UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UTE INDIAN TRIBE OF THE UINTAH AND OURAY INDIAN RESERVATION, *Plaintiff*, v. UNITED STATES OF AMERICA, et al., *Defendants.*	Civil Action No. 1:18-cv-00546 (CJN)

ORDER

In December, the Court granted much of the Federal Defendants' Motion to Dismiss. *See* ECF Nos. 76, 77. But the Court did not dismiss Count 5, which alleges trespass. *See* ECF No. 76 at 15–19. In light of the arguments the parties had made at that time, the Court concluded that no grounds existed for dismissing that claim. *See id.*

The Federal Defendants now ask that the Court reconsider its decision. *See generally* Mot. for Partial Recon. ("Mot."), ECF No. 80. They contend that they misunderstood that Count 5 does not purport to rely on a waiver of sovereign immunity under § 706 of the Administrative Procedures Act, but instead relies on § 702, and as a result they ask the Court to hold that the trespass claim is barred by the Quiet Title Act, 28 U.S.C. § 2409a. *See id.* Although this argument is late, the Federal Defendants are correct. The Court thus grants reconsideration as to Count 5 and dismisses it.

LEGAL STANDARDS

Under Rule 54(b), the Court has the power to revise any order or decision that does not constitute a final judgment "at any time before the entry of a judgment adjudicating all the claims

and all the parties' rights and liabilities." Fed. R. Civ. P. 54(b). This is an inherent power, but the Court need exercise it only "as justice requires." *Capitol Sprinkler Inspection, Inc. v. Guest Servs., Inc.*, 630 F.3d 217, 227 (D.C. Cir. 2011) (quoting *Greene v. Union Mut. Life Ins. Co. of Am.*, 764 F.2d 19, 22–23 (1st Cir. 1985) (Breyer, J.)); *see also Klayman v. Judicial Watch, Inc.*, 296 F. Supp. 3d. 208, 213 (D.D.C. 2018) (collecting citations). The proponent must show "some harm, legal or at least tangible, [that] would flow from a denial of reconsideration." *United States v. Dynamic Visions, Inc.*, 321 F.R.D. 14, 17 (D.D.C. 2017). "In general, a court will grant a motion for reconsideration of an interlocutory order only 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." *Klayman*, 293 F. Supp. 3d at 213 (quotations omitted).

I. RECONSIDERATION IS WARRANTED, AND THE QUIET TITLE ACT BARS COUNT 5

The Court concludes that justice warrants reconsideration of its previous decision not to dismiss Count 5 of Plaintiff's Complaint, and further concludes that dismissal is appropriate.

A. Reconsideration is warranted

A motion for reconsideration "cannot be used . . . as a vehicle for presenting theories or arguments that could have been advanced earlier." *Estate of Gaither ex rel. Gaither v. District of Columbia*, 771 F. Supp. 2d 5, 10 (D.D.C. 2011) (quoting *Secs. & Exch. Comm'n v. Bilzerian*, 729 F. Supp. 2d 9, 14 (D.D.C. 2010)). And, at first blush, it seems questionable why the Federal Defendants did not raise this argument earlier. Count 3 of the Tribe's Complaint, after all, sought to quiet title to these lands, and the Federal Defendants argued that the statute of limitations under the Quiet Title Act barred that claim. *See* Compl., ECF No. 1, at ¶¶ 104–11; Mot. to Dismiss, ECF No. 35, at 22–24. It seems natural that this precise argument would have been raised in defense of the trespass claim, too.

But as the Court recognized in its opinion, the briefing and the complaint on this issue were unclear. *See, e.g.*, ECF No. 76 at 16–17 & n.5. The Court also acknowledges that the Federal Defendants did not understand the Tribe's claim in the same way that the Court did. *See* Mot. at 2 & n.2. The Court thus finds that justice requires it reconsider this argument, which was never previously presented.

B. The Quiet Title Act bars Count 5

"The [Quiet Title Act] authorizes (and so waives the Government's sovereign immunity from) a particular type of action, known as a quiet[-]title suit: a suit by a plaintiff asserting a 'right, title, or interest' in real property that conflicts with a 'right, title, or interest' the United States claims." *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak*, 567 U.S. 209, 215 (2012). The Quiet Title Act requires "'adverse claimants,' meaning plaintiffs who themselves assert a claim to property antagonistic to the Federal Government's." *Id.* at 219–20. Such is the case here. In Count 5, the Tribe alleges that the "undisposed of, surplus lands within the Uncompahgre Reservation were restored to trust status" long ago. Compl. ¶ 119. And it alleges that, "[s]ince these lands were restored to trust status, the Defendants and their employees have continued to enter these lands to conduct activities, many of which are not performed on behalf of the Tribe." *Id.* ¶ 120. It thus requests a declaratory judgment that the Defendants are trespassing on its land, and it seeks an injunction to enforce that declaratory judgment. *See id.* ¶ 123–24. The United States, however, views this land as its own. The Quiet Title Act thus applies to this claim: the Tribe asserts a "right, title, or interest" in real property that conflicts with a "right, title, or interest" asserted by the United States. *See Patchak*, 567 U.S. at 215.

It is irrelevant that Count 5 is styled as a claim for trespass, rather than a claim for the underlying title. The Quiet Title Act still applies. As the Supreme Court has explained, a party

"[can]not circumvent the [Quiet Title Act]'s statute of limitations by invoking other causes of action, among them the APA." *Id.* at 219. Consider an example in which the Supreme Court concluded that the Quiet Title Act did *not* apply:

> [The Plaintiff] does not contend that he owns the [property at issue], nor does he seek any relief corresponding to such a claim. He wants a court to strip the United States of title to the land, but not on the ground that it is his and not so that he can possess it. [The Plaintiff's] lawsuit therefore lacks a defining feature of a [Quiet Title Act] action. He is not trying to disguise a [Quiet Title Act] suit as an APA action to circumvent the [Quiet Title Act] . . . . Rather, he is not bringing a [Quiet Title Act] suit at all. He asserts merely that the Secretary's decision to take land into trust violates a federal statute—a garden-variety APA claim.

Id. at 220. The Tribe's claim is the opposite at every sentence. The Tribe *does* contend that it owns the property at issue, or at least has a beneficial interest in it. It *does* seek relief corresponding to that claim: an injunction prohibiting government actors from entering that land without approval. And its request is based on its position that the land *is* its own, if even in part. Count 5 thus *does* have the defining features of a Quiet Title action, and that Act's limitations apply.

As the Court's previous decision makes clear, the application of the Quiet Title Act's limitations to this claim proves fatal. The Court previously held that the waiver of sovereign immunity in § 702 of the APA is applicable to Count 5. *See* ECF No. 76 at 17. But the APA gives no "authority to grant relief if any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought." 5 U.S.C. § 702. This "provision prevents plaintiffs from exploiting the APA's waiver to evade limitations on suit contained in other statutes." *Patchak*, 567 U.S. at 216.

"The [Quiet Title Act] is such an 'other statute,' because, if a suit is untimely under the [Quiet Title Act], the [Quiet Title Act] expressly 'forbids the relief' which would be sought under

§ 702." *Block v. North Dakota*, 461 U.S. 273, 286 n.22 (1983). And, as the Court previously explained, the statute of limitations for a Quiet Title Act claims is twelve years:

> [T]he Quiet Title Act bars claims unless they are "commenced within twelve years of the date upon which [the relevant action] accrued." 28 U.S.C. § 2409a(g). . . .
>
> The Quiet Title Act is precise on when a claim accrues: "the date the plaintiff or his predecessor in interest knew or should have known of the claim of the United States." 28 U.S.C. § 2409a(g). "A 'test of reasonableness' applies to determine whether a plaintiff . . . 'knew or should have known' of a federal claim of interest in property." *Warren v. United States*, 234 F.3d 1331, 1335 (D.C. Cir. 2000) (quoting *D.C. Transit Sys., Inc. v. United States*, 717 F.2d 1438, 1441 (D.C. Cir. 1983)). "Knowledge of the claim's full contours is not required. All that is necessary is a reasonable awareness that the Government claims some interest adverse to the plaintiff's." *Id.* (quoting *Knapp v. United States*, 636 F.2d 279, 283 (10th Cir. 1980)).

ECF No. 76 at 14–15 (first ellipsis added, all other alterations in original).

Here, the Tribe seeks a "declaratory judgment that the Defendants' and their employees' activities on tribal trust land that are not conducted on behalf of the tribe, and are not tribally authorize or other legally authorized, constitute trespass and/or continuing trespass." Compl. ¶ 123. Their claim is thus barred:

> Thus, the relevant date for statute of limitation purposes is when the Tribe knew or should have known that the United States did not recognize the lands at issue as held in trust for it. If the Tribe should have so known before March 8, 2006, its claim is barred.
>
> It should have. By the Complaint's own terms, following the passage of the 1948 Act, the United States failed to treat the lands at issue as tribal trust lands. Indeed, the Tribe made such claims in their 1951 petition. And, to alleviate any uncertainty of where the United States stood, the 1986 amicus brief—filed in a case the Tribe had itself brought—made clear that the United States viewed these lands as public domain land, *not* tribal trust land. No matter which of these dates is operative, each results in an accrual date before the new millennium. The Quiet Title Act's statute of limitations bars this claim.

ECF No. 76 at 15.[1]

The Court notes that the Tribe does not seriously dispute any of the foregoing. Its argument on these points is quite cursory; it neither cites nor engages with any case law, let alone the text of either the APA or the Quiet Title Act itself. *See* Mem. in Opp. to Mot., ECF No. 87, at 3–4. Indeed, the Tribe seems to acknowledge that its own claim cannot survive: "Using euphemisms and less blunt language, case law instructs that if the Executive Branch unscrupulously refuses to bring a quiet title action to resolve a good faith dispute between it and the party to whom it owes a trust duty, the Tribe then needs to antagonize the United States to bring a [Quiet Title Act] claim." *Id.* The Court adds the caveat that a timely Quiet Title Act suit *could* have been brought. But that is not the case here.

* * *

Accordingly, it is **ORDERED** that

The Federal Defendants' Motion for Reconsideration, ECF No. 80, is **GRANTED**. It is further **ORDERED** that

Count 5 of the Plaintiff's Complaint is **DISMISSED WITHOUT PREJUDICE**.

IT IS SO ORDRED.

DATE: August 16, 2022

CARL J. NICHOLS
United States District Judge

[1] This analysis would not change even if the Quiet Title Act's statute of limitations is not jurisdictional—a question the Supreme Court recently agreed to hear argument on. *See Wilkins v. United States*, U.S. Sup. Ct. Case No. 21-1164.