IN THE UNITED STATES COURT OF FEDERAL CLAIMS

AARON OLSON, *et al.*,	)	
Plaintiffs,	)	Case No. 18-287C
v.	)	(Judge Campbell-Smith)
THE UNITED STATES,	)	
Defendant.	)	

DEFENDANT'S SUPPLEMENTAL BRIEF IN SUPPORT OF ITS MOTION TO DISMISS IN PART

Pursuant to the Court's June 10, 2020 order (ECF No. 45), defendant, the United States, respectfully submits this supplemental brief in further support of its pending motion to dismiss in part in this matter. For the reasons provided in our motion (ECF No. 35), our reply (ECF No. 40), and this brief, the Court should dismiss all claims related to the Trust Land Allotments.

On April 27, 2020, the United States Supreme Court issued a decision in *Me. Cmty. Health Options v. United States*, 140 S. Ct. 1308 (2020). The Supreme Court held that the Patient Protection and Affordable Care Act's risk corridors program, codified at 42 U.S.C. § 18062, is a money-mandating statutory provision that confers jurisdiction on this Court pursuant to the Tucker Act. *Id.* at 1315. In reaching this conclusion, the Supreme Court further explained this Court's jurisdictional reach and the relevant inquiry for determining whether a statutory provision is money-mandating. *Id.* at 1327-31.

The Supreme Court's explanation is directly relevant to the parties' arguments here, as plaintiffs and the Government disagree whether certain statutes and regulations are money-mandating. *See* Def. Mot. at 11-15, ECF No. 35 (explaining that the statutes and regulations cited in the amended complaint are not money-mandating); Pls. Resp. at 16-19, ECF No. 36

(arguing that those statutes and regulations are money-mandating). Specifically, we believe that *Me. Cmty. Health Options* supports our position here in three respects.

First, the Supreme Court recognized that "not every claim invoking the Constitution, a federal statute, or a regulation is cognizable under the Tucker Act . . . , [n]or will every failure to perform an obligation create a right to monetary relief against the Government." *Me. Cmty. Health Options*, 140 S. Ct. at 1327 (internal citations, quotations, and alterations omitted). Indeed, the Supreme Court acknowledged that money-mandating provisions are "uncommon" and "rare." *Id.* at 1329. In other words, not every statutory or regulatory Government obligation qualifies as a money-mandating source of law.

Second, the Supreme Court explained that whether a statutory provision is money-mandating depends on whether the provision is backward-looking or forward-looking. *See Me. Cmty. Health Options*, 140 S. Ct. at 1329. And so, while "statutes that attempt to compensate a particular class of persons for *past* injuries or labors" permit Tucker Act suits, "laws that subsidize *future* state expenditures" do not. *Id.* (citing *Bowen v. Massachusetts*, 487 U.S. 879 (1988)) (emphasis added). The sole statutory authority relevant to plaintiffs' claims here – the Act of Aug. 1, 1914, Pub. L. No. 63-160, 38 Stat. 582 – establishes future entitlement to irrigation water, without addressing compensation for past Government conduct. *See* Def. Mot. at 13-14, ECF No. 35. As a forward-looking statute, this Act does not amount to a money-mandating source of law.

And *third*, plaintiffs have seized on the word "shall" in statutory text, arguing that "[t]he Federal Circuit has repeatedly recognized that the use of the word 'shall' generally makes a statute money-mandating." Pls. Resp. at 16, ECF No. 36 (citing *Agwiak v. United States*, 347 F.3d 1375 (Fed. Cir. 2003)). But, as we explain in our reply brief, "shall" is only indicative of a

statute's money-mandating status if it mandates the payment of money, as opposed to some other good or service. *See* Def. Reply at 6, ECF No. 40. The Supreme Court in *Me. Cmty. Health Options* similarly focused on "[s]tatutory 'shall pay language,'" as opposed to the word "shall" more generally. *See* 140 S. Ct. at 1329. This indicates that statutory provisions must mandate payment to be considered money-mandating. *See also Lummi Tribe of the Lummi Reservation, Washington v. United States*, 870 F.3d 1313 (Fed. Cir. 2017) (holding that statutory language directing that the Government "shall . . . make grants" and "shall allocate . . . amounts" was not money-mandating for Tucker Act purposes).

CONCLUSION

For these reasons, and for the reasons stated in our moving papers, we respectfully request that the Court dismiss all claims alleged by plaintiffs Aaron Olson (lease nos. 1-2-2801-1216, 1-2-2891-1317, 2-2-2284-0913, and 1-2-2141-0918), Darin Olson (lease no. 124 P111300316 NS), the Domans (lease no. 1-2-3020-1317 and permit no. 4-2-3029-1317), El Rancho Bella Vista, LLC (lease no. 1-2-2926-1322), George DeRuyter (lease no. 1-2-2698-1120), and Green Acre Farms, Inc. (lease no. 1-2-3110-1317). We also respectfully request that the Court dismiss claims related to the Trust Land Allotments alleged by plaintiffs the Wiltses (lease no. 1-2-3076-1314), the Boiselles (lease no. TP13-18), and the Youngs (lease no. 1-2-2682-1014).

Respectfully Submitted,

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June 19, 2020

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