[ORAL ARGUMENT SCHEDULED JANUARY 19, 2023]

No. 22-5185

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

MANDAN, HIDATSA, AND ARIKARA NATION,

Appellee,

v.

U.S. DEPARTMENT OF THE INTERIOR, *et al.*,

Appellees,

STATE OF NORTH DAKOTA,

Appellant

Appeal from the United States District Court for the District of Columbia, Case No. 1:20-cv-01918, Judge Amy Berman Jackson

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BRIEF OF APPELLEE MANDAN, HIDATSA, AND ARIKARA NATION

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

(A) Parties.

The following parties appeared in the district court:

1. Appellant State of North Dakota was the putative Intervenor; previously it was the Intervenor-Defendant as to Count I.

2. Appellee Mandan, Hidatsa, and Arikara Nation is the Plaintiff.

3. Appellees United States Department of the Interior, Debra A. Haaland, in her official capacity as Secretary of the United States Department of the Interior, and Robert Anderson, in his official capacity as Solicitor of the United States Department of the Interior are Defendants.

(B) Ruling Under Review.

Appellant State of North Dakota seeks review of the district court's Order of June 21, 2022, denying its motion to intervene. Joint Appendix ("JA") 167-173.

(C) Related Cases.

This case was not previously before this Court or any other court other than the district court below.

The Mandan, Hidatsa, and Arikara Nation filed a related case in the U.S. Court of Federal Claims, (*Mandan, Hidatsa, and Arikara Nation v. United States*, No. 20-cv-00859), which presently is stayed while the district court case proceeds.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page(s)**

*Authorities upon which we chiefly rely are marked with an **

Statutes and Rules

Other Authorities

GLOSSARY OF ABBREVIATIONS

"APA" is the Administrative Procedure Act

"DOI" is the Department of the Interior

"IBLA" is the Interior Board of Land Appeals

"JA" is the Joint Appendix

"QTA" is the Quiet Title Act

"SA" is the Supplemental Appendix

JURISDICTIONAL STATEMENT

Appellee Mandan, Hidatsa, and Arikara Nation (the "MHA Nation") agrees with the jurisdictional statement of appellant State of North Dakota ("North Dakota" or the "State") except that the MHA Nation asserts that, for the reasons explained in this brief, both the district court and this Court lack subject matter jurisdiction over the claims asserted by the State.

ISSUE PRESENTED

Did the district court err in denying North Dakota's motion to intervene where the Indian lands exception to the Quiet Title Act, 28 U.S.C. § 2409a(a), deprives the court of jurisdiction and deprives North Dakota of both standing and a legally protected interest?

INTRODUCTION

This case involves issues between the MHA Nation and the Department of Interior ("DOI") regarding ownership of the bed of the Missouri River and the underlying mineral estate within the Fort Berthold Reservation (the "Reservation"). Since 1936, DOI has taken the position that the riverbed belongs to the MHA Nation, a position that it reaffirmed in 1979 and again in 2017. In 2020, however, DOI

reversed course and opined that the riverbed belongs to North Dakota. In response, the MHA Nation filed this suit challenging DOI's new position, and North Dakota intervened on that issue as a party-defendant.

In 2022, DOI withdrew the outlier opinion and restored its original position that the riverbed belongs to the MHA Nation; it then recorded the Nation's title in the agency's records. These actions mooted several of the claims in this action. In addition, they implicated the Indian lands exception to the Quiet Title Act, 28 U.S.C. § 2409a, which bars federal courts from adjudicating title challenges with respect to property in which the United States claims an interest on behalf of an Indian tribe.

At this juncture the State sought to intervene as to the remaining claims in this case based on its asserted ownership of the riverbed within the Reservation. Because the Quiet Title Act divests federal courts of jurisdiction to adjudicate challenges to ownership of Indian lands, the district court lacks jurisdiction over the State's claim, the State lacks standing to intervene, and the State has no legally protected interest which it can assert. As a result, North Dakota cannot

intervene in this litigation. The district court correctly denied the State's motion to intervene and this Court should affirm.

STATEMENT OF THE CASE

A. Background.

For over eighty years, the United States recognized the MHA Nation's ownership of the Missouri River's bed within the boundaries of the Reservation.

In 1936, the DOI Solicitor addressed whether an island formed from the bed of the river within the Reservation after North Dakota's statehood became the property of the State or, instead, a part of the Reservation held by the United States in trust for the MHA Nation. The Solicitor determined that the island belonged to the MHA Nation, not to North Dakota, because the riverbed was part of the Reservation prior to the admission of North Dakota to statehood. Therefore, islands subsequently formed from the riverbed were part of the Reservation. M-28120, *Title to island in the Missouri River within the Fort Berthold Indian Reservation*, *reprinted in* 1 Dep't of the Interior, Opinions of the Solicitor of the Department of the Interior Related to Indian Affairs 616 (Mar. 31, 1936).

In 1979, the Interior Board of Land Appeals ("IBLA") ruled that the bed of the Missouri River within the Reservation did not belong to the State. In *Impel Energy Corp.*, 42 IBLA 105 (Aug. 16, 1979), appellant Impel Energy argued that the Missouri riverbed lands within the Reservation were "federally owned, because title to the lands was held by the United States in trust for the Indians of the Fort Berthold reservation from 1851 until title was transferred to the United States in 1949 to permit construction of the Garrison Dam and Reservoir." 42 IBLA at 110.[1] North Dakota intervened in the agency adjudication and argued—as it did again in this action —that it acquired title to the riverbed under the "equal footing" doctrine upon its admission to the Union in 1889.

The IBLA rejected the State's argument and held that title to the riverbed never passed to the State. It concluded that the Treaty of Fort Laramie and the Executive Order of April 12, 1870, "when considered with the case law and the various utterances made contemporaneously with the treaty, discloses an intention to include the lands underlying the

[1] In 1984, Congress restored to the MHA Nation the mineral interests in the lands taken for the dam and reservoir. Fort Berthold Reservation Mineral Restoration Act, Pub. L. No. 98-602, tit. 2, 98 Stat. 3149, 3152 (1984).

Missouri River, insofar as it runs through the Fort Berthold reservation, among the lands of the reservation itself." *Id.* at 114.

In 2017, the DOI Solicitor issued an opinion that concluded, like the 1936 opinion and *Impel*, that title to the Missouri riverbed within the Reservation never passed to the State, and is held in trust for the MHA Nation. M-37044, *Opinion Regarding the Status of Mineral Ownership Underlying the Missouri River within the Boundaries of the Fort Berthold Reservation (North Dakota)*, (Jan. 18, 2017).

However, on May 26, 2020, DOI Solicitor Daniel Jorjani issued a new opinion, M-37056 ("Jorjani Opinion"), which reversed DOI's longstanding position and concluded that the State owned the Missouri Riverbed within the Reservation. It advised the agency "to take any actions deemed necessary to comply with this opinion, to include the withdrawing of any existing oil and gas permits for extraction in submerged lands beneath the Missouri River." That opinion precipitated this litigation.

B. The instant litigation.

The MHA Nation filed this lawsuit on July 16, 2020, and alleged four causes of action:

- Count I alleged that the Jorjani Opinion violated the Administrative Procedure Act ("APA") and sought injunctive relief preventing DOI from implementing the Jorjani Opinion and an order setting it aside.

- Count II alleged that the Jorjani Opinion was the product of undue political pressure, violated the APA, and sought injunctive relief and an order setting it aside.

- Count III alleged that DOI has a trust duty to account for the property it holds and manages for the benefit of the MHA Nation and sought an accounting, under the APA and DOI's statutory, regulatory, and trust obligations.

- Count IV sought a declaration that the adjudication in *Impel Energy Corp.*, 42 IBLA 105 (Aug. 16, 1979), rejecting the State's claim of title to the riverbed, is *res judicata* and binding on DOI, and sought to compel DOI under the APA and/or 28 U.S.C. § 1361 to take actions necessary to document the MHA Nation's title to the riverbed, administer and account for that trust property, and collect, deposit, invest, or pay over funds generated from that property.

(JA 28-32.) With its Complaint, the MHA Nation filed a motion for a preliminary injunction on Count I. The district court converted this into a motion for partial summary judgment as to Count I pursuant to Fed. R. Civ. P. 65(a)(2). (JA 4, 35-37.)

North Dakota then moved to intervene in this action as to Count I only. (JA 5.) The district court granted that motion. (JA 38-45.)

The parties filed cross-motions for summary judgment as to Count I. Before the district court ruled on those motions, DOI filed a motion to

stay proceedings on February 1, 2021, (JA 7-8), which the district court granted. Six weeks later, on March 19, 2021, DOI withdrew the Jorjani Opinion. (JA 101.)

Subsequently, on February 4, 2022, DOI Solicitor Robert Anderson issued a new opinion, M-37073. (*See* JA 148.) This opinion concluded that the United States holds the Missouri riverbed within the Fort Berthold Reservation, and the minerals underlying the riverbed, in trust for the benefit of the MHA Nation. On April 4, 2022, the Bureau of Indian Affairs recorded the MHA Nation's title to the Missouri riverbed within the Fort Berthold Reservation. (JA 152, 154-55.)

At this juncture, the parties agreed that Counts I, II, and part of Count IV of the MHA Nation's original complaint were moot. (JA 155.) The remaining claims for relief are:

- Count III, seeking an accounting from DOI, under the APA and DOI's statutory, regulatory, and trust obligations (JA 30, ¶ 83); and
- The portions of Count IV that sought an order compelling DOI to administer and account for the MHA Nation's property and to collect, deposit and invest, or pay over funds owing to the MHA Nation (JA 31-32, ¶¶ 89(b) and 89(c)).

The parties disagreed, however, on whether North Dakota could assert an interest in those claims. (JA 155.)

C. North Dakota's supplemental motion to intervene.

On April 29, 2022, the State filed a supplemental motion to intervene, seeking intervention as a matter or right or, in the alternative, permissive intervention. (JA 10.) The State asserted that "Counts Three and Four assert alternative theories to deprive North Dakota of its title to the bed of the Missouri River and underlying minerals bounded by the Fort Berthold Indian Reservation." (Supplemental Appendix ("SA") 2).

The State represented that it has issued approximately 255 oil and gas leases to the bed of the Missouri River within the Reservation. Because of the title dispute, royalty payments have not been made; some well operators have held the unpaid royalties while other operators have paid them into an escrow account. The State claimed that the unpaid royalties and bonus are easily in excess of $116 million. (JA 160-61).

The MHA Nation and DOI both opposed the State's motion for intervention. (JA 10.)

On June 21, 2022, the district court denied the State's motion to intervene. (JA 167-73.) The court agreed that the State's interest in the

disputed portion of the riverbed had been implicated by Counts I, II and IV, but noted that those counts (or the relevant portion) had been dismissed from the case. It reasoned that Count III and the remaining part of Count IV do not threaten the State's claimed interest in the riverbed because they concern DOI's trust obligations towards the MHA Nation. The district court rejected the State's argument that it still must resolve ownership of the riverbed to adjudicate the remaining claims, concluding that there was no longer a live controversy before it on that issue. (JA 172.)

This appeal followed.

SUMMARY OF ARGUMENT

The Quiet Title Act ("QTA") bars North Dakota from intervening in this action to contest DOI's claim of title to the bed of the Missouri River. The QTA provides the exclusive remedy for claims involving title disputes with the United States over real property, and it excepts any lands that the DOI claims on behalf of Indians. The Government is immune from any title challenge involving Indian lands.

There are three distinct reasons why North Dakota cannot intervene as to the remaining claims. First, the district court lacks

subject matter jurisdiction to adjudicate the State's asserted title to the riverbed. Second, the State lacks Article III standing to assert its claims to the riverbed. Third, the State's asserted interest is not legally protected.

The district court correctly denied the State's motion to intervene and its ruling should be affirmed.

STANDARD OF REVIEW

This Court reviews the denial of a motion to intervene as of right de novo for issues of law, for clear error as to findings of fact, and for abuse of discretion as to issues that involve a measure of judicial discretion. *See Yocha Dehe v. U.S. Dep't of the Interior*, 3 F.4th 427, 430 (D.C. Cir. 2021) (citing *Fund For Animals, Inc. v. Norton*, 322 F.3d 728, 732 (D.C. Cir. 2003)). The Court reviews the denial of a motion for permissive intervention under the abuse of discretion standard. *E.E.O.C. v. National Children's Center, Inc.*, 146 F.3d 1042, 1046 (D.C. Cir. 1998).

ARGUMENT

I. The Indian Lands Exception To The Quiet Title Act Bars The State's Claim.

The QTA provides the exclusive remedy for claims involving adverse title disputes with the United States, and it contains an Indian lands exception that precludes challenges to title involving Indian lands. "The QTA authorizes (and so waives the Government's sovereign immunity from) . . . 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 statute, however, contains an exception: The QTA's authorization of suit 'does not apply to trust or restricted Indian lands.' § 2409a(a)." *Id.* Thus, "the QTA specifically authorizes quiet title actions . . . except when they involve Indian lands." *Id.* at 216. This "reflects a congressional policy of honoring the federal government's solemn obligations to Indians with respect to title disputes over Indian trust land." *Patchak v. Salazar*, 632 F.3d 702, 712 (D.C. Cir. 2011), *aff'd*, 567 U.S. 209 (2012).

North Dakota is well aware of the limitations imposed by the QTA — it was the litigant in the leading Supreme Court case on the issue, which involved a claim by the State to a portion of the Little Missouri riverbed. In *Block v. North Dakota ex rel. Bd. of Univ. & Sch. Lands*, the Court held that "Congress intended the QTA to provide the exclusive means by which adverse claimants could challenge the United States' title to real property," 461 U.S. 273, 276–77 (1983). Although the State had asserted a number of jurisdictional bases for its claim in that case—including the APA and the Declaratory Judgment Act—the Court held that "North Dakota's action [could] proceed, if at all, only under the QTA." *Id.* at 292–93. The Court reasoned that "[t]he balance, completeness, and structural integrity of the [QTA] belied the contention that it was designed merely to supplement other putative judicial relief," and explained that if North Dakota were permitted to seek relief under the other statutes then "all the carefully-crafted provisions of the QTA deemed necessary for the protection of the national public interest could be averted . . . by artful pleading." *Id.* at 284–85 (internal quotation marks and citation omitted).

"Most actions under the Quiet Title Act concern the incidents of land ownership and not ownership per se." *Hat Ranch, Inc. v. Babbitt*, 932 F. Supp. 1, 2 (D.D.C. 1995) (collecting cases), *aff'd*, 102 F.3d 1272 (D.C. Cir. 1996). If a claim turns on ownership of lands, it "must therefore stand or fall under the Quiet Title Act." *Id.* at 3. The Supreme Court rejected a litigant's attempts to avoid the QTA where "the claim for title is the essence and bottom line of respondent's case." *United States v. Mottaz*, 476 U.S. 834, 842 (1986).

The State repeatedly argues that DOI cannot "finally adjudicate property disputes among competing claimants." (Br. at 17).[2] But that is not the issue. "[W]hen the United States claims an interest in real property based on that property's status as trust or restricted Indian lands, the Quiet Title Act does not waive the Government's immunity." *Mottaz*, 476 U.S. at 843 (emphasis added). As the Ninth Circuit explained:

> The QTA's limitations on actions challenging the United States' assertions of title apply without regard to the ultimate validity of those assertions. As this court has previously stated, "[t]he immunity of the government applies

[2] Indeed, the State spends five and a half pages of its brief arguing that an M opinion and recordation of title do not amount to a judicial declaration of title. (Br. at 12-17.)

> whether the government is right or wrong." Indeed, "[t]he very purpose of the doctrine is to prevent a judicial examination of the merits of the government's position."

State of Alaska v. Babbitt, 38 F.3d 1068, 1076 (9th Cir. 1994) (citations omitted; emphasis added). Thus, the critical point here — which the State ignores — is that no court can adjudicate the title dispute that the State seeks to raise.

North Dakota asserts that it is only raising its claim of title as a defense to existing claims, not as counterclaims. (*See* Br. at 6.) This is immaterial. "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 276–77. The State is unquestionably such an "adverse claimant" and it seeks to set aside the United States' claim of title to the riverbed. *See* SA 6 ("[A] ruling in the State's favor should precipitate implementation by DOI and enable North Dakota to clearly exercise title to the riverbed."). *Block* held that the strictures of the QTA cannot be evaded "by artful pleading." 461 U.S. at 285. Thus, the State cannot challenge DOI's claim of title by posturing itself as a co-defendant of the agency in this litigation and

asserting that it is simply "defending" against the MHA Nation's causes of action.[3]

This does not leave North Dakota without any recourse. Congress exempted the Tucker Act, 28 U.S.C. § 1491, from the strictures of the QTA. The QTA "does not . . . apply to or affect actions which may be or could have been brought under sections 1346, 1347, 1491, or 2410 of this title." 28 U.S.C. § 2409a(a). Thus, North Dakota could pursue a claim for compensation in the Court of Federal Claims based on DOI's alleged taking of the riverbed from it.[4] *See Oak Forest, Inc. v. United*

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[3] The State seeks to interject a title dispute into the district court action when the existing parties agree that title to the riverbed is held by DOI in trust for the MHA Nation. The Nation's remaining claims seek an accounting of the funds owed to it as owner of the riverbed and to require DOI to collect those funds. There is no dispute between the MHA Nation and the DOI that the Nation is entitled to those funds. In contrast, the State seeks to intervene to assert that it holds title to the riverbed and is entitled to all the proceeds thereof. The QTA bars this claim.

[4] Any such suit would be unsuccessful because the State's claim of title to the riverbed would be rejected. *See Alaska v. United States*, 545 U.S. 75, 100 (2005) ("It is now settled that the United States can defeat a future State's presumed title to submerged lands not only by conveyance to third parties but also by setting submerged lands aside as part of a federal reservation ...."); *Idaho v. United States*, 533 U.S. 262, 272-81 (2001) (affirming that Congress intended to defeat Idaho's title to submerged lands that were held by the United States in trust for the Coeur d'Alene Indian tribe).

States, 23 Cl. Ct. 90 (1991). But the State cannot contest DOI's claim of title to the riverbed (on behalf of the MHA Nation), or challenge any incidents of riverbed ownership, in any court, federal or state.

II. North Dakota Cannot Intervene To Assert Its Barred Claim.

Because the State's claim is barred by the QTA, there are multiple reasons why it cannot intervene.

A. The district court lacks jurisdiction over the State's claim.

First, the district court lacks jurisdiction over the State's claim. *See Karsner v. Lothian*, 532 F.3d 876, 882 (D.C. Cir. 2008) ("Before addressing the merits, we must resolve the threshold issue[] of the district court's subject matter jurisdiction . . . ."). "No less than the original claimants, a third party who seeks to intervene in a federal action and litigate a claim on the merits must demonstrate that the claim falls within the court's limited jurisdiction." *E.E.O.C. v. National Children's Center, Inc.*, 146 F.3d at 1046-47.

Absent a waiver of sovereign immunity, a court lacks jurisdiction over claims against the United States or against its officers acting in their official capacities. *See United States v. Mitchell*, 463 U.S. 206, 212 (1983). "When the United States consents to be sued, the terms of

its waiver of sovereign immunity define the extent of the court's jurisdiction." *Mottaz*, 476 U.S. at 841. The QTA is the only available waiver of sovereign immunity for claims challenging the United States' title to real property and it provides no waiver with respect to Indian lands. Thus, no federal (or state) court has jurisdiction to adjudicate the State's claim of title.

B. The State lacks standing to pursue its claim.

The QTA also deprives the State of standing to pursue its claim. "Intervenors become full-blown parties to litigation, and so all would-be intervenors must demonstrate Article III standing." *Old Dominion Electric Coop. v. FERC*, 892 F.3d 1223, 1232 (D.C. Cir. 2018); *see also Crossroads Grassroots Policy Strategies v. FEC*, 788 F.3d 312, 316 (D.C. Cir. 2015) (parties seeking to intervene as a defendant must demonstrate their standing). Further, "[b]ecause a would-be intervenor's Article III standing presents a question going to th[e] court's jurisdiction," it is a threshold issue to be addressed at the outset. *Fund For Animals, Inc. v. Norton*, 322 F.3d at 732.

"In essence the question of standing is whether the litigant is entitled to have the court decide the merits of the dispute or of

particular issues." *Warth v. Seldin*, 422 U.S. 490, 498 (1975). To establish standing, "the prospective intervenor must establish injury-in-fact to a legally protected interest, causation, and redressability." *Old Dominion*, 892 F.3d at 1233.

The QTA bars the State from litigating title to the riverbed in this or any other judicial proceeding. Consequently, the State lacks a legally protected interest in the disputed royalty payments and so lacks standing. Nor can the State establish redressability because the district court cannot grant the relief that it seeks, i.e., a ruling that it owns the riverbed or is entitled to the royalties as an incident of its ownership.

C. The State cannot intervene based on a nonjusticiable interest.

Finally, the State's lack of a legally protected interest dooms its motion under the standards of Fed.R.Civ.P. 24(a). A party seeking to intervene in a lawsuit as of right must satisfy four requirements, one of which is to demonstrate a legally protected interest in the action. *See SEC v. Prudential Sec. Inc.*, 136 F.3d 153, 156 (D.C. Cir. 1998) (listing requirements for intervention). Here the State cannot do so. *See id.* at

160 (denying intervention because the putative intervenor did not have a legally protected interest in enforcement of a consent decree).

III. The District Court Properly Denied Intervention.

Although both parties argued that the QTA bars North Dakota's motion to intervene, the district court denied that motion without analyzing the impact of the QTA.[5] In framing its appeal, the State studiously avoids any mention of the QTA. It treats as a given that the district court has jurisdiction over its claim and focuses solely on whether the requirements of Rule 24(a) are satisfied. But the State knows full well that it must surmount the QTA and that it cannot do so.

The district court correctly observed that the current claims in this action concern DOI's trust obligations to the MHA Nation in a situation where both parties now agree that the riverbed belongs to the Nation. The court concluded that, with the case in this posture, the State has no stake in these trust obligation claims.

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[5] Nonetheless, this Court can affirm the district court "on any basis supported by the record, even if different from the grounds the district court cited." *Parsi v. Daioleslam*, 778 F.3d 116, 126 (D.C. Cir. 2015). Further, subject-matter jurisdiction can be raised at any point during a proceeding, even on appeal or after trial. *See, e.g.*, *Arbaugh v. Y & H Corp.*, 546 U.S. 500, 506 (2006).

The district court's analysis would be unassailable if the MHA Nation sought compensation from its trustee for any uncollected royalties. The State argues, however, that the MHA Nation seeks judicial relief requiring DOI to collect unpaid royalties from well operators, which could impinge on the State's ability to collect those same royalties.

Whether the State's asserted interest in the royalties would be sufficient to support its intervention in the absence of the QTA is an issue that the Court need not reach because the impact of the QTA cannot be ignored. The QTA controls threshold issues that must be addressed before conducting an analysis under Rule 24. Here, as explained above, the QTA clearly bars the State's claim and provides multiple reasons for affirming the decision of the district court.

CONCLUSION

Congress has forbidden anyone from litigating a title claim against the United States relating to Indian lands. North Dakota ignores that prohibition in seeking to intervene as to the current claims in this lawsuit. The district court correctly denied both mandatory and permissive intervention, and this Court should affirm.

Dated: November 14, 2022

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this Brief complies with the type-volume limitations of Fed. R. App. P. 32(a)(7)(B) and Circuit Rule 32(a). Excluding the Table of Contents, Table of Authorities, the Glossary, the Addendum of Pertinent Statutes and Regulations, and counsel's Certificates, this Brief contains 4,097 **words**, including footnotes. This Brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) because it has been prepared in a proportionally spaced typeface in **Microsoft Word 2003** using **Century, 14-point font**.

Dated: November 14, 2022

Respectfully submitted,

/s/ Steven D. Gordon
Steven D. Gordon

CERTIFICATE OF SERVICE

I hereby certify that on November 14, 2022, copies of the foregoing Brief of Appellee Mandan, Hidatsa, and Arikara Nation were served by electronic means using the Court's CM/ECF system.

/s/ Steven D. Gordon
Steven D. Gordon

ADDENDUM

TABLE OF CONTENTS

28 U.S.C. §2409a. Real property quiet title actions

(a) The United States may be named as a party defendant in a civil action under this section to adjudicate a disputed title to real property in which the United States claims an interest, other than a security interest or water rights. This section does not apply to trust or restricted Indian lands, nor does it apply to or affect actions which may be or could have been brought under sections 1346, 1347, 1491, or 2410 of this title Show, sections 7424, 7425, or 7426 of the Internal Revenue Code of 1986, as amended (26 U.S.C. 7424, 7425, and 7426), or section 208 of the Act of July 10, 1952 (43 U.S.C. 666).

(b) The United States shall not be disturbed in possession or control of any real property involved in any action under this section pending a final judgment or decree, the conclusion of any appeal therefrom, and sixty days; and if the final determination shall be adverse to the United States, the United States nevertheless may retain such possession or control of the real property or of any part thereof as it may elect, upon payment to the person determined to be entitled thereto of an amount which upon such election the district court in the same action shall determine to be just compensation for such possession or control.

(c) No preliminary injunction shall issue in any action brought under this section.

(d) The complaint shall set forth with particularity the nature of the right, title, or interest which the plaintiff claims in the real property, the circumstances under which it was acquired, and the right, title, or interest claimed by the United States.

(e) If the United States disclaims all interest in the real property or interest therein adverse to the plaintiff at any time prior to the actual commencement of the trial, which disclaimer is confirmed by order of the court, the jurisdiction of the district court shall cease unless it has jurisdiction of the civil action or suit on ground other than and independent of the authority conferred by section 1346(f) of this title Show.

(f) A civil action against the United States under this section shall be tried by the court without a jury.

(g) Any civil action under this section, except for an action brought by a State, shall be barred unless it is commenced within twelve years of the date upon which it accrued. Such action shall be deemed to have accrued on the date the plaintiff or his predecessor in interest knew or should have known of the claim of the United States.

(h) No civil action may be maintained under this section by a State with respect to defense facilities (including land) of the United States so long as the lands at issue are being used or required by the United States for national defense purposes as determined by the head of the Federal agency with jurisdiction over the lands involved, if it is determined that the State action was brought more than twelve years after the State knew or should have known of the claims of the United States. Upon cessation of such use or requirement, the State may dispute title to such lands pursuant to the provisions of this section. The decision of the head of the Federal agency is not subject to judicial review.

(i) Any civil action brought by a State under this section with respect to lands, other than tide or submerged lands, on which the United States or its lessee or right-of-way or easement grantee has made substantial improvements or substantial investments or on which the United States has conducted substantial activities pursuant to a management plan such as range improvement, timber harvest, tree planting, mineral activities, farming, wildlife habitat improvement, or other similar activities, shall be barred unless the action is commenced within twelve years after the date the State received notice of the Federal claims to the lands.

(j) If a final determination in an action brought by a State under this section involving submerged or tide lands on which the United States or its lessee or right-of-way or easement grantee has made substantial improvements or substantial investments is adverse to the United States and it is determined that the State's action was brought more than twelve years after the State received notice of the Federal claim to the lands, the State shall take title to the lands subject to any existing

lease, easement, or right-of-way. Any compensation due with respect to such lease, easement, or right-of-way shall be determined under existing law.

(k) Notice for the purposes of the accrual of an action brought by a State under this section shall be—

(1) by public communications with respect to the claimed lands which are sufficiently specific as to be reasonably calculated to put the claimant on notice of the Federal claim to the lands, or

(2) by the use, occupancy, or improvement of the claimed lands which, in the circumstances, is open and notorious.

(l) For purposes of this section, the term "tide or submerged lands" means "lands beneath navigable waters" as defined in section 2 of the Submerged Lands Act (43 U.S.C. 1301).

(m) Not less than one hundred and eighty days before bringing any action under this section, a State shall notify the head of the Federal agency with jurisdiction over the lands in question of the State's intention to file suit, the basis therefor, and a description of the lands included in the suit.

(n) Nothing in this section shall be construed to permit suits against the United States based upon adverse possession.

Fed.R.Civ.P. 24. Intervention

(a) Intervention of Right. On timely motion, the court must permit anyone to intervene who:

(1) is given an unconditional right to intervene by a federal statute; or

(2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

(b) Permissive Intervention.

(1) In General. On timely motion, the court may permit anyone to intervene who:

(A) is given a conditional right to intervene by a federal statute; or

(B) has a claim or defense that shares with the main action a common question of law or fact.

(2) By a Government Officer or Agency. On timely motion, the court may permit a federal or state governmental officer or agency to intervene if a party's claim or defense is based on:

(A) a statute or executive order administered by the officer or agency; or

(B) any regulation, order, requirement, or agreement issued or made under the statute or executive order.

(3) Delay or Prejudice. In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights.

(c) Notice and Pleading Required. A motion to intervene must be served on the parties as provided in Rule 5. The motion must state the grounds for intervention and be accompanied by a pleading that sets out the claim or defense for which intervention is sought.