

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UTE INDIAN TRIBE OF THE
UINTAH AND OURAY INDIAN
RESERVATION,

Plaintiff,

v.

THE UNITED STATES OF AMERICA,
et al.,¹

Defendants.

Case No. 1:18-cv-546-CJN

**DEFENDANTS' MOTION FOR
PARTIAL RECONSIDERATION OF
THE COURT'S DECEMBER 16, 2021
ORDER**

INTRODUCTION

Pursuant to the Court's authority to review and revise interlocutory rulings, Federal Defendants move for partial reconsideration of the Court's December 16, 2021 Order (ECF No. 77) and accompanying Memorandum Opinion (ECF No. 76, the "**Mem. Op.**") denying their motion to dismiss. Specifically, Federal Defendants believe the Court erred in denying the motion to dismiss Count 5 (the "**Trespass Claim**"). In moving to dismiss, Federal Defendants had interpreted the Trespass Claim as seeking relief under section 706 of Administrative Procedure Act (the "**APA**"). ECF No. 35 at 18. The motion argued that the Ute Indian Tribe of the

¹ Pursuant to Fed. R. Civ. P. 25(d), Deb Haaland is automatically substituted for Ryan Zinke as Secretary of the Interior and Tommy Beaudreau is automatically substituted for David Bernhardt as Deputy Secretary of the Interior.

Uintah and Ouray Indian Reservation (the “*Tribe*” or “*Plaintiff*”) had not demonstrated a basis for jurisdiction or an applicable right of action for such a claim in district court. ECF No. 35 at 18-22, 24-31. The Court disagreed, finding that the Tribe had relied upon the waiver of sovereign immunity under section 702 of the APA. In doing so, the Court interpreted the Trespass Claim as being a prospective request to adjudicate title in the subject lands. If the Trespass Claim is to be interpreted as requiring an adjudication of title, however, there is no jurisdictional basis for that claim because it would be barred by the Quiet Title Act (the “*QTA*”).²

The Supreme Court has held that section 702 of the APA provides no independent basis for challenging the government’s title to real property. Further, section 702’s waiver of sovereign immunity does not apply where another statute forbids the relief sought, such as in the instant case, given that the Court separately determined that a claim to quiet title is time-barred under the QTA. Here, should the Court allow the Tribe to proceed on the Trespass Claim, this Court—as a threshold issue— would have to adjudicate the nature of the United States’ property interest in the lands at issue. In other words, the Court would have to determine whether the Tribe holds any form of interest in or title to those lands, the very same relief sought by the Tribe’s third cause of action brought under the QTA and dismissed as untimely. As such, the QTA’s waiver of sovereign immunity, and its statute of limitations, applies to the Trespass Claim in the same way it applied

² As the Court noted in its opinion, Plaintiff’s briefing on the trespass issue was “confused,” causing both parties to focus on the issue of whether the Tribe could proceed with its claim for trespass under section 706 of the APA. Mem. Op. at 17 n.5.

to Plaintiff's quiet title claim and maintains the United States' sovereign immunity. And interpreting the Trespass Claim otherwise would elevate form over function and allow any plaintiff to circumvent the QTA (and its statute of limitations) by merely asserting section 702 in their pleadings rather than the QTA.

Thus, consistent with applicable law and its ruling on Plaintiff's other quiet title claim, the Court should reconsider its ruling on the Trespass Claim and dismiss the claim for lack of jurisdiction.

PROCEDURAL BACKGROUND

On October 16, 2018, Federal Defendants filed a motion to dismiss the Tribe's first, second, third, and fifth claims in its Complaint. ECF No. 35. Relevant here, Plaintiff's third claim sought to quiet title to the lands within the exterior boundaries of the original Uncompahgre Reservation (the "***Public Domain Lands***") and asked the Court to determine that the United States holds that land in trust for the Tribe. Complaint (the "***Compl.***"), ECF No. 1, at ¶¶ 104-111. Plaintiff's fifth claim—the Trespass Claim—seeks a declaration that the United States has been trespassing on the Public Domain Lands and an injunction prohibiting the United States from accessing those lands without the Tribe's consent. Compl. at ¶¶ 118-124.

On December 16, 2021, the Court granted the motion to dismiss as to the first, second, and third claims but denied the motion as to the Trespass Claim. Mem. Op. at 1. In dismissing the third claim for quiet title, the Court determined that the Tribe should have known before March 8, 2006 that the United States did not recognize the underlying lands as held in trust and the claim was therefore barred by the QTA's twelve year statute of limitations. Mem. Op. at 15. In denying

Federal Defendants' motion to dismiss the Trespass Claim, the Court clarified that the claim seeks prospective declaratory and injunctive relief for trespass. *Id.* The Court then determined that the waiver of sovereign immunity found in section 702 of the APA allowed the Tribe to bring its Trespass Claim. *Id.* at 16-17. While the Court determined that, in the Trespass Claim, the Tribe had adequately pleaded that the lands were restored to Tribal ownership, the Court also recognized that the claim would require adjudication of the nature of the United States' and Tribe's property interests. *Id.* at 18-19 ("It might very well be that these lands were not and should not be restored to Tribal ownership.").

On December 21, 2021, the United States filed an unopposed motion for extension of time to answer the remaining claims and to file a motion to reconsider. ECF No. 78. The Court granted the motion on December 22, 2021.

LEGAL STANDARD

Although the Federal Rules of Civil Procedure do not specifically address motions for reconsideration, such determinations are within the trial court's broad discretion. *United States v. All Assets Held at Bank Julius*, 502 F. Supp. 3d 91, 95 (D.D.C. 2020) (citations omitted); *see also* Fed. R. Civ. P. 54(b) ("any order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities . . . may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities."). The court has the inherent authority to reconsider interlocutory orders "as justice requires." *Id.* (citing *Wannall v. Honeywell Int'l Inc.*, 292 F.R.D. 26, 30-31 (D.D.C. 2013), *aff'd sub nom. Wannall v. Honeywell, Inc.*, 775 F.3d 425 (D.C. Cir. 2014)). Courts determine justice requires reconsideration of an interlocutory order when the

movant demonstrates “(1) an intervening change in the law; (2) the discovery of new evidence not previously available; or (3) a clear error in the first order.” *Id.*

(citation omitted).

The QTA’s statute of limitations is jurisdictional. *Block v. North Dakota ex rel. Bd. of Univ. & Sch. Lands*, 461 U.S. 273, 292 (1983) (if a suit is barred by the QTA’s statute of limitations, “the courts below ha[ve] no jurisdiction to inquire into the merits.”); *United States v. Mottaz*, 476 U.S. 834, 841 (1986) (“When the United States consents to be sued, the terms of its waiver of sovereign immunity define the extent of the court’s jurisdiction.”); *see also Fed. Deposit Ins. Corp. v. Meyer*, 510 U.S. 471, 475 (1994) (“Sovereign immunity is jurisdictional in nature.”). “[A] federal court always has jurisdiction to determine its own jurisdiction.” *Schindler Elevator Corp. v. Wash. Metro. Area Transit Auth.*, 16 F.4th 294, 297 (D.C. Cir. 2021) (citations omitted) (affirming dismissal for lack of subject matter jurisdiction where there was no waiver of sovereign immunity). Under Fed. R. Civ. P. 12(h)(3), if, at any time, the court determines it lacks jurisdiction, the court must dismiss the claim.

ARGUMENT

The QTA’s waiver of sovereign immunity, 28 U.S.C. § 2409a, applies to actions in which the plaintiff claims an interest in property to which the government holds title. *Match-E-Be Nash-She-Wish Band of Pottawatomi Indians v. Patchak*, 567 U.S. 209, 221-22 (2012). Not only does the waiver apply to those actions, but the Supreme Court has expressly held that “Congress intended the QTA to provide the *exclusive* means by which adverse claimants could challenge the United States’ title to real property.” *Block*, 461 U.S. at 286 (emphasis added). “It

would require the suspension of disbelief to ascribe to Congress the design to allow its careful and thorough remedial scheme to be circumvented by artful pleading.” *Id.* at 285 (citation omitted). “To permit challenges to the Government’s claim of title to be brought under other jurisdictional provisions might mean that ‘the QTA’s 12-year statute of limitations . . . could be avoided, and, contrary to the wish of Congress, an unlimited number of suits involving stale claims might be instituted.’” *Mottaz*, 476 U.S. at 847 (quoting *Block*, 461 U.S. at 285)).

In keeping with the above determination, the Supreme Court has concluded that section 702 of the APA provides no independent basis for challenging the government’s title to real property. The APA’s waiver was carefully crafted to clearly state that it provides no “authority to grant relief if any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought” by the claimant. 5 U.S.C. § 702. “That provision prevents plaintiffs from exploiting the APA’s waiver to evade limitations on suit contained in other statutes.” *Patchak*, 567 U.S. at 215. And the Supreme Court has expressly held that “[t]he QTA is such an ‘other statute,’ because, if a suit is untimely under the QTA, the QTA expressly ‘forbids the relief’ which would be sought under § 702.” *Block*, 461 U.S. at 286 n.22.

Thus, the Tribe cannot pursue adjudication of title through the Trespass Claim independent and apart from the QTA. For a claim to qualify as a quiet title action, the interest at issue need not amount to full legal title. *See Spirit Lake Tribe v. North Dakota*, 262 F.3d 732, 738 (8th Cir. 2001). Any suit that requires an adjudication of adverse claims of the United States’ property rights qualifies. *Patchak*, 567 U.S. at 219-20; *see, e.g., Alaska v. Babbitt*, 75 F.3d 449, 452–53 (9th

Cir. 1995) (determining *Block* precluded a challenge to title brought as an *ultra vires* action under section 702's waiver of sovereign immunity).

Here, the Court's interpretation of the Trespass Claim as a prospective request under section 702 does not merely require the Court to determine if a trespass has occurred and to enjoin future trespass. Rather, the Trespass Claim seeks adjudication of title to the subject lands. That is, it asks the Court to determine whether "these lands were not and should not be restored to Tribal ownership." Mem. Op. at 19. As such, the Trespass Claim challenges the United States' claim to exclusive ownership of the Public Domain Lands and seeks to restrict the United States from exercising its full property rights.³ See Compl. at ¶ 120 (claiming Federal Defendants' employees are prohibited from entering the underlying land without Tribal authorization unless they are performing activities for the Tribe). As the Court has interpreted it, the Trespass Claim is an "adverse" claim to title—"assert[ing] a claim to property antagonistic to the Federal Government's" claim to title. *Patchak*, 567 U.S. at 219-20.

Indeed, by its very nature, the Trespass Claim, as now interpreted, first requires a determination that the Public Domain Lands should be considered trust lands, an allegation which the United States has expressly denied. *Accord* Compl. at ¶ 123 ("Plaintiff requests that this Court enter declaratory judgment that the Defendants' and their employees' activities on [the Public Domain Lands] that are not conducted on behalf of the Tribe, and are not tribally authorized or otherwise

³ When the United States holds property in trust, the United States holds the fee interest while the Tribe holds the beneficial title. *Pueblo of Jemez v. United States*, 483 F. Supp. 3d 1024, 1101 (D. N.M. 2020).

legally authorized, constitute trespass and/or continuing trespass.”). The Court cannot analyze whether trespass has occurred, or enjoin any alleged trespass, unless it first determines that the Public Domain Lands are held in trust for the Tribe.

As such, the only means by which the Trespass Claim can be adjudicated is through the QTA. As the Court has already determined, however, any QTA claim is time-barred. The Tribe had notice that the United States viewed the underlying land as public domain land, and not tribal trust land, more than twelve years before this action. Mem. Op. at 15. The Tribe did not seek to quiet title for the lands within the limitations period and any claims to title are barred. Because the QTA, through its statute of limitations, has preserved the United States’ sovereign immunity for any adjudication of title, the Court lacks jurisdiction. Therefore, the Court should reconsider its prior ruling and dismiss the Trespass Claim to prevent any evasion of the QTA’s time limitation.

CONCLUSION

For the foregoing reasons, the United States asks that this Court partially reconsider the order and dismiss the Tribe’s fifth cause of action for trespass as untimely under 28 U.S.C. § 2409a(g).

Respectfully submitted this 31st day of January 2022.

TODD KIM
Assistant Attorney General
United States Department of Justice
Environment & Natural Resources Division

Ashley M. Carter

ASHLEY M. CARTER

BRIGMAN L. HARMAN

United States Department of Justice

Environment & Natural Resources Division

Natural Resources Section

P.O. Box 7611

Washington, DC 20044-7611

Telephone: (202) 305-0482

Facsimile: (202) 305-0506

brigman.harman@usdoj.gov

ashley.carter@usdoj.gov

Counsel for the Federal Defendants