IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MANDAN, HIDATSA, AND ARIKARA NATION, Plaintiff, v. UNITED STATES DEPARTMENT OF THE INTERIOR, et al., Defendants, and STATE OF NORTH DAKOTA, Intervenor Defendant.	Civil Action No. 1:20-CV-01918-ABJ

FEDERAL DEFENDANTS' [PROPOSED] AMENDED ANSWER TO PLAINTIFF'S COMPLAINT

The United States Department of the Interior ("Interior") and, in their official capacities, Secretary Deb Haaland and Solicitor Robert Anderson,[1] and the United States of America ("United States") as the titleholder of the real property at issue (collectively, "Federal Defendants" or "Cross-Claimants"), hereby answer the correspondingly numbered paragraphs of Plaintiff Mandan, Hidatsa, and Arikara Nation's ("Plaintiff," "MHA Nation," or "Three Tribes") Complaint (ECF No. 3-1)[2] and file a crossclaim against Intervenor Defendant State of North Dakota ("State" or "Cross-Defendant").

[1] Former Secretary David Bernhardt and former Solicitor Daniel Jorjani are automatically substituted with Secretary Deb Haaland and Solicitor Robert Anderson respectively. Fed. R. Civ. P. 25(d).

[2] All references to Plaintiff's Complaint herein are to Plaintiff's corrected version of the Complaint filed as ECF No. 3-1. Headings included in the Complaint are not reproduced here

ANSWER TO PLAINTIFF'S COMPLAINT

Any allegation not specifically admitted, denied, or qualified is hereby denied. Federal Defendants answer Plaintiff's Complaint as follows:

1. The allegations in Paragraph 1 refer to Plaintiff's challenge in Counts I and II of the Complaint to M-37056, *Status of Mineral Ownership Underlying the Missouri River within the Boundaries of the Fort Berthold Indian Reservation (North Dakota)* (May 26, 2020) ("2020 M-Opinion"), which was subsequently withdrawn by M-37066, *Permanent Withdrawal of M-37056, Status of Mineral Ownership Underlying the Missouri River within the Boundaries of the Fort Berthold Indian Reservation (North Dakota)* (Mar. 19, 2021). The withdrawal of the 2020 M-Opinion rendered Plaintiff's Counts I and II moot. Order at 1-2 (Aug. 2, 2021), ECF No. 49. The allegations in Paragraph 1 referring to claims that have been dismissed as moot require no response. The remaining allegations characterize Plaintiff's remaining claims and the Complaint, which requires no response. Federal Defendants otherwise deny any violation of law and deny that Plaintiff is entitled to the requested relief or any relief whatsoever.

2. The first, second, and third sentences of Paragraph 2 state conclusions of law, which requires no response. The allegations in the fourth sentence are vague as to the specific instances in which "DOI has . . . affirmed and reaffirmed the MHA Nation's title to the Missouri riverbed minerals" and on that basis Federal Defendants deny the allegations in the fourth sentence of Paragraph 2.

3. Federal Defendants admit that the Solicitor of the Interior issued Opinion M-28120 in 1936. The remaining allegations in Paragraph 3 characterize Opinion M-28120, which

---

and require no response. To the extent any response is required, any factual allegation in the Complaint's heading is hereby denied.

speaks for itself and is the best evidence of its contents, and no response is required. To the extent the allegations are inconsistent with Opinion M-28120, they are denied.

4. Federal Defendants admit the allegations in Paragraph 4.

5. The allegations in Paragraph 5 characterize an Interior Board of Land Appeals ("IBLA") opinion (the "IBLA Opinion"), which speaks for itself, and no response is required. To the extent the allegations are inconsistent with the IBLA Opinion, they are denied.

6. Federal Defendants admit the State of North Dakota did not seek appeal of the IBLA Opinion. The allegation in the last clause of Paragraph 6 states a conclusion of law, which does not require a response.

7. Federal Defendants admit the allegations in Paragraph 7.

8. Federal Defendants admit the allegations in Paragraph 8.

9. The allegations in the first clause of the first sentence of Paragraph 9 characterize the IBLA Opinion, which speaks for itself and is the best evidence of its contents, and no response is required. Federal Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 9. To the extent a response is required, the allegations are denied.

10. The allegations in Paragraph 10 are vague as to the specific leases Plaintiff refers to, and on that basis Federal Defendants deny the allegations in Paragraph 10.

11. Federal Defendants admit that since 2011, Plaintiff has requested that Interior prepare title documents and maps to show that the bed of the Missouri River and the underlying mineral estate within the Fort Berthold Indian Reservation ("Reservation") is held in trust for Plaintiff. Federal Defendants deny the allegations in the second sentence of Paragraph 11. The remaining allegations in Paragraph 11 constitute conclusions of law, which require no response.

12. The allegations in Paragraph 12 are denied.

13. Federal Defendants admit that the Solicitor of the Interior issued Opinion M-37044 in 2017. The remaining allegations in Paragraph 13 characterize Opinion M-37044, which speaks for itself and is the best evidence of its contents, and no response is required. To the extent the allegations are inconsistent with Opinion M-37044, they are denied.

14. Federal Defendants admit that the Solicitor of the Interior issued the 2020 M-Opinion. The remaining allegations in Paragraph 14 characterize the 2020 M-Opinion, which speaks for itself and is the best evidence of its contents, and no response is required. To the extent the allegations are inconsistent with the 2020 M-Opinion, they are denied.

15-18. The allegations in Paragraph 15-18 state conclusions of law, which require no response.

19. Federal Defendants admit the allegations in Paragraph 19.

20. Federal Defendants admit that Interior is a cabinet-level agency of the United States government. The remainder of Paragraph 20 consists of conclusions of law, which require no response.

21. Federal Defendants deny the allegations in Paragraph 21. The current Secretary of the Interior is Deb Haaland, who is automatically substituted in her official capacity under Federal Rule of Civil Procedure 25(d).

22. Federal Defendants deny the allegations in Paragraph 22. The current Solicitor of the Interior is Robert Anderson, who is automatically substituted in his official capacity under Federal Rule of Civil Procedure 25(d).

23. The allegations in Paragraph 23 are vague as to the specific acts allegedly constituting recognition of Plaintiff's "use and occupation of the Missouri River and the

surrounding area," their timing, and the identity of those who allegedly engaged in such recognition on behalf of the United States, and on that basis Federal Defendants deny the allegations in Paragraph 23.

24. Federal Defendants admit the first two sentences of Paragraph 24. The remaining allegations in Paragraph 24 characterize treaties between the United States and the MHA Nation, which speak for themselves and are the best evidence of their contents, and no response is required. To the extent the allegations are inconsistent with the treaties, they are denied.

25. The allegations in Paragraph 25 characterize the 1851 Treaty of Fort Laramie ("1851 Treaty"), which speaks for itself and is the best evidence of its contents, and no response is required. To the extent the allegations are inconsistent with the Treaty, they are denied.

26. The allegations in the first, second, and fourth sentences, as well as the block quote in Paragraph 26, characterize the Fort Berthold Reservation Executive Order (Apr. 12, 1870) ("1870 Executive Order"), which speaks for itself and is the best evidence of its contents, and no response is required. To the extent the allegations are inconsistent with the Executive Order, they are denied. Federal Defendants admit the third sentence of Paragraph 26. The last sentence of Paragraph 26 describes the understanding of "left bank" and the inclusion of the width of the Missouri River within the geographic limits of the Reservation. Federal Defendants admit this allegation.

27. The first clause in Paragraph 27 is vague as to "tribal consultation or consent" and on that basis Federal Defendants deny the allegation. The remaining allegations in paragraph 27 characterize President Hayes Executive Order (July 13, 1880) ("1880 Executive Order"), which speaks for itself and is the best evidence of its contents, and no response is required. To the extent the allegations are inconsistent with the Executive Order, they are denied.

28. The allegations in Paragraph 28 characterize the 1870 and 1880 Executive Orders, which speak for themselves, and no response is required. To the extent the allegations are inconsistent with the Executive Orders, they are denied. Federal Defendants admit that the Executive Orders included the width of the Missouri River within the Fort Berthold Indian Reservation.

29. The allegations in Paragraph 29 state conclusions of law, which require no response.

30. The allegations in Paragraph 30 characterize an Agreement and Act of Congress, which speak for themselves and are the best evidence of their contents, and no response is required. To the extent the allegations are inconsistent with the Agreement, they are denied.

31. The allegations in Paragraph 31 characterize the State of North Dakota's Constitution, which speaks for itself and is the best evidence of its contents, and no response is required. To the extent the allegations are inconsistent with the State of North Dakota's Constitution, they are denied.

32. Federal Defendants admit the allegations contained in Paragraph 32.

33. The allegations in the first sentence of Paragraph 33 characterize a statute, Pub. L. No. 81-437, which speaks for itself and is the best evidence of its contents, and no response is required. To the extent the allegations in the first sentence of Paragraph 33 are inconsistent with this statute, they are denied. Federal Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 33. To the extent a response is required, the allegations are denied.

34. Federal Defendants admit that the Reservation overlays the Bakken formation, a rich deposit of oil and gas. Federal Defendants lack knowledge or information sufficient to form

a belief as to the truth of the remaining allegations in Paragraph 34, and on that basis deny the allegations.

35. The allegations in Paragraph 35 characterize an Act of Congress, the Fort Berthold Reservation Mineral Restoration Act, Pub. L. No. 98-602, which speaks for itself and is the best evidence of its contents, and no response is required. To the extent the allegations are inconsistent with this statute, they are denied.

36. Federal Defendants admit that the Solicitor of the Interior issued Opinion M-28120 in 1936. The remaining allegations in the first and second sentences of Paragraph 36 characterize Opinion M-28120, which speaks for itself and is the best evidence of its contents, and no response is required. To the extent the allegations are inconsistent with the Opinion M-28120, they are denied. Federal Defendants admit the allegations contained in the third sentence of Paragraph 36.

37. Federal Defendants admit the allegations in Paragraph 37.

38. Federal Defendants admit the allegations in the first and final sentences of Paragraph 38. The remaining allegations in Paragraph 38 characterize the IBLA Opinion, which speaks for itself and is the best evidence of its contents, and no response is required. To the extent the allegations are inconsistent with the IBLA Opinion, they are denied.

39. The allegations in Paragraph 39 characterize the IBLA Opinion, which speaks for itself and is the best evidence of its contents, and no response is required. To the extent the allegations are inconsistent with the IBLA Opinion, they are denied.

40. The allegations in Paragraph 40 state conclusions of law, which require no response.

41. Federal Defendants admit that the State of North Dakota did not seek review of the IBLA Opinion. The second sentence of Paragraph 41 contains a conclusion of law, which requires no response.

42. Federal Defendants admit the allegations in Paragraph 42.

43. Federal Defendants admit the allegations in the first sentence of Paragraph 43. Federal Defendants deny the remaining allegations in Paragraph 43. Any allegations of legal violations are denied.

44. The allegations in Paragraph 44 state conclusions of law, which require no response.

45. Federal Defendants deny the allegations in Paragraph 45.

46. All allegations in Paragraph 46 asserting violations of law are denied. Moreover, the allegations in Paragraph 46 are vague as to the specific acts or omissions Federal Defendants took or failed to take with respect to the oil and gas operations within the Riverbed, and on this basis Federal Defendants deny the allegations. Any remaining allegations in Paragraph 46 are denied.

47. The allegations in Paragraph 47 characterize federal statutes, 25 U.S.C. §§ 2, 5–6, 9, and 25 C.F.R. Part 150, which speak for themselves and are the best evidence of their contents, and require no response. To the extent the allegations are inconsistent with the federal statutes, they are denied. The allegations in Paragraph 47 also state conclusions of law, which require no response.

48. The allegations in Paragraph 48 characterize federal statutes, 25 U.S.C. § 177, 25 U.S.C. §§ 396a–396g, 25 U.S.C. § 464, 25 U.S.C. §§ 2101-2108, 25 U.S.C. §§ 4011 & 4043, 30 U.S.C. §§ 1701–1757, 25 C.F.R. Parts 211 and 225, and 30 C.F.R. Parts 202 and 206, which

speak for themselves and are the best evidence of their contents, and require no response. To the extent the allegations are inconsistent with these statutes, they are denied. The allegations in Paragraph 48 also state conclusions of law, which require no response.

49. The allegations in Paragraph 49 characterize federal statutes, 25 U.S.C. §§ 155, 161a, 162a, and 4043(b)(2)(B), and federal regulations, 25 C.F.R. Part 115, which speak for themselves and are the best evidence of their contents, and require no response. To the extent the allegations are inconsistent with these statutes and regulations, they are denied. The allegations in Paragraph 49 also state conclusions of law, which require no response.

50. Federal Defendants admit the allegations in the first sentence of Paragraph 50. The allegations in the second sentence of Paragraph 50 state conclusions of law, which require no response.

51. Federal Defendants have not located the alleged letter sent August 2, 2011 referenced in Paragraph 51, and, accordingly, Federal Defendants lack knowledge or information sufficient to form a belief as to the allegations in the first sentence of Paragraph 51 that "the MHA Nation's then-Chairman Hall sent" the alleged letter to Interior's Assistant Secretary – Indian Affairs. The remaining allegations in Paragraph 51 characterize this letter, which, to the extent it exists, speaks for itself and is the best evidence of its contents, and thus no response is required. To the extent the allegations are inconsistent with this alleged letter, they are denied.

52. Federal Defendants admit that the Bureau of Indian Affairs ("BIA") received the letter dated September 26, 2011. The remaining allegations in Paragraph 52 characterize this letter, which speaks for itself, and no response is required. To the extent the allegations are inconsistent with this letter, they are denied.

53. Federal Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 53, and on that basis, deny the allegations.

54. Paragraph 54, including each of its subparts, are denied.

55. Federal Defendants admit that the Solicitor of the Interior issued Opinion M-37044 in 2017. The remaining allegations in Paragraph 55 characterize Opinion M-37044, which speaks for itself and is the best evidence of its contents, and no response is required. To the extent the allegations are inconsistent with Opinion M-37044, they are denied.

56. The allegations in Paragraph 56 characterize Solicitor Opinion M-37044, which speaks for itself and is the best evidence of its contents, and no response is required. To the extent the allegations are inconsistent with Opinion M-37044, they are denied. Moreover, the allegations in Paragraph 56 contain conclusions of law, and no response is required.

57-63. The allegations in Paragraph 57-63 refer to the 2020 M-Opinion or actions taken in connection with the 2020 M-Opinion, which has since been withdrawn. The withdrawal of the 2020 M-Opinion rendered Plaintiff's Counts I and II moot. Order at 1-2 (Aug. 2, 2021), ECF No. 49. The allegations in Paragraph 60-63 therefore relate to claims that have been dismissed as moot, and thus require no response.

64. Federal Defendants incorporate by reference responses to Paragraphs 1–63.

65-69. The allegations in Paragraph 65-69 relate to Plaintiff's Count I, which was dismissed as moot. Order at 1-2 (Aug. 2, 2021), ECF No. 49. No response is required.

70. Federal Defendants incorporate by reference responses to Paragraphs 1–69.

71-76. The allegations in Paragraph 71-76 relate to Plaintiff's Count II, which was dismissed as moot. Order at 1-2 (Aug. 2, 2021), ECF No. 49. No response is required.

77. Federal Defendants incorporate by reference responses to Paragraphs 1–76.

78. The allegations in Paragraph 78 state conclusions of law which require no response.

79. The allegations in Paragraph 79 state conclusions of law which require no response.

80. Federal Defendants deny the allegations in Paragraph 80.

81. The allegations in Paragraph 81 characterizes a federal statute, which speaks for itself and is the best evidence of its contents, and no response is required. To the extent the allegations are inconsistent with that statute, they are denied.

82. The allegations in Paragraph 82 are denied. Further, Federal Defendants aver that this Court lacks jurisdiction over certain of Plaintiff's claims and certain forms of relief Plaintiff seeks. Federal Defendants further deny that Plaintiffs are entitled to any relief whatsoever.

83. Federal Defendants deny the allegations in Paragraph 83.

84. Federal Defendants incorporate by reference responses to Paragraphs 1–83.

85. Paragraph 85 characterizes a federal statute, which speaks for itself and is the best evidence of its contents, and no response is required. To the extent the allegations are inconsistent with this statute, they are denied.

86. Federal Defendants deny the allegations in Paragraph 86.

87. Paragraph 87 characterizes a federal statute, which speaks for itself and is the best evidence of its contents, and no response is required. To the extent the allegations are inconsistent with this statute, they are denied.

88. Paragraph 88 characterizes a federal statute, which speaks for itself and is the best evidence of its contents, and no response is required. To the extent the allegations are inconsistent with this statute, they are denied.

89. Paragraph 89 and each of its subparts are denied. Moreover, certain of these requests for relief have been dismissed as moot.

The allegations in this section of the Complaint constitute Plaintiff's prayer for relief, to which no response is required. To the extent a response is required, Federal Defendants deny that Plaintiff is entitled to the relief requested or to any relief whatsoever and any allegation not specifically admitted, denied, or qualified, is hereby denied.

DEFENSES TO PLAINTIFFS' COMPLAINT

Without limiting or waiving any defenses available, Federal Defendants hereby assert the following defenses:

1. Plaintiff fails to challenge a "final agency action" reviewable under the Administrative Procedure Act, 5 U.S.C. § 702.

2. Plaintiff asserts claims that are barred, in whole or in part, by the statute of limitations, 28 U.S.C. § 2501.

3. To the extent that Plaintiff asserts claims that existed or accrued on or before August 12, 1946, those claims are barred by the Indian Claims Commission Act of August 13, 1946, 60 Stat. 1049, as amended (formerly 25 U.S.C. §§ 70 et seq.).

4. Plaintiff asserts claims that are barred, in whole or in part, by the doctrines of laches, equitable estoppel, waiver and consent, and any similar equitable defenses.

5. To the extent Plaintiff asserts claims that it or its privies or predecessors in interest asserted or could have asserted in a prior adjudication in which a court or tribunal of competent jurisdiction entered a final judgment, including, but not limited to, actions brought in the Court of Claims under special jurisdictional statutes, and before the Indian Claims

Commission, those claims are barred in whole or in part by the doctrines of res judicata and/or collateral estoppel.

6. The Court lacks jurisdiction over some or all of Plaintiff's claims, including, without limitation, because (1) Federal Defendants are immune from suit under the doctrine of sovereign immunity, and (2) to the extent Plaintiff's claims ultimately seek restoration of allegedly unpaid funds or other types of monetary relief, such claims are outside the jurisdiction of this Court to the extent they exceed $10,000.

7. To the extent Plaintiff's claims have been settled in prior litigation, such claims are barred by the doctrine of accord and satisfaction.

8. Plaintiff fails to state a claim upon which relief can be granted because Plaintiff has not identified specific, applicable, trust-duty creating statute requiring the accounting requested in Count III and have identified no statute creating a mandatory duty to take the actions requested in Count IV.

CROSSCLAIM AGAINST
INTERVENOR STATE OF NORTH DAKOTA

Pursuant to Federal Rule of Civil Procedure 13(g), Federal Defendants hereby file this Crossclaim against the State. Federal Defendants seek a declaratory judgment that the United States reserved the bed and banks of the Missouri River within the Fort Berthold Indian Reservation and, thus, the State did not acquire title to the Riverbed within the Reservation at the time of statehood. Federal Defendants further seek to quiet title to the United States' interests in the Riverbed and mineral interests underlying the Riverbed within the present boundaries of the Reservation.

If the Court issues such a declaration and quiets title to the Riverbed and its underlying minerals to the United States, Federal Defendants assume the State will comply with that ruling

regarding any State-issued leases and monies derived from production of minerals underlying the Riverbed. In the event that is not the case, Federal Defendants will seek all just and appropriate remedies, including but not limited to: declaratory and injunctive relief declaring any State-issued leases for production of minerals underlying the Riverbed void *ab initio*; prohibiting the State from issuing or approving any future leases for the production of minerals underlying the Riverbed; paying to remediate any damages resulting from the State-issued leases; and compelling the State to provide an accounting of and pay any monies in its possession derived from production of minerals underlying the Riverbed to the United States as trustee for the MHA Nation or directly to the MHA Nation as beneficiary.

SUMMARY AND NATURE OF THE ACTION

1. This civil action concerns ownership of land and mineral interests subject to the 1851 Treaty of Fort Laramie, to which the MHA Nation is a signatory and beneficiary. The subject land and mineral interests are situated within the boundaries of the Reservation, which was set aside pursuant to the 1851 Treaty. Certain lands and minerals within the Reservation are held in trust by the United States for the benefit of the MHA Nation, a federally recognized Indian tribe.

2. The State contends—contrary to Federal law, the historic and recently reaffirmed position of Interior, and substantial historical evidence—that it acquired the Riverbed and its underlying minerals at statehood pursuant to the Equal Footing Doctrine of the United States Constitution.

3. Federal Defendants file this Crossclaim against the State to obtain a judicial determination confirming that the United States owns the portion of the Riverbed crossing

through the Reservation and its underlying minerals, and that ownership of the Riverbed and its minerals never passed to the State at statehood or otherwise.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this Crossclaim pursuant to 28 U.S.C. § 1331 (Federal Question) because this matter arises under the Constitution, laws, and treaties of the United States.

5. This Court can grant declaratory and injunctive relief pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, because the State's claim to title ownership of the Riverbed and its mineral interests creates an actual justiciable controversy between the Parties.

6. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(2) because the Riverbed, its underlying minerals, and royalties generated therefrom are the property in dispute among the parties, and this property is the subject of the remaining counts that Plaintiff MHA Nation asserts against Federal Defendants. *Mandan, Hidatsa and Arikira Nation v. U.S. Dep't of Interior*, 66 F.4th 282 (D.C. Cir. 2023). Moreover, having intervened in this action for the purpose of asserting it owns claim to the same Riverbed, minerals, and royalties, the State in effect concedes venue is proper to resolve the question of ownership of such property. *See* Fed. R. Civ. P. 13(g).

PARTIES

7. Cross-Claimants are the Department of the Interior, which is a department of the United States, two officials of Interior sued in their official capacity, and the United States, as the owner of the real property at issue. The United States holds legal title to land in trust for the MHA Nation that is managed by BIA, including certain Riverbed mineral interests that are encompassed within the scope of this Crossclaim.

8. Cross-Defendant is the State of North Dakota, which was admitted to the Union on November 2, 1889.

FACTUAL ALLEGATIONS

Fort Berthold Reservation

9. The Reservation is the permanent homeland of the Mandan, Hidatsa, and Arikara Nation, federally recognized as the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

10. The Three Tribes have resided along and near the Missouri River ("River") in present-day North Dakota, South Dakota, and Montana since time immemorial.

11. Though initially distinct tribal organizations, the Three Tribes shared a common sedentary lifestyle as opposed to the more nomadic lifestyle of other tribes in the broader region. Each of the Three Tribes occupied expansive village settlements along the River, which served as trade centers among the Three Tribes, nomadic tribes in the region, and non-Indian traders.

12. Trade between members of the Three Tribes and non-Indians was so extensive that the United States entered into the first treaty with the Three Tribes in 1825, whereby only non-Indian traders who obtained licenses from the United States could engage in trade within the territory described in the treaty as "their [the Three Tribes'] territory." 7 Stat. 259.

13. The Hidatsa territory extended along the Missouri River north of Square Buttes and west of the River roughly to the mouth of the Yellowstone River, in present-day North Dakota and Montana. The Mandan territory was located south of Square Buttes, also along the River and particularly near the mouth of the Heart River in present-day North Dakota. The Arikara settled south of the other two tribes along the River.

14. The Three Tribes' territory was originally recognized in the 1851 Treaty, which broadly delineated the territories of various Indian tribes, including the Mandan, Hidatsa (described as the "Gros Ventre"), and Arikara. 11 Stat. 749. Article 5 of the 1851 Treaty set forth the boundaries of the Three Tribes territory as "commencing at the mouth of Heart River; thence up the Missouri River to the mouth of the Yellowstone River; thence up the Yellowstone River to the mouth of Powder River in a southeasterly direction, to the head-waters of the Little Missouri River; thence along the Black Hills to the head of Heart River, and thence down Heart River to the place of beginning." *Id.* art. 5.

15. The United States sought a treaty with the tribes in the region—including the Mandan, Hidatsa, and Arikara—following the discovery of gold in the west. The discovery of gold led to a large number of non-Indians migrating through and settling in the region, resulting in costly conflicts between non-Indians and Indians. One of the United States' central goals in entering into the 1851 Treaty was to ensure peace among the Indians and to secure safe travel for gold prospectors entering into the Indians' territory.

16. In exchange for the covenants in the 1851 Treaty, the United States assumed the right "to protect the aforesaid Indian nations against the commission of all depredations by the people of the said United States, after the ratification of this treaty." 11 Stat. 749, art. 3.

17. Despite the 1851 Treaty, hostilities continued. The Three Tribes became increasingly frustrated that the United States did not protect them or their territory against non-Indians and that, if they took action to protect themselves, they would be accused of breaching the covenants in the 1851 Treaty.

18. In 1866, the Three Tribes ceded certain lands situated on the northeast side of the Missouri River to the United States. Although that agreement was never ratified, the cession of

lands only on the northeast side of the River demonstrates the United States' intent to keep and maintain the River and Riverbed within the boundaries of the Three Tribes' territory. The cession further demonstrates the importance of the River to the Three Tribes, who would not cede land outside the Reservation unless they retained the River and Riverbed within their territorial domain.

19. The ongoing hostilities from non-Indian settlers and the confusion resulting from the unratified 1866 agreement led to concerns by the Three Tribes. After consultation with the Three Tribes in 1869, the commanding officer at Fort Stevenson forwarded a proposal to the Commissioner of Indian Affairs to establish a reservation for the Three Tribes within their treaty-defined territory. On April 12, 1870, President Grant adopted that proposal in its entirety and issued an executive order establishing the Fort Berthold Indian Reservation and setting its boundaries as follows:

> [f]rom a point on the Missouri River 4 miles below the Indian village (Berthold), in a northeast direction 3 miles (so as to include the wood and grazing around the village); from this point a line running so as to strike the Missouri River at the junction of Little Knife River with it; thence along the left bank of the Missouri River to the mouth of the Yellowstone River, along the south bank of the Yellowstone River to the Powder River, up the Powder River to where the Little Powder River unites with it; thence in a direct line across to the starting point 4 miles below Berthold."

1870 Executive Order, *reprinted in* 2 CHARLES J. KAPPLER, INDIAN AFFAIRS: LAWS AND TREATIES 881 (2d ed. 1904).

20. The term "left bank" meant the north and east sides of the River, resulting in the entire width of the River and Riverbed being included within the boundaries of the Reservation as set forth in the executive order.

21. Despite the creation of the Reservation for the Three Tribes, tensions continued due in part to congressional action allowing for railroad rights-of-way that the Three Tribes

believed might threaten their access to and use of the banks on both sides of the River and the River itself. Hostilities resulted, including attacks by Indians on a steam ship, resulting in the death of a soldier on board, and threats to kill the Indian agent assigned to the area if he were not removed.

22. To secure a lasting peace with the Three Tribes, President Hayes issued an executive order on July 13, 1880, redefining the Reservation's boundaries as follows:

> Beginning at a point where the northern forty-mile limit of the grant to the Northern Pacific Railroad intersects the present southeast boundary of the Fort Berthold Indian Reservation; thence westerly with the line of said forty-mile limit to its intersection with range line, between ranges 92 and 93 west of the fifth principal meridian; thence north along said range line to its intersection with the south bank of the Little Missouri River; thence northwesterly along and up the south bank of said Little Missouri River, with the meanders thereof to its intersection with the range line between ranges 96 and 97 west of the fifth principal meridian; thence westerly in a straight line to the southeast corner of the Fort Buford Military Reservation; thence west along the south boundary of said military reservation to the south bank of the Yellowstone River, the present northwest boundary of the Fort Berthold Indian Reservation; thence along the present boundary of said reservation and the south bank of the Yellowstone River to the Powder River; thence up the Powder River to where the Little Powder River unites with it; thence northeasterly in a direct line to the point of beginning, be and the same hereby is, restored to the public domain.
>
> And it is further ordered that the tract of country in the territory of Dakota, lying within the following-described boundaries, viz, beginning on the most easterly point of the present Fort Berthold Indian Reservation (on the Missouri River); thence north to the township line between townships 158 and 159 north; thence west along said township line to its intersection with the White Earth River; thence down the said White Earth River to its junction with the Missouri River; thence along the present boundary of the Fort Berthold Indian Reservation and the left bank of the Missouri River to the mouth of the Little Knife River; thence southeasterly in a direct line to the point of beginning, be, and the same hereby is, withdrawn from sale and set apart for the use of the [MHA Nation], as an addition to the present reservation in said Territory.

1880 Executive Order, *reprinted in* 2 CHARLES J. KAPPLER, INDIAN AFFAIRS: LAWS AND

TREATIES 881 (2d ed. 1904). Whereas the first paragraph redefined the boundaries of the Reservation as it then existed, the second paragraph added land to the Reservation in the north that was not previously a part of the Reservation.

23. As with the 1870 Executive Order, the boundaries set forth in the 1880 Executive Order expressly included the full width of the River, and therefore the Riverbed, within the boundaries drawn for the Reservation. The "south bank of the Little Missouri River" in the first paragraph referred to the far side of the Little Missouri River with respect to the remainder of the Reservation at that time. The reduction removed only land on the opposite side of the Little Missouri River and retained the width of the Little Missouri within the Reservation boundaries. The use of the term "left bank" in the second paragraph again meant the north and east sides of the River, as well as equating that line with the "present boundary" of the Reservation. The 1880 Executive Order continued to recognize that the boundary set in the 1870 Executive Order—which the 1880 Executive Order extended by adding adjacent land—was on the far side of the River, opposite the remainder of the prior Reservation land base and thus including the full width of the River and Riverbed within the original (and new) bounds of the Reservation.

24. The Reservation's boundaries were altered again by an agreement between the Three Tribes and the United States in 1886 ("1886 Agreement"), ratified by Congress in 1891. That agreement ceded certain lands "lying north of the forty-eighth parallel of north latitude, and also all that portion lying west of a north and south line six miles west of the most westerly point of the big bend of the Missouri River, south of the forty-eighth parallel of north latitude," effectively keeping the lines of the Reservation's eastern and southern boundaries mostly intact while drawing new northern and western boundaries along straight lines that intersected and shortened the original eastern and southern boundaries.

25. Like the 1870 and 1880 Executive Orders, the 1886 Agreement included the full width of the River, and therefore the Riverbed, within the boundaries of the Reservation, though it reduced the length of the River and Riverbed running through the Reservation.

26. The Reservation's boundaries were finally set to their present locations by an 1892 executive order issued by President Harrison adding a small portion of land north of the River to the Reservation. By act of Congress in 1910, the lands within the Reservation lying east and north of the River were opened to settlement by non-Indians, except for 238,000 acres of land found to have mineral interests and reserved from settlement. Patents for some of these lands were subsequently issued to non-Indian settlers, with certain mineral rights reserved in trust by the United States for the MHA Nation and its members.

27. The United States—through treaty, executive orders, and statute—included the full width of the River where it runs through the Reservation, as part of the Reservation for the benefit of the MHA Nation as a means to confine the Indians to the Reservation and put an end to hostilities between settlers and members of the Three Tribes.

28. The Reservation, including the Riverbed and the River where it flows through the Reservation, are within and are a part of the MHA Nation's aboriginal territory. The MHA Nation has never disclaimed any right, title, or interest it may have arising from its aboriginal title to the land, water, or mineral interests within the boundaries of the Reservation.

29. In 1936, Interior, through a legal opinion issued by the Solicitor, determined that title to an island within the River belonged to the United States in trust for the MHA Nation because the island formed from the Riverbed that was made a part of the Reservation prior to North Dakota's admission to the Union. The State did not challenge this legal opinion at the time.

30. In 1979, the Interior Board of Land Appeals ("IBLA") concluded that the Riverbed was made part of the Reservation prior to North Dakota's admission to the Union. *Impel Energy Corp.*, IBLA 78-422, 1979 WL 16246 at **7-8 (Aug. 16, 1979). The State was a party to the IBLA case but did not appeal the IBLA's decision.

31. Today, the Reservation consists of approximately 980,000 acres of land. The United States holds legal title to approximately 423,000 acres in trust for the MHA Nation and its members.

North Dakota Statehood

32. Congress authorized the admission of the Dakota Territory, which included present-day North Dakota and South Dakota, to the Union by passing the Enabling Act of 1889.

33. As a condition of admission to the Union, the Enabling Act required that, before North Dakota was admitted to the Union,

> the people inhabiting said proposed States do agree and declare that they forever disclaim all right and title . . . to all lands lying within said limits [of the state] owned or held by any Indian or Indian tribes; and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States, and said Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States.

25 Stat. 676, ch. 180, Sec. 4.

34. In accordance with the Enabling Act, a Constitutional Convention was held in Bismarck, North Dakota, where the delegates selected to represent the citizens of the future State adopted the North Dakota Constitution on August 17, 1889. The North Dakota Constitution was ratified by voters on October 1, 1889, prior to North Dakota's admission to the Union.

35. Article Thirteen of the North Dakota Constitution states that all provisions of the Enabling Act, including the requirement to disclaim all right and title to Indian lands within the

State, "are continued in effect as though fully recited and continue to be irrevocable without the consent of the United States and the people of this state." N.D. CONST. art. XIII, § 4.

36. After North Dakota disclaimed any right and title to lands owned or held by any Indian or Indian Tribes, title to which had not been extinguished by the United States, President Harrison signed Presidential Proclamation 292—Admission of North Dakota into the Union on November 2, 1889, formally admitting North Dakota to the Union as the thirty-ninth state.

History and Culture of the Three Affiliated Tribes

37. The River is, and was at the time the Reservation was created, a central pillar of the Three Tribes' cultures and traditions.

38. The Hidatsa derive their tribal name from their word for "willows," which grow along the banks of the River and have a distinct importance to their origin story.

39. The Mandan's tribal name translates from their language as "the people of the bank," denoting that tribe's understanding of the River's central importance to the tribe's literal and cultural survival.

40. The Three Tribes were predominantly sedentary, as opposed to nomadic, and engaged in extensive fishing, agriculture, trapping, hunting, and gathering near centralized settlements along the River.

41. Indian agents assigned to oversee the Three Tribes, including Indian agents assigned to the Reservation after its creation, noted the Three Tribes' reliance on fishing and the critical importance to the Three Tribes of fishing and the creation of certain items from fishing used in trade and commerce.

42. Each of the Three Tribes fished the River extensively, relying heavily on various species of bottom-feeding catfish and sturgeon as a critical food source and protein supply. As

part of the Three Tribes' fishing practices, fish bones were saved and used as or in various tools, including to fashion fishhooks relied upon in the Three Tribes' extensive fishing practices.

43. The Three Tribes harvested freshwater mussels attached to the shallow and mid-depth Riverbed. The mussels provided a food source essential to the Three Tribes' diets, and the shells were used in various tools and personal items critical to tribal cultural practices.

44. A common Arikara fishing practice involved harvesting willows in the eddies of the River to construct fish traps. Setting the traps involved sinking posts into the Riverbed to anchor the trap and, when necessary, removing debris and smoothing the Riverbed before setting the traps.

45. Fishing was more than just a means to obtain food for subsistence. Teaching traditional fishing practices was a form of education used to convey traditional stories and maintain cultural continuity across generations. For instance, the Mandan and Hidatsa practiced a fish trapping ceremony that, among other things, taught the story of how the Three Tribes' fishing practices were given to them by sacred religious figures. Tribal members practiced these ceremonies in the same traditional locations as their ancestors until the River was dammed and flooded.

46. Certain ceremonial practices involved sacred items gathered from the River during fishing that were placed in medicine bundles that were handed down from generation-to-generation and were endowed with healing and protecting properties. Select tribal members were considered bundle keepers—people of such trust and prominence they were charged with distributing fish from communal traps laid in the traditional manner. One of these individuals' responsibilities was to distribute fish to those most in need, such as the elderly, widowed, or infirm.

47. Beyond the Three Tribes' connection to the River and Riverbed for food and trade, the Three Tribes' religious and spiritual practices are and historically have been intimately connected to the River. The Mandan and Hidatsa share a creation story describing the River as the shared nexus between the lands created by "First Creator" (one of the central deities in the Three Tribes' religions) and "Lone Man" (the first human on Earth). In essence, the River serves as the dividing line between the human world and the spirit world and is a source of embodiment of spiritual beings.

48. Among the spirits embodied in the River is a deity known as "Grandfather Snake" who, according to the Three Tribes' religious beliefs, maintained the water level of the River and ensured good hunting along its banks. As a regular religious practice, tribal members made offerings to Grandfather Snake and other spirits of the River.

49. The Arikara traditionally have referred to the River as "Holy River" and "Mysterious River," denoting its central importance to the Arikara's origin, survival, and afterlife. One Arikara creation story tells the history of how Mother Corn guided the Arikara up the River toward its source before they settled along its banks.

50. The Arikara consider the River to be a link between their past, present, and future. At the completion of an annual Arikara religious festival known as the Festival of the Holy Cedar Tree, the Arikara carry a sacred cedar tree to the River. The cedar tree, which stood outside the tribe's holy lodge during the preceding year, is endowed with the tribe's memories and experiences from the past year, and members of the tribe attach the moccasins of the tribe's children to the tree. The cedar tree is then placed in the River where it floats downstream, passing by prior settlements of the tribe and letting the tribe's ancestors know that their tribe still exists—the children's shoes symbolize that there is hope for the future.

Garrison Dam History

51. Beginning in 1936, Congress passed a series of statutes collectively known as the Flood Control Acts authorizing the United States Army Corps of Engineers ("Corps of Engineers") to construct a series of dams along the River for flood control, irrigation, energy production, and other purposes. This came to be known as the Pick-Sloan Plan, with construction of the dams lasting several decades.

52. The Garrison Dam, located in McLean and Mercer Counties just east of the Reservation, was the first of six large dams constructed under the Pick-Sloan Plan. Construction began in 1946 and was completed in 1953, ultimately flooding over 150,000 acres of prime agricultural and homestead land within the Reservation to create the Lake Sakakawea Reservoir impounded behind the dam.

53. Following the passage of the 1944 Flood Control Act, the Corps of Engineers initially attempted to use its power of eminent domain to take the Reservation land that would be flooded following construction of the Garrison Dam. In response, the MHA Nation protested and successfully lobbied Congress to halt expenditures on the Garrison Dam project until the MHA Nation negotiated a compensation agreement for the Indian land that was to be taken. Congress authorized the Corps of Engineers to negotiate an agreement with the MHA Nation, and an agreement between the MHA Nation and the United States was reached in 1947. That agreement would have provided monetary and non-monetary compensation to the MHA Nation and would have reserved the mineral rights beneath the lands taken to the MHA Nation. Ultimately, Congress did not ratify that agreement.

The 1949 Takings Act, Garrison Dam Construction, and 1984 Restoration Act

54. Following the negotiations with the MHA Nation, Congress passed legislation in 1949 specific to the MHA Nation ("1949 Takings Act") that took title to approximately 155,000 acres of the Reservation to be flooded because of the Garrison Dam. The flooding displaced at least 325 families (80 percent of the MHA Nation's membership), forcing these men, women, children, and elders to abandon their homes and allotments and relocate from productive fertile agricultural land to land on higher ground that was unsuitable for farming. Many tribal members, particularly the elderly and infirm, perished because of the relocation.

55. The 1949 Takings Act provided that, upon acceptance by the MHA Nation, "all right, title and interest of said tribes, allottees and heirs of allottees in and to the lands constituting the Taking Area described in section 15 (including all elements of value above or below the surface) shall vest in the United States of America." 63 Stat. 1026. At the time the 1949 Takings Act was enacted, construction on the Garrison Dam had already begun. The MHA Nation accepted the statute's terms in 1950.

56. Section 15 of the 1949 Takings Act expressly described the Taking Area as [w]ithin the Reservation Boundaries." 63 Stat. 1026, § 15. The statute delineated the specific boundaries of the Taking Area, encompassing the full width of the Missouri River and excluding certain non-Indian homestead lands within the Taking Area which had to be acquired by the Corps of Engineers from the non-Indian landowners through voluntary sale or civil condemnation.

57. Where these non-Indian homestead lands were excepted, Congress specifically excluded erosions and specifically included accretions.

58. There is no mention of any interests held by the State in the 1949 Takings Act. This understanding is consistent with the Department's view, as first outlined in a 1936 legal

opinion from the Solicitor, that title to the Riverbed never passed to the State and was reserved for the MHA Nation under the Equal Footing Doctrine.

59. Congress passed legislation in 1984 (1984 Restoration Act), which, with the exception of certain specified parcels of land, placed in trust for the benefit of the MHA Nation "all mineral interests in the lands located within the exterior boundaries of the [Reservation] which . . . were acquired by the United States for the construction, operation, or maintenance of the Garrison Dam and Reservoir Project[.]" 98 Stat. 3149, tit. II, 3152.

60. Thus, since 1851 when the Reservation was first set aside, and as further evidenced by the enactment of the 1984 Restoration Act, certain mineral interests underlying the Riverbed have been and continue to be held in trust for the benefit of the MHA Nation.

Bakken Oil Boom

61. The Reservation is situated directly over the Bakken Three Forks Formation, the most prolific oil and gas field in North America.

62. The Bakken Three Forks Formation is estimated to contain 4.3 billion barrels of unconventional oil and 4.9 trillion cubic feet of unconventional natural gas.

63. Over 11,000 oil and gas wells have been drilled in the Bakken since 2013, most utilizing horizontal drilling techniques and hydraulic fracturing to extract oil and gas from deposits that are located far away from the surface level well pad.

64. On information and belief, since the beginning of the Bakken Oil Boom, the State has issued over 200 oil and gas leases for mineral production from Riverbed trust lands within the Reservation.

65. Royalties resulting from such production belong to the MHA Nation, but the State has failed to pay such monies to Interior's Office of Natural Resources Revenue for deposit into the MHA Nation's trust account.

66. The State's issuance of leases to oil and gas producers has denied the MHA Nation the full benefit of the property held in trust by the United States for the MHA Nation.

FIRST CLAIM FOR RELIEF

(Declaratory Judgment That Title to the Missouri Riverbed and Underlying Minerals Within the Fort Berthold Reservation Did Not Pass to the State Upon Statehood and That Title is Held by the United States Today)

67. Federal Defendants incorporate by reference each of the preceding paragraphs above as though fully set forth herein.

68. When an Indian reservation is created within a territory of the United States prior to that territory becoming a state, title to the lands so reserved do not pass to the state upon its admission to the Union.

69. Under the Equal Footing Doctrine, the United States must demonstrate its intent to include submerged lands beneath navigable waterways within the Indian reservation and to defeat the future state's title to the submerged lands.

70. When a state disclaims all interest in Indian lands as a prerequisite for entry into the Union and the lands disclaimed include submerged lands beneath navigable waters, that disclaimer demonstrates clear evidence of congressional intent to reserve the submerged lands from the state. This is especially true when the executive order specifically includes certain submerged lands and excludes other submerged lands.

71. The United States demonstrates its intent to reserve submerged lands prior to statehood and its intent to defeat state title to those lands when there is evidence that excluding the submerged lands would have compromised or undermined the purpose of the reservation.

72. The United States created the Reservation from the Three Tribes' territory as defined in the 1851 Treaty. At all times since the Reservation's creation, the United States has taken special care to include the full width of the River and Riverbed within the boundaries of the Reservation, as demonstrated by the boundary descriptions within the 1870 and 1880 Executive Orders and the 1886 Agreement with the Three Tribes which specifically includes the full width of the River and Riverbed while specifically excluding the Little Missouri River where it forms the southern boundary of the Reservation.

73. The State specifically disclaimed all right, title, and interest in any and all Indian lands as a prerequisite of its admission to the Union pursuant to the Enabling Act of 1889 and Article XIII, § 4 of the North Dakota Constitution.

74. Title to the Riverbed, being explicitly part of the Reservation created prior to North Dakota's statehood, rested with the United States in trust for the MHA Nation prior to the State's admission to the Union and, thus, did not pass to the State at statehood.

75. The 1949 Takings Act and 1984 Mineral Restoration Act do not change the United States' title to the Riverbed and the minerals underlying the Riverbed.

76. On April 4, 2022, the United States recorded title to certain Riverbed minerals in trust for the MHA Nation in the Land Title and Records Office of the Bureau of Indian Affairs, keeping legal title with the United States and recording beneficial title to the MHA Nation.

77. Under claim of title, North Dakota has issued leases to oil and gas producers who extract mineral trust assets underlying the Riverbed.

78. North Dakota's claim of ownership interferes with the United States' legal title and impairs the MHA Nation's beneficial interest in the exclusive use, occupancy, and right to quiet enjoyment of the Riverbed minerals.

79. Declaratory relief is appropriate because this Court can provide an immediate and definitive determination of the legal rights of the parties in an adversary proceeding upon the facts alleged.

80. There is no adequate remedy by which the controversy may be resolved and absent a declaration from this Court quieting title in the United States, the facts and circumstances giving rise to this dispute will continue indefinitely.

81. Accordingly, Federal Defendants are entitled to a declaratory judgment quieting title to the Riverbed and its underlying mineral interests in the United States.

SECOND CLAIM FOR RELIEF

Injunctive Relief

82. Federal Defendants incorporate by reference each of the preceding paragraphs above as though fully set forth herein.

83. Federal Defendants are entitled to protect the United States' interests in the Riverbed as title owner, including its interest in protecting the MHA's beneficial interest in the Riverbed minerals.

84. Federal Defendants have the right to protect the land and minerals held in trust by the United States for the MHA Nation pursuant to Article 3 of the 1851 Treaty.

85. Since at least 2015, the State has issued leases to oil and gas producers who have extracted mineral trust assets from the Riverbed.

86. On information and belief, under the terms of the State-issued leases, oil and gas producers are required to pay the State a percentage of sales revenue in the form of royalty payments, despite the State's lack of any ownership of, or property rights to, the Riverbed and its underlying minerals.

87. The State's issuance of leases and demand for royalty payments is in direct conflict with the United States' ownership of the Riverbed and its underlying minerals, and it should be enjoined.

88. State law requires royalty payments from land with disputed title to be deposited with the Bank of North Dakota ("Bank"), a wholly owned entity of the State, pursuant to N.D. CENT. CODE § 6-09-07.

89. On information and belief, the Bank currently holds in escrow royalty payments made by certain oil and gas producers derived from the sale of Riverbed mineral trust assets.

90. Any royalties deposited with the Bank are under the actual and total control of the State.

91. On information and belief, the Bank has disbursed Riverbed royalty monies to the State's general fund for the State's use.

92. The State is the sole entity able to provide information as to whether any royalty payments belonging to the United States in trust for the MHA Nation have been disbursed from the Bank and used by the State for its own benefit.

93. The North Dakota Board of University & School Lands ("Board") is an entity of the State and is comprised of the Superintendent of Public Instruction, Governor, Attorney General, Secretary of State, and State Treasurer. The Board "is charged with, among other

things, managing North Dakota's minerals underlying sovereign lands." *Continental Res., Inc. v. N.D. Bd. of Univ. and School Lands*, 505 F. Supp. 3d 908, 910 (D.N.D. 2020).

94. On information and belief, the Board will not release royalty monies held in escrow until there is a final adjudication determining ownership of the Riverbed minerals.

95. In addition to the royalty monies held in escrow at the Bank, certain producers have deferred royalty payments to the State and placed these monies in escrow with other financial institutions or held these monies in interest-bearing suspense accounts owned by the producer.

96. As title owner of the Riverbed's underlying minerals, the United States is entitled to all royalty monies derived from the sale of Riverbed minerals, and any interest earned thereon, which will be held in trust for the MHA Nation as the beneficial owner of such mineral trust assets.

97. The State's issuance of leases to producers who extract Riverbed mineral trust assets and the State's claim of ownership to the oil and gas royalties has caused, and continues to cause, financial harm by diverting royalty payments belonging to the United States in trust for the MHA Nation to the State.

98. The State's issuance of leases and its claim to the oil and gas royalties harms the United States' ability to act as trustee to protect resources held in trust for the MHA Nation pursuant to Federal law.

99. Federal Defendants will be irreparably harmed if the State is not enjoined from issuing leases to producers who extract and sell Riverbed mineral trust assets.

100. Any withdrawal or use of royalty monies from the Bank by the State for its own use and benefit is counter to the United States' rights and must be returned to the United States to be placed in trust for the MHA Nation.

101. The balance of equities weighs in the Federal Defendants' favor such that an injunction should issue.

102. Accordingly, an injunction should issue enjoining the State from authorizing new leases to extract Riverbed mineral trust assets; compelling the Bank to disburse any Riverbed royalties it holds in escrow to the United States as trustee or directly to the MHA Nation as beneficiary; compelling the Board to authorize the release of any Riverbed royalties wheresoever held to the United States as trustee or directly to the MHA Nation as beneficiary; compelling the Bank to account for any Riverbed royalty monies it has disbursed to the State for the State's use; and compelling the State to remit to the United States any Riverbed royalty monies disbursed to the State.

PRAYER FOR RELIEF

WHEREFORE, Cross-Claimants respectfully requests this honorable Court enter a judgment granting the following relief:

a. Declare that the State did not receive title to the historic Riverbed or underlying mineral interests within the Reservation when the State entered the Union in 1889;

b. Declare that the State has no right or title or interest in the Riverbed or its underlying mineral interests within the Reservation and no right of possession thereof;

c. Declare that title to the Riverbed within the Reservation is quieted in favor of the United States, including the mineral interests underlying the Riverbed, which are held by the United States in trust for the MHA Nation's exclusive use, occupancy, and quiet enjoyment;

d. If the State does not comply with such declarations regarding any State-issued leases and monies derived from production of mineral underlying the Riverbed:

i. Declare any state-issued leases to be void *ab initio*;

ii. Issue an Injunction ordering the following:

1. Permanently enjoining the State from asserting any right, title, or otherwise interest in or to the Riverbed or underlying mineral interests, or otherwise interfering in any way with the exclusive possession, use, and occupancy of such lands by the United States or the MHA Nation;
2. Canceling any state-issued leases as unlawfully issued;
3. Permanently enjoining the State from issuing any new leases authorizing the withdrawal, production, or sale of minerals underlying the Riverbed;
4. Compelling the State to account for any Riverbed royalty monies disbursed to the State; and
5. Compelling the State to remit to the United States as trustee, or directly to the MHA Nation as beneficiary, any Riverbed royalty monies disbursed to the State;

e. Award pre- and post-judgment interest on all damages awarded from the date of filing this Crossclaim until judgment is paid in full;

f. Award Federal Defendants all costs in this action to the maximum extent permissible; and

g. Grant any and all further relief, including ejectment, deemed just and proper by this honorable Court.

Dated: July 7, 2023

Respectfully submitted,

TODD KIM
Assistant Attorney General
United States Department of Justice
Environment and Natural Resources Division

By: */s/ Jacob D. Ecker*
JACOB D. ECKER
Trial Attorney
U.S. Department of Justice
Environment and Natural Resources Division
Natural Resources Section

/s/ Cody L. C. McBride
CODY L. C. McBRIDE, Trial Attorney
EMMI BLADES, Trial Attorney
LAURA BOYER, Trial Attorney
REBECCA M. ROSS, Senior Attorney
Indian Resources Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, DC 20044-7611
Telephone: (202) 514-6755
Facsimile: (202) 353-1156
Email: cody.mcbride@usdoj.gov

Attorneys for Federal Defendants

OF COUNSEL:
NICHOLAS RAVOTTI
Attorney-Advisor
Office of the Solicitor
Division of Indian Affairs