a continued right public access not to exceed twenty-five (25) feet along the non-exclusive use Chistochina-Eagle Trail.<sup>4</sup> Native Allotment 50-2013-0004 is subject to a continued right public access not to exceed twenty-

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<sup>2</sup> D. Ak. LR 7.1(a)(3).

<sup>3</sup> D. Ak. LR 7.1(j)(2).

<sup>4</sup> Docket 79-1.

five feet, along the non-exclusive use Chistochina-Eagle Trail, Forty (40) Mile Trail, and Ketchumstuk to Chicken Trail.<sup>5</sup> Although the right of public access along these trails is not at issue *per se*, the State appears to contend that the rights-of-way over those trails is at least 100 feet (50 feet on either side of the centerline), not 25 feet. It is also undisputed that neither Native Allotment is specifically subjected to reserved rights-of-way along the Chicken Ridge Alternate, Myers Fork Spur, Chicken to Franklin, or Chicken Ridge Trails.

Count I of the Complaint seeks to quiet title as against the United States. Count II seeks to quiet title as against all non-federal defendants under R.S. 2477 and Alaska Statute § 09.45.010. Count III seeks to quiet title in all non-federal defendants, except the Purdys.<sup>6</sup> Count IV seeks recovery of possession of property against all non-federal defendants under Alaska Statute § 09.45.630. Count V seeks a declaratory judgment under 28 U.S.C. § 2201 of the rights of the State in the real property at issue in this action, including the Purdy allotments. Count VI seeks to condemn those portions of the Purdy allotments crossed by the Chicken Ridge Alternate, Myers Fork Spur, Chicken to Franklin, or Chicken Ridge Trails.

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<sup>5</sup> Docket 79-2.

<sup>6</sup> Because it specifically excludes any claim as against the Purdys, Count III obviously does not state a claim as against them. Accordingly, nothing in this Order should be construed as holding the opposite.

### III. ISSUE PRESENTED

The Purdys argue the Administrative Procedures Act requires that a plaintiff exhaust available remedies before bringing an action contesting an administrative act before the federal courts.<sup>7</sup> The Purdy's contend that inasmuch as the State did not assert its position *vis-a-vis* the unreserved rights-of-way covering the Chicken Ridge Alternate, Myers Fork Spur, Chicken to Franklin, or Chicken Ridge Trails in the administrative proceeding culminating in the grants of the native allotments to them, the State is barred from asserting those claims under the failure to exhaust administrative remedies doctrine.

The State argues in response that all federal land conveyances are subject to valid existing rights, irrespective of whether the conveyances are made expressly subject to the rights or are completely silent regarding those rights. The State also asserts that the Bureau of Land Management ("BLM") has a general policy of not addressing rights-of-way at the time it issues native allotment certificates.

### IV. APPLICABLE STANDARD

Federal courts possess only that power authorized by Constitution and statute, which may not be expanded by judicial decree. It is presumed that a cause lies outside this limited jurisdiction, and the burden of establishing jurisdiction rests upon the party asserting jurisdiction.<sup>8</sup> Any order or judgment entered by a court lacking subject-matter

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<sup>7</sup> 5 U.S.C. § 704.

<sup>8</sup> *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994).

jurisdiction is a nullity and void.<sup>9</sup> Subject-matter jurisdiction can be neither waived nor conferred by consent.<sup>10</sup> Lack of subject-matter jurisdiction may be raised in the answer or by motion,<sup>11</sup> and brought at any time.<sup>12</sup> Because a court always has a duty to examine its own subject-matter jurisdiction,<sup>13</sup> it may even be addressed by the court *sua sponte*.<sup>14</sup> Exhaustion of administrative remedies, i.e., the failure to utilize available administrative agency remedies prior to resort to the courts, part of sovereign immunity, is also jurisdictional.<sup>15</sup>

## V. DISCUSSION

This Court agrees with the Purdys that the Administrative Procedures Act (“APA”) requires that a plaintiff exhaust available remedies before bringing an action contesting an administrative act before the federal courts.<sup>16</sup> That, unfortunately, does not address the basis for this Court’s jurisdiction over the controversy as between the State and the Purdys.

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<sup>9</sup> *Orff v. United States*, 358 F.3d 1137, 1149 (9th Cir. 2004).

<sup>10</sup> *Pennsylvania v. Union Gas Co.*, 491 U.S. 1, 26 (1989), *overruled on other grounds by Seminole Tribe v. Florida*, 517 U.S. 44 (1996); *United States v. Luong*, 627 F.3d 1306, 1310 (9th Cir. 2010).

<sup>11</sup> Fed. R. Civ. P. 12(b)(1)

<sup>12</sup> Fed. R. Civ. P. 12(h)(3); *see Emrich v. Touche Ross & Co.*, 846 F.2d 1190, 1194 (9th Cir. 1988).

<sup>13</sup> *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 230–31 (1990).

<sup>14</sup> *See Westlands Water Dist. v. Firebaugh Canal*, 10 F.3d 667, 673 (9th Cir. 1993).

<sup>15</sup> *Vacek v. United States Postal Service*, 447 F.3d 1248, 1250 (9th Cir. 2006).

<sup>16</sup> 5 U.S.C. § 704.

By its very nature the APA applies to challenges to administrative actions of agencies of the United States, not to rights as between parties, other than the United States, as may be affected by those agency decisions. In this case, as the State explains in its opposition to the pending motion, the action by the State as against the Purdys in Counts II, IV, and V is predicated, at least in part, upon various theories that the allotments are subject to previously established rights-of-way as a matter of law notwithstanding the silence of the document of conveyance concerning the existence of the specific right-of-way. That is, nothing in the Complaint seeks to reform the conveyances to the Purdys to specifically cover the additional claimed rights-of-way. Accordingly, although they may be subject to defeat based upon some other defense or infirmity,<sup>17</sup> the claims against the Purdys are not vulnerable to dismissal for lack of subject-matter jurisdiction.

## VI. ORDER

For the reasons set forth above, it is hereby **ORDERED** that the Motion to Dismiss Counts II – V of Plaintiff's Complaint as to Agnes and Anne Purdy for Failure to Exhaust Administrative Remedies at **Docket 79** is **DENIED**, without prejudice.

**IT IS SO ORDERED** this 5<sup>th</sup> day of September, 2013.

S/ RALPH R. BEISTLINE  
UNITED STATES DISTRICT JUDGE

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<sup>17</sup> The Court hastens to add that this determination should not be construed to foreclose the Purdys from seeking judgment in their favor on some other theory that may be fairly raised by the facts, e.g., estoppel.