The State disputes the existence of a federal question based solely on the source of title, and firmly asserts its Eleventh Amendment protection.

1. The Court Lacks Subject Matter Jurisdiction To Hear This Matter

The Notice of Removal identifies the source of its title as I.C. 443. The circumstances surrounding its acquisition of title were subject to administrative appeal,[19] but this action is not the fruit of such an appeal. Any federal question relating to those issues are long since moot. This matter does not arise under ANCSA; it is founded upon state title law.

The Ninth Circuit recently reiterated that the simple acquisition of title under a federal statute relating to Indians does not confer jurisdiction.[20] This is patently sensible, as most title in this country originates from some federal legislation which makes the land available to a non-federal entity or person. Should mere federal dispensation of title confer jurisdiction, federal courts would be awash in land disputes.

As noted above in the factual section,[21] after the I.C. was issued and the BLM waived administration, the Interior Board of Land Appeals expressed its intent that jurisdiction of disputes relating to material source grants would shift to state court. Administrative Judge Mullen held that:

> Notwithstanding the loss of administrative appeal and hearing rights, the State will continue to have recourse to the courts in order to safeguard those rights

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[19] 43 C.F.R. 2650.7 (1980).
[20] *Northwestern Energy, LLC v. Plain Bull*, 224 Fed. Appx. 581, 582, 2007 WL 704907, 1 (9th Cir. 2007) (*citing San Xavier Dev. Auth. v. Charles,* 237 F.3d 1149, 1154 (9th Cir. 2001), *Oneida Indian Nation v. County of Oneida,* 414 U.S. 661 (1974), *Taylor v. Anderson,* 234 U.S. 74 (1914)).
[21] *See,* discussion at pages 2-3, *supra.*

> which were reserved. See, e.g., Tetlin Native Corp. v. State of Alaska, No. 4 FA-84-2536 Civil (Alaska Aug. 12, 1985). Waiver of administration would not diminish the State's ability to take action. [FN1] However, it would shift the forum for resolution of the propriety of action taken in the administration of the right-of-way from Federal to State court and bypass the intermediate step of administrative adjudication by the Department.[22]

Administrative Judge Mullen's expectation was reasonable on the point. The Ninth Circuit had noted in 1980 that pre-ANCSA trespass actions relating to aboriginal and other native title not involving the United States would have been brought in state court.[23] The Ninth Circuit then confirmed that ANCSA extinguished aboriginal title in 1971.[24] Subsequent state court decisions did in fact address conflicts founded upon ANCSA title issues.[25]

ANCSA required I.C. 443 to be issued specifically subject to this and other prior title interests.[26] Ahtna could have appealed that decision administratively long before this dispute arose.[27] Had Ahtna done so, it might have eventually have been able to claim federal jurisdiction through the Federal Administrative Procedures Act as an administrative appeal. That, however, is not the posture of this case.

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[22] *State of Alaska*, 97 IBLA 229, 232 (1987). Docket 25-3.
[23] *United States v. Atlantic Richfield*, 612 F.2d 1132, 1136 (9th Cir. 1980).
[24] *Id.*
[25] *E.g., Snook v. Bowers,* 12 P.3d 771, 780 (Alaska 2000) (ANCSA land status as developed considered); *Chenega Corp. v. Exxon Corp.,* 991 P.2d 769, 783 (Alaska 1999) (vesting of title considered); *Capener v. Tanadgusix Corp.*, 884 P.2d 1060, 1073 (Alaska 1994) (ANCSA definition of "occupant" considered); *Tetlin Native Corp v. State of Alaska*, 759 P.2d 528 (Alaska 1988) (Material site easements crossing ANCSA land selected by corporation). *Compare, Foster v. State of Alaska,* 34 P.3rd 1288 (Alaska 2001) (Trust land subject to exclusive jurisdiction of federal court by express statutory restriction).
[26] 43 U.S.C. § 1613(g).
[27] 43 C.F.R. 2650.7 (1980). E*.g., Hurst v. Idaho-Iowa Lateral & Reservoir Co.*, 202 P. 1068, 1069 (Idaho 1921).

Show on page(s): Subject matter jurisdiction1. State trial courts have subject-matter jurisdiction over all cases except those which must be heard exclusively in other courts. Paul files a tort case against Dennis in a state trial court. There is no law which gives any court exclusive jurisdiction to hear this type of case. Therefore, the state trial court has subject-matter jurisdiction over this case.

2. Federal district courts are courts of limited jurisdiction. They only have subject-matter jurisdiction if a claim arises under federal law, or if no plaintiff shares a state of citizenship with any defendant and the amount in controversy exceeds $75,000 (seediversity jurisdiction). Richard thinks that Vincent has violatedfederal racketeering law, and wants to file a civil suit. Richard and Vincent are both citizens of New York, but the case can still be tried in federal district court because the claim arises under federal law. Alternatively, the case may be tried in state court because no law gives federal courts exclusive jurisdiction over this type of claim.

3. The State of Arizona plans to sue the State of California for excessive air pollution amounting to a public nuisance. Under 28 U.S.C. § 1251, the U.S. Supreme Court has exclusive jurisdiction over "all controversies between two or more States." This means that only the U.S. Supreme Court has subject-matter jurisdiction over this type of case. Arizona can only sue California in the U.S. Supreme Court. The state courts have no subject-matter jurisdiction over this type of case.