THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Ute Indian Tribe of the Uintah and Ouray Reservation, Plaintiff, v. **United States Department of the Interior, *et al.*,** Defendants, and **State of Utah,** Intervenor.	Case No. 1:18-cv-00546-CJN Judge Carl. J. Nichols **RESPONSE IN OPPOSITION TO MOTION TO RECONSIDER**

Defendants' motion to reconsider should be denied for two reasons.

First, a motion to reconsider should not be used as a vehicle for serially litigating arguments. The United States' new argument for dismissal of Count V is one that it could have been raised in its prior motion to dismiss that Court, and that would have been raised in that motion if it had any merit.

Second, and more significantly, the motion is substantively incorrect.

I. THE MOTION TO RECONSIDER SHOULD BE DENIED BECAUSE THE MOTION IS DEPENDENT ON AN ARGUMENT THAT WAS NOT RAISED IN THE MOTION TO DISMISS.

In *Risenhoover v. United States Department of State,* the United States opposed a plaintiff's motion to reconsider. In denying the non-federal party's motion to reconsider, this Court provided the following summary of the law governing motions to reconsider:

> "[C]ourts will not address new arguments or evidence that the moving party could have raised before the decision issued," *id.* Thus, the law is well-settled that motions for reconsideration are "discretionary and need not be granted unless the district court finds that there is an intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest

> injustice." *Pigford v. Perdue*, 950 F.3d 886, 891 (D.C. Cir. 2020) (quoting *Ciralsky v. CIA*, 355 F.3d 661, 671 (D.C. Cir. 2004)).

Risenhoover, No. CV 19-715 (BAH), 2020 WL 5416626, at *1 (D.D.C. Sept. 2, 2020), *aff'd,* No. 20-5276, 2020 WL 8773055 (D.C. Cir. Dec. 22, 2020).

Similarly, in *Judicial Watch, Inc. v. U.S. Department of Energy*, 319 F. Supp. 2d 32, 34 (D.D.C. 2004), this Court rejected an attempt to raise a new argument in a motion to reconsider. In that case, as in this case, the United States attempted to raise the new argument in a motion to reconsider, but the Court held that parties cannot use motions to reconsider to raise new arguments. *See also Ecol. Rts. Found. v. U.S. Env't Prot. Agency*, 541 F. Supp. 3d 34, 40 (D.D.C. 2021) (denying the United States' motion for partial reconsideration, holding that the United States could not raise new arguments in a motion to reconsider).

Those holdings bar the United States current attempt to raise a new argument in its motion to reconsider. The United States cannot bring one set of arguments in a motion, and then if that motion is denied, bring its secondary line of arguments through a motion to reconsider. Here, the United States is not alleging any change in the law, and it does not allege a clear error or manifest injustice. Instead, it makes an argument that was available to it at the time that it filed its prior motion to dismiss Count 5, but which it chose not to raise in that motion.

In its prior motion to dismiss, the United States correctly did not argue that the trespass claim was a Quiet Title Act (QTA) claim in disguise, but its current motion to reconsider is based upon that argument that it chose not to raise previously. In fact, in its motion to dismiss, the United States correctly recognized that the Tribe brought its QTA claim openly, in a separate count of the complaint, and that one analysis applied to the QTA claim, and a different analysis applied to the trespass claim. The Court therefore should deny the United states motion to "reconsider" which seeks to raise an issue that the United States chose not to raise in its motion to dismiss.

II. THE TRESPASS CLAIM IS NOT A QTA CLAIM.

As the United States correctly recognized when it filed its motion to dismiss, the Tribe's trespass claim is not a QTA claim. More significantly, as this Court discussed in its order denying the motion to dismiss the trespass claim, the trespass claim is not a QTA claim. In its motion to reconsider, the United States quotes this Court's statement that the trespass claim "asks this Court to determine whether 'these lands were not and should not be restored to tribal ownership.'" Dkt. 80 at 7 (quoting Mem. Op at 19). This Court could hold that minerals that are daily being extracted from the lands were already restored to tribal ownership, without quieting title to the land. This Court could also determine that minerals that are being daily extracted from the lands *should be* restored to tribal ownership, without quieting title to the land. Assuming this Court were to issue either ruling, the parties then can argue about the proper remedy in order to bring the Executive Branch into compliance with the existing federal law, or determine other remedies. We can determine at that time whether the United States can argue that the remedy cannot include an order to quiet title. But, even if that remedy were barred, it would be a jurisdictional bar to the claim, and would not bar other remedies.

The United States' motion to reconsider yet again illustrates the Executive Branch's failure to understand that it cannot simply violate an existing act of Congress, and then prevent the Tribe and the Court from remedying the ongoing and future violations of that Act of Congress. The United States' argument on the QTA statute of limitations illustrates this same myopic failure by the Executive Branch. As the Tribe has previously discussed, dismissal of a QTA claim does *not* quiet title in the United States. Instead, it leaves title unresolved until the United States brings a quiet title claim. 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 QTA claim. The Ute Indian Tribe has ample ability to do that, to bring suits against others who are stealing the Tribe's minerals, who are violating the Tribe's rights under color of state or federal law, who are building structures on land that has been or should be restored to tribal ownership.

The trespass claim is not a QTA claim. It is, instead, one of the more polite ways that the Tribe can show the United States that the Tribe and the United States will have to have it determined whether an area of land larger than several states is owned by the United States in trust or in fee, and will have to have it determined whether the Executive Branch and hundreds of others are, on a daily basis, violating an existing act of Congress.

CONCLUSION

For all of the reasons discussed above, this Court should deny the United States' motion to reconsider.

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