IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION

LEGEND LAKE PROPERTY OWNERS ASSOCIATION, INC.,
Plaintiff,

v. Case No. 1:23-cv-00480

UNITED STATES DEPARTMENT OF THE INTERIOR, et al.,
Defendants.

AMICUS BRIEF OF THE MENOMINEE INDIAN TRIBE OF WISCONSIN

Menominee Indian Tribe of Wisconsin ("Menominee" or "Tribe") submit this Amicus Brief in the above-captioned matter. The Court lacks jurisdiction because the United States has not waived its immunity to this claim.

I. INTRODUCTION

Plaintiff's Complaint seeks to vacate or remand a final decision of the Department of the Interior, through the Interior Board of Indian Appeals ("IBIA"), to acquire 40 parcels in trust for Menominee pursuant to the Menominee Restoration Act, Pub. L. No. 93-197, 87 Stat. 770 (1973) (formerly codified at 25 U.S.C. §§ 903-903e) ("Restoration Act"). Plaintiff's case is based on enforcing Restrictive Covenants over the 40 properties which are now held in trust for the Tribe by the United States. Plaintiff asserts that its Restrictive Covenants are property interests, and so it is asserting property interests adverse to those of the United States. Claims asserting property interests adverse to those of the United States are subject to the Quiet Title Act, which bars claims asserting property interests on Indian trust lands such as those in this case, 28 U.S.C. §2409a, and cannot be brought under the Administrative Procedure Act. The case must therefore be dismissed.

II. BACKGROUND

A. Menominee Tribe—Termination and Restoration

The Menominee Indian Tribe of Wisconsin is a federally recognized Indian Tribe. Restoration Act § 3(a), 87 Stat. 770, 770. The Tribe's reservation in Wisconsin was established by the Treaty of Wolf River in 1854. Treaty with the Menominee, 1854, 10 Stat. 1064 (May 12, 1854) 1854 WL 9490 (Trty.); *see Menominee Tribe of Indians v. United States*, 391 U.S. 404, 405 (1968). In 1954, however, Congress enacted the Menominee Indian Termination Act, Pub. L. No. 83-397, 68 Stat. 250 (1954) ("Termination Act"), "to provide for orderly termination of Federal supervision over the property and members of the Menominee Indian Tribe of Wisconsin." *Latender v. Israel*, 584 F.2d 817, 819 (7th Cir. 1978) (Termination Act, § 1). The Termination Act resulted in the loss of the trust status of the Tribe's reservation lands, and the loss of tribal self-government. *See Menominee Tribe of Indians*, 391 U.S. at 405-09. The Menominee Reservation became Menominee County. *See id*. at 409; *see also* S. Rep. No. 93-604, at 10-11 (1973).

Termination had deleterious effects on the Tribe and its members. One of these was the loss of thousands of acres of land that were sold by Menominee Enterprises, Incorporated ("MEI"), the entity created to own tribal lands following termination, for financial reasons. S. Rep. No. 93-604, at 11 (1973); *Menominee Tribe of Indians*, 391 U.S. at 408-09. The lands sold by MEI included the Legend Lake development. *Repealing the Act Terminating Federal Supervision over the Property and Members of the Menominee Indian Tribe of Wisconsin: Hearing on H.R. 7421 Before the Subcomm. on Indian Affairs of the H. Comm. on Interior and Insular Affairs*, 93rd Cong. 259-66 (1973) (statement of Rep. Harold Froehlich (WI-8)).

In 1973, Congress acknowledged the failure of termination and restored Menominee's federal rights through enactment of the Restoration Act. The Act repealed the Termination Act and "reinstated all rights and privileges of the tribe or its members under Federal treaty, statute, or otherwise which may have been diminished or lost pursuant to [the Termination Act]." Restoration Act § 3(b), 87 Stat. 770, 770. The Restoration Act also provides a mechanism to restore Menominee lands. Section 6(b) provided, subject to certain conditions (which were met), that the Secretary of the Interior ("Secretary") would accept the transfer of lands held by MEI, to be held in trust for the Tribe and exempt from taxation. Further, Section 6(c) provides that "[t]he Secretary shall accept the real property (excluding any real property not located in or adjacent to the territory constituting, on the effective date of this Act, the county of Menominee, Wisconsin) of members of the Menominee Tribe, but only if transferred to him by the Menominee owner or owners." Restoration Act § 6(c), 87 Stat. 770, 773. The lands so transferred "shall be taken in the name of the United States in trust for the Menominee Tribe of Wisconsin and shall be part of their reservation." *Id*. The Restoration Act specified that lands so transferred "shall be exempt from all local, State, and Federal taxation." *Id*.

Trust acquisitions meeting the requirements of Section 6(c) of the Restoration Act—i.e., owned by a Menominee tribal member or members and located within Menominee County—are mandatory, leaving the Secretary of the Interior with no discretion not to accept the trust transfer. *Menominee Cty., Wis. v. Midwest Reg'l Dir., Bureau of Indian Affairs*, 52 IBIA 72, 72 (2010).

B. The Restrictive Covenants

In 2009, thirty-six years after enactment of the Restoration Act, Plaintiff Legend Lake Property Owners Association adopted the Restrictive Covenants (Ex. A to Compl., Dkt. 1-1, hereafter "Rest. Covs."), in a vote which was limited to owners of properties in the Legend Lake development that were held in fee simple title, and so excluded properties then held in trust for

the Tribe by the United States. *Legend Lake Prop. Owners Ass'n, Inc. v. Lemay*, 710 N.W.2d 725, ¶ 5, 289 Wis. 2d 549, (Wis. Ct. App. 2006).

The Restrictive Covenants purport to prevent transfers of lands that "could or would" remove the properties from the County tax rolls, or from County zoning authority and general County authority. Rest. Covs. (Dkt.1-1) ¶ 1.B. The Restrictive Covenants further provide that "[t]his restriction [from transfer] shall … expressly apply to any application to have the Subject Real Estate … placed into federal trust *pursuant to the Indian Reorganization Act*." Rest. Covs. (Dkt. 1-1) ¶ 1.C (emphasis added). They also provide that "[a]ny purported transfer of any interest in the Subject Real Estate … in violation of these restrictions shall be null and void." Rest. Covs. (Dkt. 1-1) ¶1.E.

Plaintiff contends that these Restrictive Covenants bar the transfer of the properties to the United States in trust for the Tribe under the Restoration Act, even though the Restrictive Covenants contain no provision regarding trust acquisitions pursuant to the Restoration Act, and despite a savings clause in the Restrictive Covenants protecting the rights of property owners under federal law.[1] In the IBIA and in a related state court case brought by Plaintiff against the Tribe, the Tribe has argued that the Restrictive Covenants are invalid or otherwise inapplicable to the transfers at issue for this reason and for various other reasons involving state law issues

[1] The Restrictive Covenants contain the following savings clause, not mentioned in Plaintiff's Complaint:

> F. Notwithstanding the foregoing, nothing contained in these Restrictive Covenants, including without limitation this paragraph, shall be deemed or construed to
> …
>
> > (2) effect a waiver, abrogation, release or relinquishment of any constitutional rights granted to or held by real property owners under the constitution or laws of the United States and/or the State of Wisconsin, including without limitation pursuant to Chapters 74 and 75, Wis. Stats.
> > …

Rest. Covs. (Dkt. 1-1) ¶ 1.F.

that were not ruled on by the IBIA. *See infra* at 6-7 (discussing IBIA decision) and 7-8 (state case).

C. The Trust Applications and Bureau of Indian Affairs Decisions at Issue in This Case

Following restoration, in order to further the reconstitution of Menominee lands pursuant to Section 6(c) of the Restoration Act, the Tribe has appointed members of the Tribe, including Guy Keshena, to act as agents to purchase lands within Menominee County on behalf of the Tribe, to be transferred to the United States in trust for the Tribe. Exs. A and B to Declaration of Michael L. Roy ("Roy Dec."). After Mr. Keshena took title to 40 parcels within the Legend Lake development, the Tribe and Mr. Keshena submitted fee-to-trust applications to the Bureau of Indian Affairs ("BIA") for the properties in March and May of 2018. *Legend Lake Property Owners Ass'n, Inc. v. Midwest Regional Director, Bureau of Indian Affairs*, 68 IBIA 284, 287 (March 24, 2023), Ex. C to Compl., Dkt. 1-3. The BIA decided to acquire the forty properties in trust for the Tribe in three separate decisions. In the first decision, dated June 14, 2018, the BIA stated its intent to acquire in trust twenty-four of the properties that were the subject of the twenty-six applications submitted on March 28 (received by the BIA on April 6). Roy Dec. Ex. C. The Notice of Decision states: "We have determined these 24 trust acquisitions are mandated pursuant to Section 6(c) of the Menominee Restoration Act." *Id*. The Notice of Decision further states:

> Please note that on April 6, 2012, the Assistant Secretary-Indian Affairs, through the Director of the Bureau of Indian Affairs, issued updated guidance regarding the processing of mandatory land into trust acquisitions. As required by the updated guidance, we have examined the language in Menominee Restoration Act and determined that it permits no discretion on the part of the Secretary of Interior to accept these tracts in trust and shall be deemed as mandatory acquisitions for purposes of compliance with 25 C.F.R. Part 151.

Id. In two later decisions, the BIA stated its decisions to acquire the remaining properties in trust pursuant to Section 6(c) of the Restoration Act, using language identical to that of the June 14 Notice of Decision. Roy Dec. Exs. D & E.

D. The IBIA Decision

Plaintiff filed an appeal with the IBIA seeking to overturn the BIA decisions. Plaintiff contended that the parcels were subject to its Restrictive Covenants that prohibit transfers of property that would remove the property from the tax rolls. *Legend Lake Property Owners Ass'n*, 68 IBIA at 285, Ex. C to Compl., Dkt. 1-3. Plaintiff requested that the decisions be vacated, or in the alternative that the covenants "would remain in force and effect after the lands were acquired into trust for the benefit of the Tribe." *Id.*

The IBIA rejected Plaintiff's contentions. It held that the Restoration Act mandated acquisition of parcels where, as here, they are located in Menominee County, and they are owned by a tribal member. *Id.* at 291-92. It further held that the Restrictive Covenants were preempted to the extent they would transfers into trust under the Restoration Act. *Id.* at 296. The IBIA rejected the argument that the Restrictive Covenants are "valid existing rights" or "other obligations" under section 6(c) of the Restoration Act:

> We are not convinced that restrictive covenants-at least not the tax and jurisdictional covenants at issue here-are included within the meaning of "valid existing rights.?" The Act specifically identifies the tax obligations deemed valid existing rights-"outstanding taxes"-and does not purport to make exceptions against the exercise of tribal jurisdiction that flows from acquisition by the United States of title to fee land in trust. To the contrary, the Act specifies that the land shall be part of the Tribe's reservation.

Legend Lake Property Owners Ass'n, 68 IBIA at 294, Ex. C to Compl., Dkt. 1-3 (emphasis added). The IBIA further stated that "even were we to assume that Congress intended 'other obligations' to include restrictive covenants," the BIA decisions to acquire the lands in trust were correct, because "even if [the acquisition] is subject to any valid existing rights, … the

[Restoration Act] does not require the elimination of such rights before the land can be taken into trust." *Id*. In so ruling, the IBIA did not discuss the savings clause in the Restrictive Covenants, or that the covenants expressly prohibit acquisitions of trust land pursuant to the Indian Reorganization Act but not under the Restoration Act. *See supra* at 4 & n.1. Nor did the IBIA decide whether the Restrictive Covenants were otherwise unlawful. *Legend Lake Property Owners Ass'n*, 68 IBIA at 296 n.14, Ex. C to Compl., Dkt. 1-3.

E. The Trust Acquisition

Subsequent to the IBIA's decision, the United States accepted transfer of title. The parcels are now held by "the United States of America in trust for the Menominee Indian Tribe of Wisconsin." Roy Dec. Ex. F.

F. State Case

On October 25, 2018, Plaintiff in this case filed suit against the Tribe and Mr. Keshena in state court in Wisconsin, *Legend Lake Property Owners Ass'n, Inc. v. Keshena et al*, no. 18-CV-30701 (Cir. Ct. Menominee Cty.), seeking a declaratory judgment that the Restrictive Covenants are valid and legally enforceable, that they apply to the 40 parcels, and that any purported transfer in violation of the Restrictive Covenants shall be null and void. Roy Dec. Ex. G ¶24. The United States is not a named party to that case.

The Tribe moved for summary judgment in that case on numerous bases: (1) that the Restrictive Covenants violated the statute of frauds; (2) that if the covenants were enforceable in the first instance, then subsequent tax lien foreclosures of each property removed any restraint on transfers; (3) that the covenants failed to meet the requirements for restrictive covenants under Wisconsin law; (4) that the covenants, even if enforceable, properly construed under Wisconsin law, would not prohibit the transfers at issue; (5) that if construed to prohibit the transfers at

issue, the covenants are preempted by federal law; (6) that sovereign immunity barred the suit against the Tribe and Mr. Keshena as its agent; and (7) that Plaintiff had no authority to record the Restrictive Covenants. Roy Dec. Ex. H. The Circuit Court dismissed the case, holding that (1) the Restoration Act preempts the Restrictive Covenants, and so the covenants are not enforceable to prevent transfer of property to the United States in trust for the Tribe under the Restoration Act, and (2) the Tribe and Mr. Keshena as its agent are immune from suit. Roy Dec. Ex. I ¶¶ 7-12. In its ruling, the court did not decide the merits of the numerous state law defenses raised by the Tribe on summary judgment, finding it unnecessary to do so. Roy Dec. Ex. I ¶14.[2] The case is now on appeal. *Legend Lake Property Owners Ass'n, Inc. v. Keshena et al*, no. 2022-AP-937 (Wisc. Ct. App. Dist. III).

III. ARGUMENT

A. The United States Cannot Be Sued Absent an Explicit Waiver of Its Immunity

The United States is immune from suit except when Congress explicitly waives sovereign immunity. *Block v. North Dakota*, 461 U.S. 273, 280 (1983).

> The basic rule of federal sovereign immunity is that the United States cannot be sued at all without the consent of Congress. A necessary corollary of this rule is that when Congress attaches conditions to legislation waiving the sovereign immunity of the United States, those conditions must be strictly observed[.]

Id. at 287. Accordingly, "[a] waiver of the Federal Government's sovereign immunity must be unequivocally expressed in statutory text," and "a waiver of the Government's sovereign immunity will be strictly construed, in terms of its scope, in favor of the sovereign." *Lane v. Pena*, 518 U.S. 187, 192 (1996). The party bringing suit against the United States has the burden

[2] The Tribe maintains that the Restrictive Covenants are not valid rights or obligations under sections 3(d) and 6(c) of the Restoration Act because, *inter alia*, they are invalid under state law, for the reasons raised by the Tribe in the state case. If the Court does not dismiss the case for the reasons stated in this brief or in the briefs of the Federal Defendants in support of Federal Defendants' Motion to Dismiss, the Tribe reserves its rights to move to intervene or otherwise participate in the case to protect its rights.

to prove that sovereign immunity has been waived. *See Macklin v. United States*, 300 F.3d 814, 819 (7th Cir. 2002).

B. Suits Asserting Title or a Property Interest Adverse to the United States Can Be Brought Only under the Quiet Title Act

Under the Administrative Procedure Act ("APA"), the United States waived its sovereign immunity for actions alleging injury as a result of agency action. 5 U.S.C. § 702. However, the APA adds that "[n]othing herein…confers authority to grant relief if any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought." *Id.* As discussed below, the Quiet Title Act, 28 U.S.C. § 2409a ("QTA"), forbids the relief plaintiff seeks.

With the QTA, Congress provided a limited waiver of sovereign immunity for actions to quiet title against the United States, thus falling within the APA's "statute that grants consent to suit" language. 5 U.S.C. § 702. "The QTA 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) (hereafter "*Patchak*") (citing 28 U.S.C. § 2409a(d)).

The QTA applies where the Plaintiff's interest is a property interest other than full title. *Van Den Heuvel Tr. of 1994 v. U.S. Army Corps of Engineers*, No. 15-CV-275, 2015 WL 4113328, at *2 (E.D. Wis. July 8, 2015) (citing numerous cases to this effect); *see* 28 U.S.C. § 2409a(d)(directing that the complaint in such an action "shall set forth with particularity the nature of the right, title, or interest which the plaintiff claims in the real property."); *see also Wilkins v. United States*, 143 S. Ct. 870 (2023) (owners of properties over which the government held an easement brought suit against the United States under the Quiet Title Act over the scope of the easement); *Alaska v. Babbitt*, 38 F.3d 1068, 1074 (9th Cir. 1994) ("[B]oth the QTA's

general waiver of sovereign immunity, as well as its exception for Indian lands, apply to cases involving claims for less than fee simple title interests to disputed property.").

Suits that fall within the waiver of sovereign immunity in the QTA can be brought only under the QTA. *See Block*, 461 U.S. at 286 n. 22. A suit that is within the QTA cannot be brought against the United States or federal agency under the APA. *Patchak*, 567 U.S. at 216 ("plaintiff cannot use the APA to end-run the QTA's limitations"); *State of Alaska v. Babbitt*, 38 F.3d at 1074. Where a plaintiff brings a suit asserting a right, title, or interest in real property that conflicts with a right, title, or interest claimed by the United States, the courts will treat the case as one under the QTA, subject to the qualifications and limitations in the QTA. *Kane Cnty. Utah v. Salazar*, 562 F.3d 1077, 1088 (10th Cir. 2009) (affirming lower court's dismissal of APA claim that implicated questions of title within the meaning of the Quiet Title Act); *Alaska v. Babbitt*, 38 F.3d at 1074; *N. New Mexicans Protecting Land Water & Rts. v. United States*, 161 F. Supp. 3d 1020, 1046-50 (D.N.M. 2016) (applying Quiet Title Act to claim brought under the APA), *aff'd on other grds*, 704 F. App'x 723 (10th Cir. 2017); *Wells Fargo Bank, Nat. Ass'n v. Se. New Mexico Affordable Hous. Corp.*, 877 F. Supp. 2d 1115, 1138 (D.N.M. 2012) (action brought by plaintiff against United States under 28 U.S.C. §1346(a) to enforce restricted covenants was a quiet title action and thus barred by 12-year limitation period in 28 U.S.C. § 2809a.); *see also* 5 U.S.C. § 702(2).

C. The Quiet Title Act Bars Claims Involving Tribal Trust Lands

There is an exception in the QTA to its waiver of immunity against the United States—"The QTA's authorization of suit 'does not apply to trust or restricted Indian lands.'" *Patchak*, 567 U.S. at 215 (quoting 28 U.S.C § 2409a(a))). A suit that is otherwise within the ambit of the QTA in that it asserts a 'right, title, or interest' in real property that conflicts with a 'right, title,

or interest' in property held in trust for Indians is thus barred and must be dismissed. *State of Alaska v. Babbitt*, 38 F.3d at 1074; *N. New Mexicans Protecting Land Water & Rts.*, 161 F. Supp. 3d at 1046-50.

D. This Case is Barred By the Quiet Title Act Because It Is Based on Plaintiff's Claims Asserting Property Interests that Are Adverse to the United States on Tribal Trust Land

Plaintiff's case is based on the Restricted Covenants which Plaintiff claims barred the acquisition by the United States in trust for the Tribe of the 40 properties, Comp. ¶21 (setting out Restrictive Covenants); ¶30 (alleging that "[Plaintiff's] notice of appeal [to the IBIA], among other things, argued that the acceptance of the Properties into trust would violate the Restrictive Covenants"); and which it claims are "valid existing rights" or "other obligations" under the Restoration Act § 6(c) that continue to have effect. Comp. ¶ 39 (alleging that "the IBIA failed to consider whether the Restrictive Covenants constituted "any other obligations" under the MRA); Comp. ¶40 (alleging that the restrictive Covenants were "existing" rights); Plaint. Legend Lake Property Owners Ass'n, Inc.'s Resp. in Opp'n to Def.'s Mot. To Dism. 19, Dkt-18. ("should the Court agree that federal law preempts certain provisions of the Restrictive Covenants, like the restriction on transferring the land into trust, the Court should nonetheless hold that the remainder are not preempted, and therefore, are valid and enforceable pursuant to the severability clause "). Plaintiff asserts a property interest adverse to the United States' interest in the property. The Restrictive Covenants "shall and hereby constitute[] covenants, conditions and restrictions running with the land as to any" property within the Legend Lake development. Rest. Covs. Ex. A to Compl., Dkt. 1-1, Recitals. They are "binding upon all parties acquiring or holding any right, title or interest" to property in Legend Lake development. *Id*. The Restrictive Covenants were recorded with the Menominee County Register of Deeds. *Legend Lake Property Owners Ass'n,* 68 IBIA at 287, Ex. C to Compl., Dkt. 1-3.

Before the IBIA, Plaintiff asserted that the Restricted Covenants imposed the property interest that ran with the land. Their lead argument was stated, in the header, as follows: "THE RESTRICTIVE COVENANTS RUN WITH THE LAND AND ARE BINDING ON THE KESHENA PROPERTIES." Roy Dec. Ex. J at 6. They quoted a Wisconsin case for the proposition that "A restrictive covenant … constitutes a valuable property right which a court of equity will enforce in the absence of facts and circumstances making such enforcement unjust or inequitable.'" *Id*. at 8 (quoting *Ward v. Prospect Manor Corp*., 188 Wis. 534, 537, 206 N.W. 856 (1926)). *See also id*. at 7-8 (quoting language in *Hall v. Church of the Open Bible*, 4 Wis.2d 246, 248, 89 N.W.2d 298 (1958), for the proposition that covenants restricting land to residential use "constitutes at least an equitable servitude upon the land, and constitutes a valuable property right …."). *See also* Roy Dec. Ex. K at 2 ("restrictive covenants are valuable property rights which run with the land"); *id*. 5 ("The Restrictive Covenants are conditions that run with the land.").[3]

Finally, Plaintiff's alleged interests in the 40 parcels are clearly adverse to those of the United States. It is the position of DOI, as set out in the BIA decisions, and the IBIA decision, that provisions in the Restrictive Covenants regarding transfers that remove the properties from the tax rolls, for example, are preempted and therefore do not apply to the Tribe or to the United States. *Legend Lake Property Owners Ass'n,* 68 IBIA at 285, Ex. C to Compl., Dkt. 1-3.

E. *Patchak* is Readily Distinguishable from the Case at Bar, and In Fact Supports Dismissal

In *Patchak*, plaintiff brought a claim against the Secretary of the Interior under the APA challenging the Secretary's decision to acquire lands in trust for a tribe under section 5 of the

[3] It bears noting that in the state case, Plaintiff is seeking to avoid the Tribe's sovereign immunity by asking the court to exercise *in rem* jurisdiction, thereby emphasizing the nature of its claims as property claims. Roy Dec. Ex. L at 30-35.

Indian Reorganization Act, now codified at 25 U.S.C. § 5108. The United States defended the case on the grounds that because the lands had been acquired in trust, suit was barred by the Indian exception to the Quiet Title Act. *Patchak*, 567 U.S. at 214. The Supreme Court disagreed, holding that the suit was not within the QTA because plaintiff was not suing to assert its own property interests adverse to those of the United States—that is, the plaintiff was not suing to quiet title. *Patchak*, 567 U.S. at 217 ("the QTA addresses a kind of grievance different from the one Patchak advances").

Patchak thus stands for the general proposition that the QTA does not bar claims challenging land-into-trust determinations where plaintiff does not assert an adverse property interest. But the Supreme Court discussed and distinguished a hypothetical claim that would be within the QTA and thus barred:

> [S]uppose Patchak had sued under the APA claiming that *he* owned the Bradley Property and that the Secretary therefore could not take it into trust. The QTA would bar that suit, for reasons just suggested. True, it fits within the APA's general waiver, but the QTA specifically authorizes quiet title actions (which this hypothetical suit is) *except when* they involve Indian lands (which this hypothetical suit does). In such a circumstance, a plaintiff cannot use the APA to end-run the QTA's limitations. "[W]hen Congress has dealt in particularity with a claim and [has] intended a specified remedy"—including its exceptions—to be exclusive, that is the end of the matter; the APA does not undo the judgment.

Patchak, 567 U.S. at 216 (quoting *Block*, 461 U.S. at 286, n. 22).

Here, Plaintiff is bringing the very type of case that the Supreme Court noted would be within the QTA even though it challenges a decision to acquire lands in trust. *See N. New Mexicans Protecting Land Water & Rts.*, 161 F. Supp. 3d at 1049 ("[Plaintiff's] case is similar to the hypothetical APA suit the Supreme Court described" and is barred by QTA where plaintiff, an association, sought to enforce easements over Indian lands held by its members).

IV. CONCLUSION

For the foregoing reasons, the Court should dismiss the case pursuant to Fed. R. Civ. P. 12(b)(1).

s/ Michael L. Roy
Michael L. Roy (DC Bar No. 411841)
Hobbs, Straus, Dean & Walker, LLP
1899 L Street NW, Suite 1200
Washington, DC 20036
202-822-8282 (Tel.)
202-296-8834 (Fax)
mroy@hobbsstraus.com

Attorneys for the Menominee Indian Tribe of Wisconsin

DATED: August 24, 2023