No. 25-____

In The Supreme Court of the United States

MCKENZIE COUNTY, NORTH DAKOTA,
Petitioner,

v.

UNITED STATES OF AMERICA AND THE DEPARTMENT OF THE INTERIOR,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

PETITION FOR WRIT OF CERTIORARI APPENDIX

DANIELLE R. BETTENCOURT
Counsel of Record
CONSTANCE E. BROOKS
Fairfield & Woods P.C.
1801 California St.,
Suite 2600
Denver, CO 80202-2645
(303) 830-2400

Counsel for Petitioner McKenzie County, ND

Table of Appendices

APPENDIX A - JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT, ENTERED ON MARCH 20, 2025……1a

APPENDIX B - ORDER GRANTING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NORTH DAKOTA, ENTERED ON NOVEMBER 29, 2023……35a

APPENDIX C - ORDER DENYING UNITED STATES' MOTION TO DISMISS AND GRANTING THE PLAINTIFF'S MOTION TO AMEND THE COMPLAINT OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NORTH DAKOTA, ENTERED ON AUGUST 20, 2019…….. 66a

APPENDIX D - ORDER DENYING UNITED STATES' MOTION TO DISMISS SECOND AMENDED COMPLAINT OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NORTH DAKOTA, ENTERED ON AUGUST 9, 2020……90a

United States Court of Appeals

For the Eighth Circuit

No. 24-1177

McKenzie County, ND

Plaintiff - Appellee

v.

United States of America; Department of Interior

Defendants - Appellants

Appeal from United States District Court
for the District of North Dakota - Western

Submitted: October 23, 2024
Filed: March 20, 2025

Before SHEPHERD, KELLY, and STRAS, Circuit Judges.

SHEPHERD, Circuit Judge.

This case concerns mineral royalties under certain lands in McKenzie County, North Dakota. McKenzie County sued the United States, claiming those royalty interests as its own and that previous litigation settled the matter. The United States asserts that the prior litigation involved different lands and that the County's[1] claim is untimely. The district court granted judgment for the County, and the United States appeals. Having jurisdiction under 28 U.S.C. § 1291, we reverse.

I.

Before it achieved statehood in 1889, North Dakota was part of the Dakota Territory, an organized incorporated territory of the United States. Much of the land in present-day North Dakota was then part of the public domain: "land owned by the [Federal] Government . . . that was 'available for sale, entry, and settlement under the homestead laws, or other disposition under the general body of land laws.'" See Hagen v. Utah, 510 U.S. 399, 412 (1994) (citation omitted). These lands were "in the first instance the exclusive property of the United States, to be disposed of to such persons, at such times, . . . in such modes, and by such titles, as the Government may deem most advantageous . . . ." Irvine v. Marshall, 61 U.S. (20 How.) 558, 561-62 (1857).

[1] For clarity, we refer to the plaintiff-appellee municipal entity as "the County," while we refer to the geographic location as "McKenzie County."

Beginning in the mid-nineteenth century, Congress exercised that authority "to encourage the settlement of the West." See Amoco Prod. Co. v. S. Ute Indian Tribe, 526 U.S. 865, 868 (1999). It did so by providing land "in fee simple absolute" to settlers in the Dakota Territory and the newly admitted North Dakota under various land-patent laws. See id. Some of these acts authorized patents with title to both the surface and mineral estates. Id.; see, e.g., 1862 Homestead Act, ch. 75, 12 Stat. 392 (1862). Others authorized the conveyance of title in only the surface estate, reserving the mineral interest as part of the public domain. Amoco Prod. Co., 526 U.S. at 870; Watt v. W. Nuclear, Inc., 462 U.S. 36, 38-39 (1983); see, e.g., Stock-Raising Homestead Act of 1916, ch.9, 39 Stat. 862. In both cases, the lands were "valuable for grazing [livestock] and raising forage crops." See Watt, 462 U.S. at 38 (citation omitted).

In the 1920's and 1930's, however, the economic bounty of these lands began to falter. A series of droughts hit North Dakota, causing widespread dust storms and crop failure. Exacerbated by the onset of the Great Depression, property values plummeted as the Dust Bowl ravaged the Great Plains. Many landowners were forced into bankruptcy, unable to afford the property taxes on their once profitable land. Like many other counties, the County foreclosed on a significant acreage of land within McKenzie County and acquired title to the property through tax forfeiture proceedings. Whatever title the previous landowner held passed to the County: only the surface estate if the United States initially reserved the

minerals, or both the surface and mineral estates if the original patent included title to both.

But the dire times continued. By 1935, vast swaths of land were in such poor condition "that the operators ha[d] practically no chance of securing a decent living," and much of the land remained "submarginal" to the point of nearing "retire[ment] from cultivation." See M.L. Wilson, The Report on Land of the National Resources Board, 17 J. Farm Econ. 39, 44 (1935). Congress responded to the crisis with a series of emergency relief bills authorizing the President to acquire and restore these "submarginal" lands. See National Industrial Recovery Act, Pub. L. No. 73-67, §§ 201-03, 48 Stat. 200 (1933); Federal Emergency Relief Appropriation Acts, Pub. L. No. 74-11, 49 Stat. 115 (1935), and Pub. L. 74-739, § 689, 49 Stat. 1608 (1936). Eventually, Congress enacted the Bankhead-Jones Farm Tenant Act, which, like the earlier acts, codified the authority to "acquire by purchase, gift, or devise, or by transfer from . . . any State, Territory, or political subdivision, submarginal land and land not primarily suited for cultivation." See Pub. L. 75-210, § 32(a), 50 Stat. 522, 525-26 (1937). The Act also permitted the Secretary of Agriculture[2] to acquire these lands "subject to any

[2] The lands in McKenzie County were initially administered by the Secretary of Agriculture, and that authority was assigned to the United States Forest Service. See 19 Fed. Reg. 74, 75 (Jan. 6, 1954). These lands were later designated as part of the Little Missouri National Grassland, with surface administration again vested in the Forest Service. 36 C.F.R. § 213.1(b), (d), and (e). While the Department of Agriculture continues to manage the surface, see id. § 213.1, the Secretary of

reservations, outstanding estates, interests, easements, or other encumbrances which . . . w[ould] not interfere" with the Act's purposes. Id. § 32(a), 50 Stat. at 526. Moreover, like the earlier relief acts, the Act authorized the sale, lease, or other disposal of land acquired under the Act, but not property acquired through other means. Id. § 32(c), 50 Stat. at 526.

Using this collection of statutes and relevant executive orders, the United States sought to acquire lands from the County. To avoid the possibility of redemption by the previous landowners and to obtain clear title, the United States used the power of eminent domain. So, beginning in 1937, the United States invoked the Condemnation Act, Pub. L. 50-728, 25 Stat. 357 (codified as amended at 40 U.S.C. § 3113), and the Declaration of Taking Act, Pub. L. 71-736, 46 Stat. 1421 (codified as amended at 40 U.S.C. §§ 3114-16, 3118), and filed six declarations of taking in federal district court in North Dakota. The declarations listed the specific tracts the United States wanted—some where the County held both the surface and mineral estates (acquired lands or, when referring to the mineral estate only, acquired minerals) and others where the County held only the surface estate, as the United States had retained the mineral estate in the original patent (public domain lands or public domain minerals). See Wallis v. Pan Am. Petroleum Corp., 384 U.S. 63, 65 & n.2 (1966) ("[I]n general[,] acquired lands are those granted or

---

the Interior is responsible for managing the subsurface estate. See 30 U.S.C. §§ 181, 189, 226, 352; 43 U.S.C. §§ 1731-32.

sold to the United States by a State or citizen and public domain lands were usually never in state or private ownership."). The lands were listed by tract number and legal description.[3]

Though the declarations took title to the listed lands "in full fee simple," they did so "subject . . . to the rights of [the] County . . . to a 6¼% perpetual royalty in minerals which may exist or may be developed on all of said tracts of land." In entering judgment on the declarations, the district court noted that "[a]ll the [taken] tracts or parcels of land . . . [we]re subject to a 6¼% royalty reservation" in the County, with the exception of specific tracts. The County then delivered to the United States the tax deeds for the listed tracts, though these deeds did not include the royalty reservation. Thereafter, the district court entered final judgment in each of the condemnation actions (collectively, the 1930's Condemnation Judgments), thus completing the

[3]These legal descriptions followed the Public Land Survey System, which subdivides and describes land in 30 southern and western states—all states except the 13 original colonies, Maine, Vermont, Kentucky, Tennessee, West Virginia, Hawaii, and Texas. Under this system, land is divided into 3840-acre "Townships," which can be subdivided into 640-acre "Sections," 160-acre "quarter sections," and 40-acre "quarter-quarter sections." Individual parcels can then be labeled according to a standardized system. For example, one of the tracts now in dispute (Tract No. 277) comprises 320 acres of land in the Northeast and Southeast quarters of Section 20 of Township 147 North, Range 104 West and is labeled as: NE¼ and SE¼, Sec. 20, T147N, R104W.

acquisition of title.[4] Each of the 1930's Condemnation Judgments contained the "6¼% perpetual royalty" language, again excepting certain specified tracts from the reservation,[5] but making no reference to public domain or acquired lands and minerals.

Thereafter, the Bureau of Land Management (BLM) at the Department of the Interior annotated its records to reflect the County's royalty interest in tracts with acquired minerals, but not those with public domain minerals. Over the next four decades, BLM leased both acquired and public domain minerals for oil and gas development and directed the royalty from acquired lands with producing mineral leases to be paid to the County. In 1985, however, BLM informed the County that it would no longer recognize the royalty reservation in the acquired minerals based on an intervening change in state law prohibiting the County from reserving interests in lands it had acquired through tax forfeiture proceedings. See De Shaw v. McKenzie County, 114 N.W.2d. 263, 264-65 (N.D. 1962).

Understandably, the County was displeased. After unsuccessfully appealing to the Interior Board of Land Appeals, in 1987 the County sued in the United States District Court for the District of North

---

[4]The condemnation judgments are identified by their "Action At Law" number and include, as relevant here, Nos. 1000, 1001, 1002, 1006, 1007, and 1028.

[5]Additionally, some judgments included the royalty reservation in only particular tracts as specified.

Dakota.[6] In its complaint, the County defined the suit as "a dispute over ownership of a 6¼% royalty interest under certain lands located in McKenzie County," and referenced Enclosure 1 as the "subject lands" in the dispute. The County also referenced each of the 1930's Condemnation Judgments, both as general background information and in listing the tracts from Enclosure 1 that were taken in each judgment. Among other forms of relief, the County sought to "[q]uiet title in the name of [the] County, to the 6¼% royalty under the subject lands."[7]

After discovery and initial briefing, the district court certified questions of law to the North Dakota Supreme Court. See McKenzie County v. Hodel, 467 N.W.2d 701 (N.D. 1991). Leaving the construction of the 1930's condemnation judgments to the district court, the North Dakota Supreme Court narrowed its consideration to two issues. Id. at 703-04. First, it held that "North Dakota Law did not impede the transfer

---

[6]This complaint named as defendants Donald Hodel (then Secretary of the Interior), Robert Burford (then National Administrator of BLM), Marv LeNoue (Area Administrator of BLM), and Cynthia L. Embretson (Chief of the Fluids Adjudication Section at BLM) in their official capacities. The complaint did not name the United States as a defendant. Before this Court, the parties proceed as if it were brought against the United States.

[7]Though seeking to quiet title, the County did not invoke the Quiet Title Act. See 28 U.S.C. § 2409a. Instead, the County relied on the district court's authority to issue mandamus relief, see 28 U.S.C. § 1361, declaratory relief, see id. § 2201, and injunctive relief, see id. § 2202, and to review final agency action, see 5 U.S.C. § 704. The United States did not argue that the Quiet Title Act provided the exclusive means of adjudicating the dispute in that litigation.

of title to real property by operation of a judgment" because the judgment itself "has the effect of a conveyance executed in due form of law." Id. at 705 (citation omitted). A transfer of real property through a judgment, then, need not comply with North Dakota's conveyancing statutes. Id.

Second, the court held that "nothing in . . . De Shaw . . . limit[ed] the County's authority to reacquire title to property formerly held by tax title," and thus the County was permitted to "repurchase, take by eminent domain, or otherwise reacquire an interest in the property" that it had previously conveyed. Id. Accordingly, North Dakota law, "and its interpretation in DeShaw, d[id] not prohibit the County from acquiring title to mineral interests through operation of a condemnation judgment." Id.

Back in the district court, the County moved for summary judgment based on the North Dakota Supreme Court's opinion and answers to the certified questions. After hearing opposition from the United States, the district court granted the County's motion. It held that "the recognition of a mineral reservation in the County in the [1930's Condemnation Judgments] operate[d] as a conveyance of that mineral interest to the County." The court thereby directed that judgment be entered "quieting title in the County to the disputed minerals." A week later, the court entered judgment:

> The Federal Government's condemnation actions against McKenzie

> County in the late 1930's extinguished all title McKenzie County had in the land, including any royalty interests. New title then vested in the Federal Government and through the condemnation judgments [the] County received the 6¼% royalty interest. The recognition of a mineral reservation in favor of McKenzie County in the federal condemnation judgments operates as a conveyance of that mineral interest to McKenzie County.
>
> It is ORDERED AND ADJUDGED that title to the disputed minerals (6¼% royalty) is quieted in McKenzie County; and, the Defendants are barred from any claim in regard to the same or proceeds from the same; that McKenzie County is the owner of the disputed minerals (6¼% royalty) free and clear of any claim of the above named defendants.

("1991 Judgment"). The United States did not appeal. In the years that followed, BLM updated its records to again recognize the County's royalty interest in acquired lands and directed oil and gas operators to resume paying the royalty to the County. As before, however, BLM's records never reflected a royalty interest in public domain minerals.

Despite the return to the status quo, the County soon became concerned about BLM's compliance with

the 1991 Judgment. So the County initiated a project to "inventory and map all royalties the [C]ounty owns, research the statute of limitations and then file with the federal government and proceed to court if necessary." In the summer of 1998, the County authorized a search of the National Archives for the case files from the 1930's Condemnation Judgments. This inventory effort continued for several years, with the Board of County Commissioners receiving regular updates on its progress. Throughout the process, the County and its attorneys had extensive correspondence with BLM about the mineral royalties and their operation.

In November 2003, BLM sent the County a message which stated that, according to BLM's records, "only the acquired minerals in the [1930's Condemnation Judgments we]re subject to a 6¼% royalty reservation[]." Two weeks later, in a meeting on December 2, the Board of County Commissioners noted "that BLM may not be recognizing the [C]ounty's royalty right on parcels which were originally patented with mineral reservations to the federal government." In the County's view, the 1930's Condemnation Judgments "supersede[d] those reservations." After meeting with BLM officials later that month to address the issue, the County received a letter from BLM on January 27, 2004. Along with a list of specific tracts, the letter included three relevant statements: that BLM recognized a royalty interest in only about three-quarters of the lands the County identified; that the discrepancy was "because [the County's] records included lands with Public Domain minerals"; and that "[o]nly lands acquired by the

United States in the condemnations are subject to a 6¼ percent royalty reservation."

On January 11, 2016, the County sued the United States under the Quiet Title Act, 28 U.S.C. § 2409a, seeking to quiet title to the royalty interest in public domain minerals, listing specific tracts of land in its complaint. After the County filed an amended complaint, the United States moved to dismiss, arguing that the County's claim was untimely under the Quiet Title Act's 12-year statute of limitations. See 28 U.S.C. § 2409a(g). The district court denied the motion and granted the County leave to file a second amended complaint. In the district court's view, the 1991 Judgment already quieted title to the public domain minerals for the County, and thus the Quiet Title Act's limitations period might not be relevant.

The County then filed its second amended complaint ("2019 Complaint"), which included an additional claim for relief.[8] Invoking the All Writs Act and Federal Rule of Civil Procedure 70(c), the County sought to enforce the 1991 Judgment or the 1930's Condemnation Judgments which, in its view, included the royalty interest underlying the tracts it was now disputing. The United States again moved to dismiss, claiming that the County failed to plausibly allege a right to relief under the All Writs Act and reasserting its statute-of-limitations argument under the Quiet Title Act. The district court denied that motion as well, concluding that the County had pled facts

[8]The County also added the Department of the Interior as a defendant.

sufficient to survive a motion to dismiss and reiterating its decision on the statute of limitations.

Both parties moved for summary judgment. Rejecting the United States' argument that the County could not circumvent the Quiet Title Act, the district court held that the All Writs Act and Rule 70 empowered it to enforce its orders from both the 1991 Judgment and the 1930's Condemnation Judgments. The district court then concluded that the 1930's Condemnation Judgments clearly and unambiguously included the royalty interest in all lands listed, whether public domain or acquired, and that the 1991 Judgment plainly and unambiguously quieted title to the royalty interests in tracts listed in the 2019 Complaint. In the alternative, the district court held that the County's Quiet Title Act claim was not barred by the Act's statute of limitations and further, were it to address the issue in the first instance, it would quiet title to the public domain mineral royalty in the County. The district court thus denied the United States' motion for summary judgment, granted the County's motion for summary judgment, and entered judgment in favor of the County. It issued the County's requested writ of mandamus, along with a declaration that the royalty interest applies to both public domain and acquired minerals, and directed the United States to comply with that declaration as embodied in the 1930's Condemnation Judgments and 1991 Judgment.

The United States appeals, arguing that the County must proceed, if at all, under the Quiet Title Act because the All Writs Act does not provide a

remedy; that the County's Quiet Title Act claim is untimely; and that, even assuming timeliness, the 1930's Condemnation Judgments did not convey a royalty interest to the County in public domain minerals.

II.

The United States first challenges the district court's grant of judgment under the All Writs Act. We review the grant of summary judgment de novo, affirming "if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." Torgerson v. City of Rochester, 643 F.3d 1031, 1042 (8th Cir. 2011) (en banc) (citation omitted).[9]

The All Writs Act grants "[t]he Supreme Court and all courts established by Act of Congress [the authority to] issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. § 1651(a). The Act thus "authorizes a federal court 'to issue such commands . . . as may be necessary or appropriate to effectuate and prevent the frustration of orders it has previously issued in its exercise of jurisdiction otherwise obtained.'" Syngenta Crop Prot., Inc. v.

[9]The facts of this case are not in dispute. The only question is whether the County or the United States was entitled to judgment as a matter of law.

Henson, 537 U.S. 28, 32 (2002) (quoting United States v. N.Y. Tel. Co., 434 U.S. 159, 172 (1977)).

But this authority is not without limits. For one thing, the Act "is not an independent source of subject matter jurisdiction." Ark. Blue Cross & Blue Shield v. Little Rock Cardiology Clinic, P.A., 551 F.3d 812, 821 (8th Cir. 2009). "[W]hile the All Writs Act empowers federal courts to wield certain 'procedural tools,' such as the 'various historic common-law writs,'" id. at 820 (citation omitted), such tools are available "only to the extent that 'the issuance of process [is] "in aid of" the issuing court's jurisdiction,'" id. (alteration in original) (quoting Clinton v. Goldsmith, 526 U.S. 529, 534 (1999)). For another, the All Writs Act is not a mechanism for "circumvent[ing] statutory requirements or otherwise binding procedural rules." Shoop v. Twyford, 596 U.S. 811, 820 (2022). The All Writs Act cannot provide relief "[w]here a statute specifically addresses the particular issue at hand." Syngenta, 537 U.S. at 32 (alteration in original) (quoting Pa. Bureau of Corr. v. U.S. Marshals Serv., 474 U.S. 34, 43 (1985)). The United States invokes this latter limitation here. According to the United States, the Quiet Title Act precludes All Writs Act relief when a plaintiff merely seeks to quiet title against the United States.

As a general matter, the United States is correct. The Quiet Title Act contains a limited waiver of sovereign immunity for civil actions against the United States "to adjudicate a disputed title to real property in which the United States claims an interest." 28 U.S.C. § 2409a(a). By its terms, the Quiet

Title Act "specifically addresses" disputes with the United States over title to real property. See Syngenta, 537 U.S. at 32 (citation omitted). Because the Quiet Title Act provides the means for adjudicating those disputes, the All Writs Act "cannot [be] use[d] . . . to circumvent [the Quiet Title Act's] statutory requirements [and] otherwise binding procedural rules." See Shoop, 596 U.S. at 820.

The nature of the Quiet Title Act makes this point particularly clear. The Quiet Title Act is not just "a statute [that] specifically addresses" title disputes with the United States, see Syngenta, 537 U.S. at 32; it is the *only* such statute. The Quiet Title Act "provide[s] the exclusive means by which adverse claimants c[an] challenge the United States' title to real property." Block v. North Dakota ex rel. Bd. of Univ. & Sch. Lands (Block I), 461 U.S. 273, 286 (1983). Parties cannot use other statutes or rules "to end-run the [Quiet Title Act]'s limitations." Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak, 567 U.S. 209, 216 (2012). Thus, if a plaintiff "not only challenges [the United States'] claim [to property], but also asserts his own right" to that property, he must do so subject to the Quiet Title Act's strictures. See id. at 217. This is true regardless of how the claim is labeled. See, e.g., Block I, 461 U.S. at 277-78, 286, n.22 (prohibiting suits brought under Declaratory Judgment Act and Administrative Procedure Act (APA)); United States v. Mottaz, 476 U.S. 834, 846-49 (1986) (prohibiting suits under General Allotment Act, 25 U.S.C. § 345); cf. Patchak, 567 U.S. at 220-24 (permitting APA claims when party does not assert

personal property interest adverse to that of the United States).

On its face, then, the County's claim under the All Writs Act is no different. The County asserts a royalty interest in certain minerals that conflicts with the interest claimed by the United States. The Quiet Title Act provides a remedy for this dispute, and its remedy is exclusive of all others. See Mottaz, 476 U.S. at 846-48. By the United States' logic, the County thus cannot "avoid [the Quiet Title] Act's strictures" by resorting to the All Writs Act. See id. at 847. In the district court and on appeal, the County suggests two ways the All Writs Act can be used in this case: through enforcing the 1930's Condemnation Judgments or through enforcing the 1991 Judgment. For different reasons, neither option provides the County the relief it seeks.

A.

The County argues that the All Writs Act can be invoked to enforce the terms of a prior judgment that itself quieted title, claiming that the 1991 Judgment did so for the minerals at issue in this litigation. But such relief could be available only if the 1991 Judgment included the tracts of land now in dispute.[10] In other words, the All Writs Act only

[10]Though we ultimately conclude that 1991 Judgment does not include the tracts at issue here, we do not doubt that a district court can enforce a Quiet Title Act judgment, either under Rule 70 or the All Writs Act. See Ohio Oil Co. v. Thompson, 120 F.2d 831, 837 (8th Cir. 1941) (noting "the general rule that when a plaintiff seeks to quiet title," he may request judgment

provides a mechanism for the County to the extent the 1991 Judgment addressed the tracts in the 2019 Complaint. We must therefore determine the scope of the 1991 Judgment.

The parties have provided no authority from this Circuit—and we are aware of none—where we reviewed a district court's interpretation of a prior order or final judgment, nor is there a clear statement of the standard of review. That being said, other courts addressing similar issues have held that "[t]he interpretation of the text of a court order or judgment is considered a conclusion of law subject to de novo review." United States v. Spallone, 399 F.3d 415, 423 (2d Cir. 2005). We adopt that standard here.[11] See id.;

"for a writ of possession" to require title to be passed in accordance with the underlying judgment); Peacock v. Thomas, 516 U.S. 349, 356 (1996) (recognizing a court's "inherent power to enforce its judgments").

[11]We have previously endorsed a more deferential standard for reviewing a bankruptcy court's interpretation of a Chapter 11 plan, see In re Dial Bus. Forms, Inc., 341 F.3d 738, 744 (8th Cir. 2003) (reviewing for an abuse of discretion), and for reviewing a district court's interpretation of its mandate on remand to an Administrative Law Judge, see Steahr v. Apfel, 151 F.3d 1124, 1126 (8th Cir. 1998) ("defer[ring] to the district court's interpretation"). We did so in part because we were reviewing "a court's interpretation of its own order," In re Dial Bus. Forms, 341 F.3d at 744 (citation omitted), and thus the district court was "best able to determine whether its [order] ha[d] been violated." Steahr, 151 F.3d at 1126. The temporal proximity justifying that deference is not present here, nor is the district judge who issued the order later interpreting it. Instead, this situation is more like interpreting a consent decree, where we apply de novo review, though we accord deference when the court that entered the decree and the court tasked with interpreting it are one and the

see also United States v. 60.22 Acres of Land, More or Less, Situate in Klickitat Cnty., 638 F.2d 1176, 1178 (9th Cir. 1980) (reversing district court's interpretation of a condemnation judgment); SEC v. Hermil, Inc., 838 F.2d 1151, 1153-54 (11th Cir. 1988) (reversing district court's interpretation of unambiguous final judgment). In doing so, "[i]t is our responsibility to construe a judgment so as to give effect to the intention of the court, not to that of the parties." 60.22 Acres of Land, 638 F.2d at 1178.[12]

In relevant part, the 1991 Judgment reads as follows:

> The Federal Government's condemnation actions against McKenzie County in the late 1930's extinguished all title McKenzie County had in the land, including any royalty interests. New title then vested in the Federal

---

same. See United States v. City of Fort Smith, 48 F.4th 900, 907 (8th Cir. 2022). Because that is not the case here, we do not accord that deference. See also Spallone, 399 F.3d at 423 (noting that issuing judge's "construction of an ambiguity in his own words" is reviewed for abuse of discretion).

[12]This makes our analysis slightly different than in the consent-decree context, where we "look to rules of contract interpretation" to "discern the *parties'* intent" because "the content of a consent decree is generally a product of negotiations between the parties." See City of Fort Smith, 48 F.4th at 907 (emphasis added) (citations omitted). To state the obvious, the 1991 Judgment was not the result of a collaborative effort in any sense of the word.

> Government and through the condemnation judgments McKenzie County received the 6¼% royalty interest. The recognition of a mineral reservation in favor of McKenzie County in the federal condemnation judgments operates as a conveyance of that mineral interest to McKenzie County.
>
> It is ORDERED AND ADJUDGED that title to the disputed minerals (6¼% royalty) is quieted in McKenzie County; and, the Defendants are barred from any claim in regard to the same or proceeds from the same; that McKenzie County is the owner of the disputed minerals (6¼% royalty) free and clear of any claim of the above named defendants.

R. Doc. 20-8, at 3. As the district court noted, the question is whether "disputed minerals (6¼% royalty)" covers the lands and mineral rights at issue in this appeal.

When "a 'judgment is clear and unambiguous,' a court must 'adopt, and give effect to,'" its plain meaning. Spallone, 399 F.3d at 421 (citation omitted); see also Travelers Indem. Co. v. Bailey, 557 U.S. 137, 150 (2009) ("[W]here the plain terms of a court order unambiguously apply, . . . they are entitled to their effect."). But the meaning of the 1991 Judgment is not so obvious. Though the order refers to the 1930's Condemnation Judgments and "the disputed minerals

(6¼% royalty)," it does not reference specific tracts of land, public domain or acquired minerals, or even specific condemnation actions. Nor is there any clarifying language elsewhere in the memorandum decision, as the court referred only to "the 6¼% royalty" or "large tracts of land" that were "'subject to' a 6¼% royalty." The court's reference to "disputed minerals" necessarily raises the question of what minerals were in dispute. The County argues that the court defined the term as the "6¼% royalty," but that leaves us in the same place: which minerals under which tracts? Thus, the plain text of the 1991 Judgment does not "unambiguously apply" to the public domain minerals at issue here, cf. Travelers Indem., 557 U.S. at 151.

Because the scope of 1991 Judgment is unclear from its plain terms, we may resort to "the entire record before the issuing court" to determine what was decided. See Ruiz v. Snohomish Cnty. Pub. Util. Dist. No. 1, 824 F.3d 1161, 1167 (9th Cir. 2016) (citation omitted); see also City of Fort Smith, 48 F.4th at 907 ("[W]hen interpreting the meaning of a consent decree 'as written,' we are not to ignore the context in which the parties were operating, nor the circumstances surrounding the order." (citation omitted)). We must interpret the order "with reference to the issues it was meant to decide," see Mayor & Aldermen of Vicksburg v. Henson, 231 U.S. 259, 269 (1913), so we must not construe it "as going beyond the motion in pursuance of which the order was made, for a court is presumed not to intend to grant relief which was not demanded," see Spallone, 399 F.3d at 424 (citation omitted). See also Henson 231 U.S. at 269 ("Every decree in a suit

in equity must be considered in connection with the pleadings, and . . . it will be limited by construction so that its effect shall be such, and such only, as is needed for the purposes of the case that has been made and the issues that have been decided." (citation omitted)).

Applying those principles here, we conclude that the 1991 Judgment does not include the tracts listed in the 2019 Complaint and at issue in this case. There are several clues that indicate as much. Start with the language of the County's complaint from that case. See id. at 269 (noting that scope of an order "must be considered in connection with the pleadings" (citation omitted)). In the second paragraph, the County defined the litigation as "a dispute over ownership of a 6¼% royalty interest under certain lands located in McKenzie County." The County said the lands were those "described in Enclosure 1," and defined them as the "subject lands." In its own words, then, the County limited its claim to the minerals underlying the tracts listed in Enclosure 1.

The County doubled down on this limitation a few pages later. It described the 1930's Condemnation Judgments by referencing each of the actions at law through which the United States obtained lands in McKenzie County. But in doing so, the County explicitly listed specific tracts—the same ones from Enclosure 1 and not a single tract more. None of those tracts contains public domain minerals, and none of those tracts is part of the lawsuit now before us. As "master of the complaint," it was up to the County to decide which tracts were included, and it only

included those listed in Enclosure 1. See Johnson v. MFA Petroleum Co., 701 F.3d 243, 247 (8th Cir. 2012); see also The Fair v. Kohler Die & Specialty Co., 228 U.S. 22, 25 (1913) ("Of course, the party who brings a suit is master to decide what law he will rely upon."). If the County wanted the litigation to cover other tracts, it should have listed them. Cf. Hunter v. Page County, 102 F.4th 853, 869 (8th Cir. 2024) ("If [plaintiffs] did not want to risk removal of their case to federal court, they should not have pleaded a federal claim.").

That the County did not list any other tracts is compelling evidence that the 1991 Judgment does not extend beyond those listed in Enclosure 1, particularly given the strict pleading requirements for quiet title actions against the United States—requirements the County was capable of fulfilling in the instant case. See 28 U.S.C. § 2409a(d) (requiring plaintiffs to describe "with particularity the nature of the right, title, or interest which the plaintiff claims in the real property, the circumstances under which it was acquired, and the right, title, or interest claimed by the United States"). Just as the instant litigation is limited to the tracts particularly described in the 2019 Complaint, the 1991 Judgment is limited to those tracts the County chose to include in its lawsuit, nothing more.

The County's requested relief further confirms the 1991 Judgment's scope. The County first requested a preliminary injunction preventing further claims to the royalty "under the subject lands." Similarly, it asked the court to "[q]uiet title" to the

royalty interest "under the subject lands." With its request for relief tailored to specific tracts, it is hard to see how the judgment granting that relief would not be so limited. To be sure, it elsewhere used only the phrase "the 6¼% royalty"—when asking for reimbursement and when seeking declaratory relief and a permanent injunction. But each of those references contained no other limiting language and immediately followed the specific requests tied to the "subject lands." Because "a court is presumed not to intend to grant relief which was not demanded," Spallone, 399 F.3d at 424 (citation omitted), we do not think the court could have intended the 1991 Judgment to extend to lands not listed in Enclosure 1. See also Ford Motor Co. v. Summit Motor Prods., Inc., 930 F.2d 277, 286 (3d Cir. 1991) (noting that orders must be construed to "give effect to the intention of the court." (citation omitted)).

This conclusion is supported by other portions of the record. For example, the County's memorandum in support of its renewed motion for summary judgment referenced the "subject lands" throughout, describing differences among the "subject lands" and including a list of the tracts taken in each of the 1930's Condemnation Judgments—the same tracts from the complaint. That the County itself continued to refer to the "subject lands" is just further evidence the 1991 Judgment was not meant to address anything beyond that. See Spallone, 399 F.3d at 424 (noting that orders must not be construed "as going beyond the motion in pursuance of which the order was made" (citation omitted)). Each of these facts alone would be persuasive evidence of the judgment's scope. Taken

together, they compel our conclusion that the 1991 Judgment was limited to only the tracts listed in Enclosure 1.

The County's responses are unconvincing. It argues that the plain terms of the 1991 Judgment include the tracts specifically listed in the 2019 Complaint. As already discussed, the plain terms do nothing to clarify the judgment's scope. It asserts that the dispute was defined as one "over ownership of a 6¼% royalty interest," without limiting the argument to specific tracts of land or minerals. What the County conveniently omits, however, is the rest of the sentence: "under certain lands" that are "described in Enclosure 1" and referred to as "subject lands." Finally, the County argues that its reference to the 1930's Condemnation Judgments was sufficient to incorporate all of the tracts taken in those actions, not just the ones listed in Enclosure 1. This argument is as implausible as it is factually inaccurate. The County did not incorporate the 1930's Condemnation Judgments wholesale in its 1987 complaint; it listed, with particularity, specific tracts from Enclosure 1 that were taken in each individual condemnation judgment. Moreover, it would require suspension of disbelief to think that the County incorporated every tract from the 1930's Condemnation Judgment by specifically listing only a select few. Both individually and collectively, these arguments are unconvincing. It is clear from the record that the judgment does not cover tracts that were neither listed nor discussed.

The All Writs Act could only provide relief to the extent the 1991 Judgment included the royalties

from tracts now in dispute. Based on the order's terms and the record upon which it was based, we conclude that the judgment was limited to the tracts listed in Enclosure 1. Because none of those tracts are included in the 2019 Complaint now before us, the All Writs Act cannot provide the relief the County seeks by enforcing the 1991 Judgment.[13]

B.

Alternatively, the County argues that the All Writs Act can be used to enforce the 1930's Condemnation Judgments directly, even without an intervening quiet title judgment. We have never addressed whether a plaintiff can enforce or challenge the scope of a prior condemnation judgment through something other than a quiet title action, but the Circuits that have considered the argument appear to be uniform in their rejection of it. See, e.g., Klugh v. United States, 818 F.2d 294, 297-98 (4th Cir. 1987) (prohibiting use of Rule 60(b) to contest original condemnation action); see also Bank One Tex. v. United States, 157 F.3d 397, 401 (5th Cir. 1998) (noting that contests over title to condemned property must be asserted "via an independent action against the United States" (citation omitted)), abrogated on other grounds by Wilkins v. United States, 598 U.S.

[13]For that same reason, the County cannot rely on Federal Rule of Civil Procedure 70. That rule grants courts certain procedural tools to enforce judgments for specific acts. See Fed. R. Civ. P. 70. Because the 1991 Judgment does not include the tracts from the 2019 Complaint, Rule 70 could not afford the County's requested relief either.

152, 156 & n.2 (2023). We join those courts today and reject the County's argument.

The reason we do so is because of the nature of eminent domain proceedings. A condemnation action "proceeds in rem against the property itself" and thereby "'extinguishes all previous rights,' and gives the United States title to the entire condemned property 'good against the world.'" Cadorette v. United States, 988 F.2d 215, 222-23 (1st Cir. 1993) (Breyer, C.J.) (citations omitted); see also United States v. Carmack, 329 U.S. 230, 235 n.2 (1946). The condemnation judgment creates title; it does not settle disputes over that title's scope. See Cadorette, 988 F.2d at 222-23. With that understanding, challenges to the scope or validity of a condemnation judgment are like any other claim contesting the scope or validity of title in any other legal instrument. Those types of challenges are properly brought under the Quiet Title Act. See Patterson v. Buffalo Nat'l River, 76 F.3d 221, 224 (8th Cir. 1996) (addressing Quiet Title Act suit challenging scope of easements in a deed); see also Block I, 461 U.S. at 277, 285-86 (holding Quiet Title Act is the exclusive remedy in suit challenging scope of property taken under the equal footing doctrine). A challenge to a condemnation judgment is no different. See Fed. R. Civ. P. 70(b) (noting that "judgment divesting any party's title and vesting it in others" operates as "a legally executed conveyance").

When looking to our precedent, this outcome makes sense. We have previously permitted challenges to the scope of land taken in a prior

condemnation action to proceed under the Quiet Title Act. In United States v. Herring, we held that a plaintiff could invoke the Quiet Title Act to ascertain "the validity or substance of the title" acquired through eminent domain. 750 F.2d 669, 670-71 (8th Cir. 1984); see Herring v. United States, 781 F.2d 119, 121 (8th Cir. 1986) (recounting that "the Quiet Title Act can be invoked to collaterally attack the government's title acquired through condemnation under the Declaration of Taking Act"). We have applied that rule in the years since, entertaining suits by plaintiffs arguing that previous condemnation proceedings "never t[ook]" property in dispute. See Long v. Area Manager, Bureau of Reclamation, 236 F.3d 910, 913 (8th Cir. 2001) (addressing dispute over scope of land taken in prior condemnation action); Bear v. United States, 810 F.2d 153, 154 (8th Cir. 1987) (entertaining quiet title action over lands acquired by United States through condemnation proceedings).

Because the Quiet Title Act can address these claims, *only* the Quiet Title Act can do so. See Block I, 461 U.S. at 273; see also Patchak, 567 U.S. at 216 (noting that where Quiet Title Act provides a remedy, that remedy is exclusive of all others). And because the Quiet Title Act "specifically addresses the particular issue," the All Writs Act cannot provide a mechanism for relief. See Pa. Bureau of Corr., 474 U.S. at 43. Accordingly, the All Writs Act cannot be used to ascertain the validity or scope of title taken in condemnation proceedings, and such claims must be brought under the Quiet Title Act. To hold otherwise would permit plaintiffs to avoid the Quiet Title Act's

"carefully-crafted" remedial scheme through artful pleading, something Congress could not have intended. See Block I, 461 U.S. at 284-85.

Because the All Writs Act cannot be used to challenge the scope of the 1930's Condemnation Judgments, and because the 1991 Judgment does not include the mineral royalties at issue in this case, the district court erred in granting summary judgment for the County under the All Writs Act. The United States was entitled to judgment as a matter of law on that claim. The County must proceed, if at all, under the Quiet Title Act and subject to the Quiet Title Act's requirements.

III.

The United States invokes one of those requirements here, arguing that the County's claim is barred by the Quiet Title Act's statute of limitations. Claims under the Act are barred unless they are brought "within twelve years of the date upon which [they] accrued"—when the plaintiff "knew or should have known of the claim of the United States." 28 U.S.C. § 2409a(g). As an alternative to its All Writs Act holding, the district court granted the County relief under the Quiet Title Act and rejected the United States' argument that the claim was untimely. "We review de novo whether a statute of limitations bars a party's claim." Humphrey v. Eureka Gardens Pub. Facility Bd., 891 F.3d 1079, 1081 (8th Cir. 2018) (citation omitted). Because the County commenced its lawsuit on January 11, 2016, its claim is time barred

if it "knew or should have known" of the United States' claim on or before January 10, 2004.

The Quiet Title Act contains a limited waiver of sovereign immunity, so its 12-year statute of limitations must be strictly construed. Spirit Lake Tribe v. North Dakota, 262 F.3d 732, 745 (8th Cir. 2001), abrogated on other grounds by Wilkins, 598 U.S. at 165.[14] The Quiet Title Act does not require actual notice of the United States' adverse claim. Id. at 738. Rather, "the [Quiet Title] Act's statute of limitations' trigger [i]s light." Gambrell, 111 F.4th at 875. "Knowledge of the claim's full contours is not required," North Dakota ex rel. Bd. of Univ. & Sch. Lands v. Block (Block II), 789 F.2d 1308, 1313 (8th Cir. 1986) (citation omitted), nor must the United States' claim have merit, North Dakota ex rel. Wrigley v. United States, 31 F.4th 1032, 1038 (8th Cir. 2022). Instead, the limitations period begins to run once the plaintiff has "a reasonable awareness" that the United States claims *some* adverse interest. Spirit Lake Tribe, 262 F.3d at 738 (citation omitted). That awareness need not be tract-specific so long as the United States' claim is based on "single legal theory." See Wrigley, 31 F.4th at 1041-42 (citation omitted).

The United States argues that the County knew or should have known about the United States' claim

[14]Wilkins held that the Quiet Title Act's statute of limitations was not a jurisdictional bar. See 598 U.S. at 165. The law governing when the limitations period accrues, however, remains valid. See Gambrell v. United States, 111 F.4th 870, 875 (8th Cir. 2024).

to public domain minerals at multiple points before January 11, 2004. One date stands out in particular: November 17, 2003.[15] On that date, BLM informed the County that "only the acquired minerals [in the 1930's Condemnation Judgments we]re subject to a 6¼% royalty reservation[]." In the United States' view, this was an explicit statement that the United States did not recognize a royalty interest in at least some lands and thus provided notice sufficient to trigger the limitations period. See Spirit Lake Tribe, 262 F.3d at 738 (noting that a plaintiff need only know "that the Government claims some interest").

The County responds that the message was vague, ambiguous, and could not have put the County on notice of the United States' claim. The County first asserts that non-possessory claims like mineral royalties are only adverse when the interest interferes with the plaintiff's rights, so the County could not have known that the United States claimed an adverse interest without more information. See Wrigley, 31 F.4th at 1039. It is true that the limitations period will not begin running until a plaintiff knows or should know of an adverse government claim, so a non-possessory interest might accrue later than a possessory one. See Kane County

[15]The United States further argues that (1) the 1930's Condemnation Judgments themselves; (2) the failure to receive royalty payments from public-domain minerals at any point since then; (3) a 1981 letter from BLM to the County; (4) the 1985 BLM decision based on De Shaw; and (5) the County's investigation in 1998 triggered the limitations period. Because we hold that the County's claim accrued no later than December 2003, we do not reach these alternative triggering events.

v. United States, 772 F.3d 1205, 1216 (10th Cir. 2014) (noting that easements can "peaceably coexist" with servient estates (citation omitted)), abrogated on other grounds by Wilkins, 598 U.S. at 165. But that does not mean the County could *never* be on notice of the adverse claim without the United States declaring that it did not recognize the royalty in specific tracts. Rather, the County still knew or should have known of some adverse non-possessory claim based on the notice that the United States did not recognize the royalty interest. See also Wrigley, 31 F.4th at 1039 (public notices sufficient to place state on notice of adverse non-possessory interest); 28 U.S.C. § 2409a(k)(1) (outlining accrual for claims by a state through public communications). The fact that the message did not specifically list which tracts the United States claimed is of no matter, as tract-by-tract notice is not required. See Block II, 789 F.2d at 1313-14.

The County also claims that the acquired-public domain distinction was not clear from the message—a distinction the district court thought was merely an after-the-fact fabrication by BLM to justify its position—and thus the use of the terms could not provide sufficient notice of anything. This argument falls short for multiple reasons. First, contrary to the County's suggestions, there is an established distinction between acquired and public lands. See, e.g., Murray v. United States, 291 F.2d 161, 162 (8th Cir. 1961) ("Acquired land is Government owned land acquired from private ownership. Public land is Government owned land which was part of the original public domain." (citation omitted)). Nor are

these terms merely creatures of judicial decision making. Congress explicitly codified the distinction well before the County's dispute with the United States arose. See Wallis, 384 U.S. at 65 (noting the distinction and comparing the Mineral Leasing Act of 1920, Pub L. 66-146, 41 Stat. 437 (codified as amended at 30 U.S.C. § 181 et seq.), with the Mineral Leasing Act for Acquired Lands of 1947, Pub. L. 80-382, 61 Stat. 913 (codified as amended at 30 U.S.C. §§ 351-60)). The fact that BLM only used one of these terms of art in the message does not mean that the distinction was fabricated.

The County's reaction to the message also demonstrates it understood the distinction. Board meeting minutes from December 2003 show that the County was "concern[ed] that BLM may not be recognizing the [C]ounty's royalty right on parcels which were originally patented with mineral reservations to the federal government." This goes beyond whether the County should have known of the United States' claim to the royalty interest, as the County actually expressed concern about it. The County knew of the United States' adverse claim, thus triggering the limitations period. See 28 U.S.C. § 2409a(g). The County argues that the meeting minutes only show that the County was concerned about the problem, but it had no information about which tracts had producing leases and whether BLM was withholding any royalty payments. This misunderstands the Quiet Title Act's accrual rule. The United States' "claim need not be 'clear and unambiguous'" or asserted together with "explicit notice." Spirit Lake Tribe, 262 F.3d at 738 (quoting

Block II, 789 F.2d at 1313). The question is not whether BLM provided such notice, but whether the County knew or should have known of the claim's general contours. See Gambrell, 111 F.4th at 875 ("[A]ll that is required is constructive notice that the [G]overnment holds a reasonable claim to some interest in the property."). The December 2003 meeting minutes demonstrate that the County had that notice here.

Finally, the County asserts that our decision in Patterson v. Buffalo National River means the limitations period is not triggered when a claim is vague or disputed. Patterson involved competing interpretations of language in the original deed. 76 F.3d at 224. In addition to a plot of land, the deed conveyed to the United States an interest in "any means of ingress or egress." Id. at 223. The United States interpreted the phrase to include a "primitive" road accessing ungranted property, while the grantors felt it applied only to paths to the granted property. Id. at 223-24. Because the language was "too ambiguous to place the [grantors] on notice of the Government's claims"—in large part because Arkansas law supported the grantor's interpretation—the limitations period could not have begun by the issuance of the deed itself. Id.

That situation stands in stark contrast to the one here. BLM made its interpretation of the 1930's Condemnation Judgments known. More fundamentally, the County actually understood what the United States meant: the United States was not recognizing a royalty interest "on parcels which were

originally patented with mineral reservations to the federal government." That the County did not know which tracts had producing leases or which royalty interests the United States claimed does not affect the analysis. "Knowledge of the claim's full contours is not required," Block II, 789 F.2d at 1313 (citation omitted), nor is notice of the specific tracts or royalties, Wrigley, 31 F.4th at 1041-42. All that was needed was "a reasonable awareness that the Government claims some [adverse] interest." Block II, 789 F.2d at 1313 (citation omitted). The County had that awareness here.

At the latest, the County knew the United States did not recognize outstanding mineral royalties in lands in which the mineral estate was reserved to the United States in the original patent by December 2, 2003. It had a "generous" twelve years from that date to figure out which specific tracts were disputed and bring its claim. See Gambrell, 111 F.4th at 875. The County's failure to do so is fatal. The County's Quiet Title Act claim is untimely, and the district court erred in holding otherwise. Accordingly, the district court erred in entering judgment in favor of the County, and its judgment must be reversed.

IV.

For these reasons, the judgment of the district court is reversed, and we remand this case to the district court with instructions to enter judgment in favor of the United States consistent with this opinion.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA

McKenzie County, North Dakota, Plaintiff, vs. United States of America and the Department of the Interior, Defendants.	)	**ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT** Case No. 1:16-cv-001

Before the Court are cross motions for summary judgment filed on May 24, 2023. See Doc. Nos. 71 and 72. The motions have been fully briefed. See Doc. Nos. 71-1, 73, 74, 75, 76, and 77. For the reasons set forth below, the Plaintiff's motion for summary judgment is granted and the Defendant's motion for summary judgment is denied.

I. BACKGROUND

This case began when McKenzie County, North Dakota, filed a complaint against the United States on January 11, 2016. See Doc. No. 1. In its complaint,

McKenzie County sought to quiet title to the 6 ¼ percent royalty interest in he mineral estate granted to it in six condemnation judgments entered by this Court in the 1930's. McKenzie County filed an amended complaint on April 2,2016. See Doc. No. 7. On August 6, 2019, the Court denied the United States' motion to dismiss for lack of subject matter jurisdiction. See Doc. No. 36. A second amended complaint was filed on August 30, 2019, alleging claims for enforcement of the Court's judgments in prior related litigation and, in the alternative, to quiet title to the disputed mineral interests under the Quiet Title Act, 28 U.S.C. § 2409a ("Quiet Title Act"). See Doc. No. 37. On September 9, 2020, the Court denied the United States' motion to dismiss the second amended complaint. See Doc. No. 49. Much of the present controversy stems from legal proceedings spanning more than seventy-five (75) years and relating to mineral interests in land located in McKenzie County. Now before the Court are cross motions for summary judgment. See Doc. Nos. 71 and 72. To provide context for the current motions, a discussion of the long legal history of the disputed lands and minerals in McKenzie County is necessary.

A. Early Condemnation Actions

From the late 1800's through the 1920's, settlers acquired federal lands for agricultural purposes under the Homestead Act of 1862, the Stock-Raising Homestead Act of 1916, the Mineral Lands and Mining Act of 1914, or through purchasing land granted to railroads by the United States in the western United States, including McKenzie County in western North Dakota. In some cases the patent

granted the settler title to both the surface and mineral estate while in others the United States reserved the mineral interest.

In the 1930's, prolonged drought along with economic depression caused many farms in McKenzie County to fail and farmers were unable to pay their property taxes. Consequently, McKenzie County acquired title to significant acreage through foreclosures. See McKenzie County Hodel, 467 N.W.2d 701, 702 (N.D. 1991). Through these tax foreclosures, McKenzie County acquired title to the foreclosed land, including the minerals if the farmer owned them prior to foreclosure. McKenzie County formalized its ownership of the foreclosed land by quit claim or Sheriff's deed, whether it was both the surface and mineral estates or the surface estate alone.

Due to the difficult economic conditions in the United States in the 1930's, Congress directed the United States Department of Agriculture ("USDA") to acquire failed farmland for conservation and other public purposes, including grazing. The USDA program in North Dakota was known as the Little Missouri Land Adjustment Project. The acquisitions were accomplished pursuant to a number of federal programs including the National Industrial Recovery Act of 1933, Emergency Relief Appropriations Act of 1935, Emergency Relief Appropriations Act of 1936, and the Bankhead-Jones Farm Tenant Act of 1937. Congress authorized the USDA to not only acquire land, but also authorized it to grant, sell, lease, or otherwise dispose of such property.

In furtherance of these Congressional directives, the Secretary of Agriculture, with the assistance of the Attorney General, negotiated the

purchase of foreclosed lands from McKenzie County. Pursuant to the agreement reached between McKenzie County and the United States, McKenzie County deeded all interests it owned in the foreclosed lands to the United States in exchange for a small cash payment, a 6 ¼ percent perpetual royalty interest in the oil and gas production on all of the foreclosed lands, and cooperation with condemnation proceedings. The deeds from McKenzie County to the United States did not recite any royalty reservation, although the declarations of taking and final judgments noted the 6 ¼ percent perpetual royalty interest in favor of McKenzie County. See Doc. No. 47-5, pp. 6 and 59. In an effort to avoid a claim to a right of redemption under state law by the party who originally forfeited the property, and to ensure clear title to the lands, the United States initiated "friendly" condemnation actions in federal district court in North Dakota which were unopposed by McKenzie County. The six relevant condemnation actions are identified as follows:

1. United States v. 10,683.00 Acres of Land, More or Less, in McKenzie County, State of North Dakota, At Law No. 1000 (D.N.D. June 30, 1937);
2. United States v. 12,344.54 Acres of Land, More or Less, in McKenzie County, State of North Dakota, At Law No. 1001 (D.N.D. Feb. 6, 1938);
3. United States v. 17,463.13 Acres of Land, More or Less, in McKenzie County, State of North Dakota, At Law No. 1002 (D.N.D. Oct. 5, 1938);
4. United States v. 11,994.84 Acres of Land, More or Less, in McKenzie County, State of North Dakota, At Law No. 1006 (D.N.D. Feb. 25,

1938);

5. United States v. 9,914.53 Acres of Land, More or Less, in McKenzie County, State of North Dakota, At Law No. 1007 (D.N.D. Oct. 11, 1939); and,
6. United States v. 11,626.49 Acres of Land, More or Less, in McKenzie County, State of North Dakota, At Law No. 1028 (D.N.D. June 15, 1938).

See Doc. Nos. 47-2, 47-3, 47-4, 47-5, 47-6, and 47-7 (collectively referred to as the "Condemnation Judgments" and often referenced by the "At Law" number). Following an agreement by the parties, a Declaration of Taking, which started the condemnation process, was filed and eventually a final judgment was entered in each condemnation action. See Doc. Nos. 47-2, p. 5; 47-3, p. 6; 47-4,p. 6; 47-5, p. 6; 47-6, p. 9; and 47-7, p. 6.

The Declarations of Taking signed by the Secretary of Agriculture, and caused to be filed in five of the six condemnation cases, provided the United States took the described lands in fee simple and "subject, however, to the rights of McKenzie County, State of North Dakota, to a 6 ¼% perpetual royalty in minerals which exist or may be developed on said lands..." See Doc. Nos. 47-2, p. 5, 47-3, p. 6, 47-4, p. 6, 47-5, p. 6, and 47-7, p. 6. In At Law 1000 the Declaration of Taking similarly provided the United States' interest was taken "subject, however, to the rights of McKenzie County, State of North Dakota, to a 6 ¼% perpetual royalty in minerals which may exist or may be developed on all of said tracts..." and a second reference therein stated the United States' interest was "subject to a 6 ¼ percent royalty

reservation in favor of McKenzie County..." See Doc. No. 47-6, pp. 6 and 9.

The final judgments and partial final judgments entered in each case stated, with some slight variations, as follows:

> That the United States of America is the owner in fee simple of the lands hereinbefore described, subject, however, to the rights of McKenzie County, North Dakota, to a 6 ¼% perpetual royalty in minerals which exist or may be developed on said lands.

See Doc. Nos. 47-2, pp. 49, 59, and 89; 47-3, pp. 50 and 72; 47-4, pp. 46, 55, and 83; 47-5, p. 59; 47-6, p. 60; and 47-7, pp. 69 and 84. The Court retained jurisdiction in each case in order to enter such further orders or decrees as may be necessary. See Doc. Nos. 47-2, pp. 50, 59, and 90; 47-3, pp. 51 and 73; 47-4, pp. 47, 55, and 84; 47-5, p. 60; 47-6, p. 61; and 47-7, pp. 70 and 85.

The United States Department of Interior ("DOI"), through the Bureau of Land Management ("BLM"), is tasked with the responsibility to monitor and manage the royalty payments owed to landowners and monitored McKenzie County's 6¼ percent perpetual royalty interest following the entry of the Condemnation Judgments. See Doc. No. 20 at ¶ 4. Upon entry of the Condemnation Judgments, BLM annotated its records to recognize the 6¼ percent royalty interest in favor of McKenzie County for those lands where the previous owner held both the surface and mineral estates and were foreclosed by McKenzie County prior to the condemnation proceedings. See Doc. No. 20 at ¶ 4. These minerals, received from

McKenzie County through tax foreclosure, are referred to by the BLM as "acquired minerals." Unbeknownst to McKenzie County, the BLM did not annotate its records to reflect the 6 ¼ percent royalty interest in favor of McKenzie County for those lands in which the United States had reserved the mineral interest in the original patent. Id. At ¶ 6. These mineral interests are referred to by the BLM as "public domain minerals." Id. at ¶ 7. The lands subject to the Condemnation Judgments included both lands with "acquired minerals" and lands with "public domain minerals." The Condemnation Judgments do not use the terms "acquired minerals" or "public domain minerals" or make any distinction between the two terms, and only an investigation of title could reveal the distinction. In other words, the terms "acquired minerals" or "public domain minerals" are not used anywhere in the final judgments from the 1930's. These terms are also not used or even referred to in the Declarations of Taking. The 6¼ royalty interest conveyed to McKenzie County is located in the universal paragraph found in each judgment, and applied to all tracts of land listed in each judgment unless the tract was expressly excluded.

After entry of the Condemnation Judgments, McKenzie County received payments from operators as a result of the 6 ¼ percent royalty interest annotation in BLM's records, at least as to the so-called "acquired minerals." These payments stopped in 1985 when the BLM directed operators to pay the 6 ¼ percent royalty interest to the United States. The BLM's unilateral decision to stop payments to McKenzie County was based solely on their interpretation of the North Dakota Supreme Court's

1962 decision in *DeShaw v. McKenzie County*, 114 N.W.2d 263 (N.D. 1962) (holding North Dakota law did not permit a county to convey anything less than all of its interest in a tax title, thus effectively foreclosing any right of redemption). This BLM decision to stop the royalty payments to McKenzie County occurred more than 20-years after the holding in *DeShaw*.

B. DeShaw v. McKenzie County

In 1962, in *DeShaw v. McKenzie County*, the North Dakota Supreme Court concluded McKenzie County was precluded under North Dakota law from retaining a mineral interest and conveying less than all of its rights, title, and interest to property acquired through tax foreclosure. 114 N.W.2d 263, 265 (N.D. 1962). On June 7, 1985, and as a consequence of the North Dakota Supreme Court's *DeShaw* decision in 1962, the BLM notified McKenzie County that as of July 1, 1985, "royalty payments formerly made to the counties [Billings, Golden Valley, and McKenzie] based on the invalid 6 ¼ percent royalty reservation are payable to the United States." See Doc. No. 20-4, p 1. The effect of the letter was to invalidate McKenzie County's 6 ¼ percent royalty interest created by the Condemnation Judgments from the 1930's.

McKenzie County appealed the BLM's June 7, 1985, letter decision to the Interior Board of Land Appeals ("IBLA"). On October 20, 1987, the IBLA issued an opinion affirming the BLM's invalidation of the 6 ¼ percent royalty interest in light of DeShaw. See Doc. No. 20-5. In its opinion, the IBLA stated McKenzie County, along with Billings County and an oil company, were appealing BLM's decision

"declaring invalid royalty reservations . . . in lands acquired by those counties through tax proceedings and subsequently acquired by the United States as the result of condemnation proceedings." See Doc. No. 20-5, p. 2. On December 16, 1987, McKenzie County filed suit in federal court against Donald Hodel, then-Secretary of the Interior, and others, seeking to quiet title to its 6 ¼ percent royalty interest created by the condemnation judgments. See McKenzie County v. Hodel, No. A4-87-211 (D.N.D. Dec. 17,1987) ("*McKenzie II*").

C. McKenzie County II

In the 1987 federal suit (*McKenzie II*), McKenzie County alleged *DeShaw* was inapplicable to the 6 ¼ percent royalty interest in the Condemnation Judgements. They requested the Court declare the 6 ¼ percent royalty interest belonged to McKenzie County, quiet title in favor of McKenzie County to the 6 ¼ percent royalty interest, and order the defendants to reimburse and pay to McKenzie County the monies due pursuant to the valid 6 ¼ percent royalty interest. See Doc. No. 20-6, p. 22. Upon McKenzie County's motion, the Court (Judge Patrick A. Conmy) certified two questions to the North Dakota Supreme Court:

> The question of law can have a different appearance from the 'spin' put on its presentation.
>
> Does a condemnation judgment, pursuant to a stipulation between the parties, recognizing an otherwise invalid reservation of a mineral interest, operate as a conveyance, so as to give validity to

> the conveyance as between the parties to the stipulation?
>
> Does a condemnation judgment, brought for the purpose of quieting title in the Federal Government to lands acquired from the County, insulating the federal government from any claims of former owners who lost the land to the County through tax title proceedings, which recognizes an invalid mineral interest reservation, operate as a conveyance back to the county of the mineral interest covered so as to make no longer applicable North Dakota statutory provisions declaring the reservation invalid?

McKenzie County v. Hodel, 467 N.W.2d 701, 703 (N.D. 1991) ("*McKenzie I*"). The North Dakota Supreme Court noted the questions posed by the federal district court could be taken as asking the North Dakota Supreme Court to "construe a federal court judgment and determine its legal effect." Id. Leaving the construction of the Condemnation Judgments to the federal district court, the North Dakota Supreme Court narrowed the questions presented for its consideration to:

> I. Under North Dakota law, may title to real property be transferred through a judgment without compliance with the conveyancing statutes?
>
> II. Do Chapter 288, 1931 N.D. Sess. Laws, and *DeShaw v. McKenzie County*, 114 N.W.2d 263 (N.D. 1962), prohibit the County from acquiring title to a mineral

> interest through operation of a condemnation judgment under the facts presented?

Id. at 704.

In answering the first question, the North Dakota Supreme Court held "North Dakota conveyancing statutes do not affect the validity or enforceability" of federal condemnation judgments because under Rule 70 of the North Dakota Rules of Civil Procedure, as well as its federal counterpart, a judgment may divest the title of a party and vest it in another, having the effect of conveying real property. Id. at 705; see also N.D. R. Civ. P. 70. The North Dakota Supreme Court recognized that a federal condemnation judgment creates a new title, extinguishes all previous rights, and has the effect of a conveyance despite the use of language of reservation. Id. Therefore, "North Dakota law does not impede the transfer of title to real property by operation of a judgment." Id.

The North Dakota Supreme Court then turned to the question of whether Chapter 288, 1931 N.D. Session Laws, and its decision in *DeShaw* prohibit the County from "acquiring title to the disputed mineral rights through operation of the condemnation judgment." Id. The North Dakota Supreme Court concluded nothing in *DeShaw* or Chapter 288 "limits the County's authority to reacquire title to property formerly held by tax title," and more specifically "Chapter 288, and its interpretation in *Deshaw* do not prohibit the County from acquiring title to mineral interests through operation of a condemnation judgment." Id. at 707.

After the North Dakota Supreme Court issued its order addressing the certified questions, McKenzie County filed a motion for summary judgment in the federal district court case, requesting the Court enter judgment in its favor by confirming McKenzie County's ownership of the disputed 6 ¼ percent royalty interest and setting aside the decisions of the BLM and the Interior Board of Land Appeals. See Doc. No. 24-9, pp. 2-3. The Court granted the motion and held that "the recognition of a mineral reservation in the County in the federal condemnation judgments operates as a conveyance of that mineral interest to the County." See Doc. No. 20-7 at 2. Judgment quieting title in the disputed minerals in favor of McKenzie County was entered on June 24, 1991 ("1991 Judgment"). See Doc. No. 20-8. In the 1991 Judgment, the Court concluded "a mineral reservation in favor of McKenzie County in the federal condemnation judgments operates as a conveyance of that mineral interest to McKenzie County" and ordered "title to the disputed minerals (6 ¼% royalty) is quieted in McKenzie County; and, the Defendants are barred from any claim in regard to the same or proceeds from the same; that McKenzie County is the owner of the disputed minerals (6 ¼% royalty) free and clear of any claim of the above named defendants." See Doc. No. 20-8 at 3. The United States did not appeal the 1991 Judgment.

D. Events After McKenzie County II

After the 1991 Judgment was entered quieting title to the 6 ¼ percent royalty interest in favor of McKenzie County, the BLM "resumed annotating its records to recognize the 6 ¼ percent royalty interest

to McKenzie County for those lands described in its 1987 complaint, which were the lands described in the Condemnation Judgments that contained acquired minerals." See Doc. No. 20, ¶ 11. McKenzie County understood the 1991 Judgment to apply to all tracts listed in the Condemnation Judgments. See Doc. No. 24-2, ¶ 4. However, and unbeknownst to McKenzie County, the BLM did not annotate its records to apply the 1991 Judgment to the tracts referenced in the Condemnation Judgments which BLM determined pertained to "public domain minerals." See Doc. No. 20, ¶ 13, 24-2, ¶¶ 4-5. Again, this was a term never used in the Condemnation Judgments. While the BLM directed well operators to resume payment of a 6 ¼ percent royalty interest to McKenzie County on the "acquired mineral" tracts, the record reveals as late as 1993, the BLM was still identifying "additional oil and gas leases subject to the 6 ¼ percent royalty rate reservation" because "lands were not identified on [BLM's] records during [its] initial review." See Doc. Nos. 24-11 and 24-12.

After the 1991 Judgment was entered, McKenzie County, along with other companion counties, made efforts to ascertain what lands within the counties were burdened by the 6 ¼ percent royalty interest. By 1998, McKenzie County had undertaken a "Natural Resource Inventory" project to review legal records and condemnation judgments, with State's Attorney Dennis Johnson traveling to Kansas City, Missouri, to retrieve legal records of the 1930's condemnation actions. See Doc. No. 24-2, pp. 5, 36. On November 17, 2003, Karen Johnson, Chief of the Fluids Adjudication Section in the BLM Billings Field Office, sent a fax to McKenzie County States's

Attorney Dennis Johnson and Keith Winter that stated, in part: "Our records show only the acquired minerals in the Judgments/Partial Judgments of Declarations of Taking At Law Nos. 1000, 1001, 1002, 1006, 1007, 1028, 1036 and 1042 are subject to a 6 ¼% royalty reservations." See Doc. No. 24-4, p. 13. As previously noted, the term "acquired minerals" is a term created solely by the BLM but never used in any of the Condemnation Judgments or the Declarations of Taking.

On December 19, 2003, McKenzie County Commissioner Roger Chinn and Billings County Commissioner Jim Arthaud met with Elaine Kaufman, Karen Johnson, and Joan Seibert from the BLM Fluids Adjudication Section in Billings, Montana, to compare the tracts of lands the records obtained by the Counties of the commendation judgments subject to a 6 ¼ percent royalty interest and the BLM records. See Doc. No. 24-2, p. 10. Chinn and Arthaud provided the BLM with copies of the Condemnation Judgments and documents from the condemnation proceeding, as well as a list of the legal descriptions of the tracts of land in McKenzie, Golden Valley, and Billings Counties that were tied to a specific paragraph in the condemnation judgments recognizing the 6¼ percent royalty interest grant to the Counties. Id. After the meeting, Karen Johnson sent an email to individuals within the BLM indicating the Counties provided the BLM with "a list of legal descriptions which provides reference to the At Law #s and the Tract #s" and "[BLM] will review the information they provided to ensure our records accurately reflect the 6 ¼% outstanding royalty

reservation in Slope, Golden Valley, McKenzie, and Billings Counties." See Doc. No. 24-2, p. 84.

On January 30, 2004, McKenzie County Commissioner Roger Chinn received a letter from Karen Johnson from the BLM dated January 27, 2004, informing the Counties of the result of the BLM's review of lands subject to a 6 ¼ percent royalty interest in favor of the Counties. See Doc. No. 24-2, pp. 92-93. In the letter, the BLM indicated McKenzie County claimed 74,032.81 acres are subject to a 6 ¼ percent royalty reservation, but the BLM's records show only 58,368.94 acres are subject to the reservation; Golden Valley County claimed 5,925.27 acres are subject to a 6 ¼ percent royalty reservation, but the BLM's records show only 3,845.27 acres are subject to the reservation; and Billings County claimed 14,921.63 acres are subject to a 6 ¼ percent reservation, but the BLM's records show only 13,990.94 acres are subject to the reservation. The BLM explained the discrepancy between the Counties' records and the BLM's records: "the acreage differences between our records and yours are primarily because your records included lands with Public Domain minerals. Only lands acquired by the United States in the condemnations are subject to a 6 ¼ percent royalty reservation." See Doc. No. 24-2, p. 92. The letter also included attachments enumerating lands in McKenzie, Golden Valley, and Billings County in which the BLM does not recognize a 6 ¼ percent mineral interest in favor of the Counties because those minerals are either "public domain minerals" or were specifically excluded from the reservation in the original condemnation judgments. Id.

After McKenzie County received the BLM's January 27, 2004, letter, McKenzie and Billings Counties exchanged several more letters with the BLM to clarify the status of certain lands. On June 18, 2004, the BLM sent another letter to Chinn and Arthaud stating the BLM would direct the Counties' request for recognition of the 6 ¼ percent royalty interest in all lands acquired through condemnation judgments to BLM's Rock Mountain Field Solicitor "for an opinion regarding [their] claim to a 6 ¼ percent royalty in lands with public domain minerals acquired through condemnation." See Doc. No. 24-2, p. 116. On December 16, 2004, BLM sent a letter to Chinn and Arthaud stating the BLM's Rocky Mountain Region Field Solicitor reviewed the Counties' claim to a 6 ¼ percent royalty interest in all lands in the condemnation judgments, and determined, in an opinion dated September 7, 2004, that "the Bureau of Land Management's decision to issue public domain mineral leases without a royalty reservation to the counties is defensible." See Doc. Nos. 24-2, p. 118 and 24-2, pp.119-22.

On March 7, 2005, counsel for McKenzie County sent a letter to the United States Department of the Interior, Office of the Solicitor requesting the office review the opinion of the Rocky Mountain Region Field Solicitor and direct the BLM to recognize a 6 ¼ percent royalty interest in favor of the Counties for all lands acquired by the United States in the condemnation judgments. See Doc. No. 24-4, pp. 15, 20. It does not appear the Department of the Interior ever responded to McKenzie County's letter.

McKenzie County then initiated this action on January 11, 2016, filed an amended complaint on

April 12, 2016, and a second amended complaint on August 30, 2019. See Doc. Nos. 1, 7, and 37. The second amended complaint contains two claims. The first is for enforcement of the Court's prior judgments through a writ of mandamus. The second claim, pled in the alternative, is to quiet title to the 6 ¼ percent royalty interest in favor of McKenzie County for the "public domain minerals" related to the condemnation judgments. Both parties have moved for summary judgment. See Doc. Nos. 71 and 72.

II. STANDARD OF REVIEW

Summary judgment is appropriate when the evidence, viewed in a light most favorable to the non-moving party, indicates that no genuine issues of material fact exist and that the moving party is entitled to judgment as a matter of law. Davison v. City of Minneapolis, 490 F.3d 648, 654 (8th Cir. 2007); see Fed. R. Civ. P. 56(a). Summary judgment is not appropriate if there are factual disputes that may affect the outcome of the case under the applicable substantive law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). An issue of material fact is genuine if the evidence would allow a reasonable jury to return a verdict for the non-moving party. Id. The purpose of summary judgment is to assess the evidence and determine if a trial is genuinely necessary. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986).

The Court must inquire whether the evidence presents a sufficient disagreement to require the submission of the case to a jury or whether the evidence is so one-sided that one party must prevail as a matter of law. Diesel Mach., Inc. v. B.R. Lee

Indus., Inc., 418 F.3d 820, 832 (8th Cir. 2005). The moving party bears the responsibility of informing the court of the basis for the motion and identifying the portions of the record which demonstrate the absence of a genuine issue of material fact. Torgerson v. City of Rochester, 643 F.3d 1031, 1042 (8th Cir. 2011). The non-moving party may not rely merely on allegations or denials in its own pleading; rather, its response must set out specific facts showing a genuine issue for trial. Id.; Fed. R. Civ. P. 56(c)(1). If the record taken as a whole and viewed in a light most favorable to the non-moving party could not lead a rational trier of fact to find for the non-moving party, there is no genuine issue for trial and summary judgment is appropriate. Matsushita, 475 U.S. at 587.

III. LEGAL DISCUSSION

Both parties have moved for summary judgment. There is no dispute McKenzie County holds a 6 ¼ percent royalty interest as to the "acquired minerals" and this interest was created by the Condemnation Judgments. The dispute is over approximately 10,000+ acres of "public domain minerals," which is a term of art created by the BLM and found nowhere in the Condemnation Judgments from the 1930's, the Declarations of Taking, or the 1991 Judgment. The Court has carefully reviewed the parties' briefs and exhibits and the entire record, which is extensive. The Court finds, based upon the plain language of the judgments in question, that the position of McKenzie County that the Condemnation Judgments created a 6 ¼ percent royalty interest in favor of McKenzie County in all the listed tracts of land to be more persuasive than the position of the

United States. The United States' position that the 6 ¼ percent royalty interest does not apply to"public domain minerals" is devoid of merit.

A. STATUTE OF LIMITATIONS

The United States contends both of McKenzie County's claims for relief are barred by the Quiet Title Act's 12-year statute of limitations. See 28 U.S.C. § 2409a(g). The statute provides "Any civil action under this section, except for an action brought by a State, shall be barred unless it is commenced within twelve years of the date upon which it accrued. Such action shall be deemed to have accrued on the date the plaintiff or his predecessor in interest knew or should have known of the claim of the United States." 28 U.S.C.A. § 2409a(g). The Quiet Title Act's 12-year time limit for bringing a claim against the United States is a nonjurisdictional claims-processing rule. Wilkins v. United States, 598 U.S. 152, 155 (2023). As a nonjurisdictional claims-processing rule, the limitation period in the Quiet Title Act is subject to equitable tolling, fraudulent concealment, waiver, and estoppel arguments. Id. at 164.

This action was commenced on January 11, 2016, when McKenzie County filed its complaint against the United States. As set forth in the second amended complaint, McKenzie County's first claim for relief is for a writ of mandamus under the All Writs Act, 28 U.S.C. § 1651(a) and Rule 70 of the Federal Rules of Civil Procedure. McKenzie County seeks an order compelling the United States to comply the Court's Condemnation Judgments from the 1930's and the 1991 Judgment. McKenzie County's second claim, which is made in the alternative, is brought

pursuant to the Quiet Title Act and seeks to quiet title to the "public domain minerals."

The United States contends the first claim is barred because it seeks to quiet title. McKenzie County maintains the first claim does not seek to quiet title because title was quieted in 1991 in federal court and all that is sought is enforcement of the Court's prior judgments. The Court agrees with McKenzie County. The Court is unpersuaded that it lacks authority to enforce its own judgments which, as explained below, are clear and unambiguous.

The All Writs Act provides that federal courts "may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. § 1651(a). Standing alone, it is not an independent source of subject matter jurisdiction. Ark. Blue Cross & Blue Shield v. Little Rock Cardiology Clinic, P.A., 551 F.3d 812, 820-21 (8th Cir. 2009). However, it does "give[] federal courts power to effectuate and prevent the frustration of orders it has previously issued in its exercise of jurisdiction otherwise obtained." Nichols v. Harbor Venture, Inc., 284 F.3d 857, 862 (8th Cir. 2002). The All Writs Act gives federal courts the power to issue writs of mandamus "to enforce our prior mandate to prevent evasion" and such mandate"encompasses everything decided, either expressly or by necessary implication." In re MidAmerican Energy Co., 286 F.3d 483, 486-87 (8th Cir. 2002).

Rule 70(a) of the Federal Rules of Civil Procedure provides that "[i]f a judgment requires a party to convey land, to deliver a deed or other document, or to perform any other specific act and the

party fails to comply within the time specified," then a court can "order the act to be done." Fed. R. Civ. P. 70(a). "Rule 70 gives the district court a discrete and limited power to deal with parties who thwart final judgments by refusing to comply with orders to perform specific acts." Analytical Eng'g, Inc. v. Baldwin Filters, Inc., 425 F.3d 443, 449 (7th Cir. 2005).

When the Court issued the Condemnation Judgments in the 1930's it retained jurisdiction "for the purpose of entering such further orders or decrees as may be necessary." See Doc. No. 47-5, p. 60. It is undisputed the Court had jurisdiction over the condemnation cases and in *McKenzie II*. What McKenzie County seeks in its first claim for relief is an order of the Court directing the United States to comply with the Court's prior orders and the judgment from 1991. The first claim for relief does not seek to quiet title. It is clear that title had already been quieted in *McKenzie II*. It is enforcement that is sought in the first claim for relief. Based on the judgments themselves, the All Writs Act, and Rule 70 of the Federal Rules of Civil Procedure, the Court finds the Quiet Title Act's 12-year limitations period does not apply to McKenzie County's first claim for relief. The Court further finds it has the authority to enforce its prior judgments and prevent the BLM from evading the clear intent expressed therein.

As for the second claim for relief, because the claim was pled in the alternative and the Court has ruled in McKenzie County's favor on the first claim for relief, the Court does not need to reach the merits of the claim. That being so, the Court finds McKenzie County's position on the issue of timeliness is far more

persuasive than that of the United States. The United states points to and relies upon a November 17, 2003, fax from the BLM with a vague and undefined reference to "acquired minerals" and no mention of "public domain" minerals as triggering the limitations period. See Doc. No. 24-4 pp. 11-13. It is clear and undisputed the Court did not use the terms "acquired minerals" and "public domain minerals" in the Condemnation Judgments from the 1930's or the 1991 Judgment. See Doc. No. 76, p. 1. Any after the fact assertion by the BLM, which was the losing party in *McKenzie II*, that these self-created terms represent the unexpressed intent of the Court is baseless.

In his declaration, former McKenzie County State's Attorney Dennis Johnson makes it clear that he and McKenzie County did not know and could not have known that the BLM was refusing to recognize McKenzie County's 6 ¼ percent royalty interest after *McKenzie II* was decided. The BLM was difficult to communicate with, unwilling to fully share information, and the royalty checks the county received did not describe the tracts of land involved. See Doc. No. 24-3, ¶¶ 13-14. The BLM never notified McKenzie County of its decision to refuse to pay royalties on what it considered "public domain minerals." See Doc. No. 24-3, ¶ 14. The only way McKenzie County could have determined the BLM was withholding royalty payments would have been to audit oil and gas well records kept by the North Dakota Industrial Commission and royalty receipts received by McKenzie County and compare them to the tracts of land listed in the Condemnation Judgments from the 1930's. See Doc. No. 24-3, ¶ 22. The November 17, 2003, fax, relied upon by the United

States as a trigger event for the statute of limitations, is vague at best; fails to define "acquired minerals;" fails to define or make any mention of "public domain minerals;" and the Court did not use those terms in the Condemnation Judgments or the 1991 Judgment. As a result, it cannot be said that the fax from the BLM in 2003 reasonably put McKenzie County on notice as to the BLM's interpretation of the Court's judgments. The 12-year statute of limitations is not triggered if the Government's claim is ambiguous or vague. Patterson v. Buffalo National River, 76 F.3d 221, 224 (8th Cir. 1996).

B. AMBIGUITY

The United States contends the Condemnation Judgments from the 1930's are ambiguous and the 1991 Judgment did not resolve the dispute. McKenzie County contends, and the Court agrees, that the Condemnation Judgments and the 1991 Judgment are clear and unambiguous and the issue was fully resolved in *McKenzie II*. If a judgment is clear and unambiguous, then "it shall be construed according to its plain meaning." Minch Family LLLP v. Buffalo-Red River Watershed Dist., 628 F.3d 960, 967 (8th Cir. 2010).

The condemnation judgments stated as follows:

> That the United States of America is the owner in fee simple of the lands hereinbefore described, subject, however, to the rights of McKenzie County, North Dakota, to a 6¼ percent perpetual

> royalty in minerals which exist or may be developed on said lands.

See Doc. Nos. 47-2, pp. 49, 59, and 89; 47-3, pp. 50 and 72; 47-4, pp. 46, 55, and 83; 47-5, p. 59; 47-6, p. 60; and 47-7, pp. 69 and 84.

The plain language of the Condemnation Judgments clearly conveyed to McKenzie County a 6 ¼ percent royalty interest in the minerals associated with each tract of land described therein. None of the Condemnation Judgments made any distinction between or even made any reference to "acquired minerals" or "public domain minerals," nor did the judgments make any direct or indirect reference to those terms. As the Supreme Court has explained, "a good rule of thumb for reading [a Court's] decision is that what they say and what they mean are one and the same." Mathis v. United States, 579 U.S. 500, 514 (2016). The Court sees no ambiguity in the language of the Condemnation Judgments.

In *McKenzie II*, this Court reaffirmed the plain meaning of the Condemnation Judgments and clearly recognized McKenzie County's 6 ¼ percent royalty interest. The Court held "that the recognition of a mineral reservation in the County in the federal condemnation judgments operates as a conveyance of that mineral interest in the County." See Doc. No. 20-7 (emphasis added). The condemnation actions extinguished all title McKenzie County held and the Condemnation Judgments conveyed new title (6 ¼ percent royalty interest) to McKenzie County. See Doc. No. 20- 8, p. 3. The Court further directed that "judgment be entered quieting title in the County to the disputed minerals." See Doc. No. 20-7. The 1991 Judgment stated as follows:

> The Federal Government's condemnation actions against McKenzie County in the late 1930's extinguished all title McKenzie County had in the land, including any royalty interests. New title then vested in the Federal Government and through the condemnation judgments McKenzie County received the 6¼% royalty interest. The recognition of a mineral reservation in favor of McKenzie County in the federal condemnation judgments operates as a conveyance of that mineral interest to McKenzie County.
>
> It is ORDERED AND ADJUDGED that title to the disputed minerals (6¼% royalty) is quieted in McKenzie County; and the Defendants are barred from any claim in regard to the same or proceeds from the same; that McKenzie County is the owner of the disputed minerals (6¼% royalty) free and clear of any claim of the above named defendants.

See Doc. No. 20-8, p. 3. Under the plain and unambiguous terms of the 1991 Judgment, this Court held that the mineral reservation in the Condemnation Judgments operates as a conveyance of a 6 ¼ percent royalty interest to McKenzie County, and quieted title to it in favor of McKenzie County. Not unsurprisingly since the terms were not used by either party in the case, the 1991 Judgment did not make any distinction between nor make any reference to "acquired minerals" or "public domain minerals." The Court defined the "disputed minerals" as the "6

¼% royalty" conveyed by the Condemnation Judgments. See Doc. No. 20-8, p. 3. More important, the United States never appealed the 1991 Judgment.

The United States contends this cannot be so because the use of the word "reservation" in two of the Judgments On Declaration of Taking renders them a reconveyance that could only apply to lands with "acquired minerals." The United States also contends it did not gratuitously create a royalty interest in McKenzie County's favor for the lands which it describes as holding "public domain minerals." These contentions are unpersuasive for several reasons.

First, the United States fails to acknowledge the plain language of the Condemnation Judgments. The plain language is crystal clear when it states the United States is the owner of the condemned lands in fee simple "subject, however, to the rights of McKenzie County, North Dakota to a 6 ¼ percent perpetual royalty in minerals which exist or may be developed on said lands." See Doc No. 47-6, p. 60. The Condemnation Judgments neither make any mention of, nor make any distinction between, "acquired minerals" and "public domain minerals." These terms of art are not used in the Declarations of Taking or the Condemnation Judgments. Nor are these terms used in the 1991 Judgment. These terms are a fiction, created by the BLM after the fact, to justify its unwillingness to recognize the plain language of the Condemnation Judgments. The United States cannot create ambiguity by ignoring the plain language of a judgment that it failed to appeal. It should be noted that in its reply brief (Doc. No. 76, p. 1, n. 1) the United States acknowledged that the terms "acquired minerals" or "public domain minerals" are not used

anywhere in the Condemnation Judgments or the Declarations of Taking.

Second, the royalty was not gratuitous. The royalty was the result of the bargain struck between McKenzie County and the United States. The record reveals negotiations involved one price with a royalty in favor of McKenzie County and another higher price with no royalty. See Doc. No. 73-10. Ultimately, the United States received all of the land and the minerals and McKenzie County's cooperation in the "friendly" condemnation proceedings. In return, McKenzie County received a 6 ¼ percent perpetual royalty in all the land and a cash payment. See Doc. No. 47-5, p. 50. This arrangement also had the effect of simplifying a complex proceeding involving approximately 75,000 acres of land in McKenzie County. If the United States and McKenzie County had intended to limit the 6 ¼ percent royalty interest to only the "acquired minerals" they surely would have mentioned that in the takings and made sure such language was included in the Condemnation Judgments. They did not. Given the amount of oil found underneath some of the condemned lands, it is understandable that the United States regrets the bargain it struck. McKenzie County may have regrets as well. But a "deal is a deal" and there was certainly nothing gratuitous about the arrangement which was in keeping with "accepted policy at that time" to "allow counties such royalty reservations on lands optioned." See Doc. No. 73-8, p. 1.

Third, the United States' contention that the use of the word "royalty reservation" in the condemnation cases "could only have referred to lands with acquired minerals" is unpersuasive. See Doc. No.

76, p. 3. If such was the intent, there are certainly clear and concise ways to express it. The only reference to a "royalty reservation" in the condemnation cases is in the Judgment On The Takings in At Law 1000 and At Law 1006, and the Declaration of Taking in At Law 1000. See Doc. Nos. 47-2, p. 26 and 47-6, pp. 9 and 30. The records as to the judgments in At Law 1028, 1002, 1007, and 1001 make no reference whatsoever to a "royalty reservation." The final judgments in each of the condemnation cases, including At Law 1000 and At Law 1006, make no reference to a "royalty reservation" but simply refer to the right of McKenzie County to a "6 ¼% perpetual royalty." The final judgments are the operative documents in regards to McKenzie County's royalty interest, not the Judgments on Declarations of Taking, which the United States relies upon. In addition, the "royalty reservation" language is only found in two of the six Judgments on Declarations of Taking. A careful review of the entire record leaves no doubt as to the meaning of the language used in the Condemnation Judgments. The Condemnation Judgments created new title and conveyed to McKenzie County a 6 ¼ percent perpetual royalty interest in all of the condemned lands.

In addition, the United States' argument regarding the use of the words "royalty reservation" is foreclosed by the Court's decision to the contrary in *McKenzie II*. In *McKenzie II*, the Court specifically held the Condemnation Judgments vested new title in the federal government and McKenzie County received a 6 ¼ percent royalty interest in the condemned lands. See Doc. No. 20- 8, p. 3. The Court

did not limit or qualify this holding in *McKenzie II* in any manner nor make any reference to "acquired minerals" or "public domain minerals."

C. CLAIM TWO – QUIET TITLE

McKenzie County's second claim, which is made in the alternative, asks the Court to quiet title in the disputed minerals. Having already quieted title in favor of McKenzie County in 1991, the Court need not address the issue again. Were the Court to address the issue again, it would reach the same conclusion it reached in 1991, namely that the 6 ¼ percent royalty interest belongs to McKenzie County and pertains to all tracts of land listed in the Condemnation Judgments.

IV. CONCLUSION

The Court has carefully reviewed the entire voluminous record, the parties' briefs, and the relevant case law, and finds the Plaintiff's contentions persuasive. For the reasons set forth above, the Plaintiff's motion for summary judgment (Doc. No. 72) is **GRANTED** and the Defendant's motion for summary judgment (Doc. No. 71) is **DENIED**. In addition, the Court **DECLARES** and **ORDERS** as follows:

1. McKenzie County's request for a Writ of Mandamus is granted in full.
2. McKenzie County's 6 ¼ percent royalty interest created by the Condemnation Judgments applies to both the "acquired minerals" and

"public domain minerals" as those terms have been defined by the Bureau of Land Management.

3. The United States is directed to comply with the plain language of the Condemnation Judgments which clearly and unambiguously conveyed to McKenzie County a 6 ¼ percent royalty interest in all tracts of land listed therein, save for those tracts specifically exempted.
4. The United States is directed to comply with the plain language of the Court's 1991 Judgment which quieted title in favor of McKenzie County in the disputed 6 ¼ percent royalty interest created by the Condemnation Judgments.

IT IS SO ORDERED.

Dated this 29th day of November, 2023.

/s/ Daniel L. Hovland

Daniel L. Hovland, District Judge

United States District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA

McKenzie County, North Dakota, Plaintiff, vs. United States of America, Defendants.	)	**ORDER DENYING UNITED STATES' MOTION TO DISMISS AND GRANTING PLAINTIFF'S MOTION TO AMEND THE COMPLAINT** Case No. 1:16-cv-001

Before the Court is the "United States' Motion to Dismiss" filed on December 20, 2016. See Doc. No. 18. Plaintiff McKenzie County, North Dakota ("McKenzie County" or "County"), filed a response in opposition to the motion on January 31, 2017. See Doc. No. 24. The United States then filed a reply brief on February 27, 2017. See Doc. No. 29. McKenzie County filed a surreply on March 17, 2017, and the United States filed a response to the surreply on March 31, 2017. See Doc. Nos. 32 and 33. For the reasons set forth below, the Defendant United States' motion to dismiss for lack of jurisdiction is denied.

I. PROCEDURAL & FACTUAL BACKGROUND

McKenzie County, North Dakota, filed a complaint against the United States on January 11, 2016. See Doc. No. 1. In its complaint, McKenzie County seeks to quiet title to the 6 ¼ percent royalty interest in the mineral estate granted to the County in condemnation judgments entered by this Court in the 1930's and 1940's. McKenzie County filed an amended complaint on April 12, 2016. See Doc. No. 7. On December 20, 2016, the United States filed this motion to dismiss the action pursuant to Federal Rule of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction because McKenzie County's complaint is untimely pursuant to the Quiet Title Act, 28 U.S.C. § 2409a ("Quiet Title Act"). The United States contends McKenzie County's complaint is untimely because the County knew or should have known of the United States' claim to the 6 ¼ percent royalty interest in the mineral estate of "public domain" lands described in

the condemnation judgment more than twelve (12) years before McKenzie County initiated this action. Much of the present controversy stems from legal proceedings spanning more than seventy-five years and relating to mineral interests in land in McKenzie County. To provide context for the current manifestation of a long-standing squabble, a discussion of the legal history of lands in McKenzie County is necessary.

A. Early Condemnation Actions

In the late 1800's through the 1920's, settlers acquired federal lands for agricultural purposes under the Homestead Acts or through purchasing land granted to railroad companies. These homestead patents granted to settlers title to 640 acres, but reserved to the United States the mineral interest in those lands. By the 1930's, extensive drought, along with plowing of sub- marginal farm land, caused the loss of the lands' protective cover. The lands quickly lost fertility and the soil blew, causing "dustbowl" conditions and significant crop failure. As a result, many farms in McKenzie County failed and farmers were unable to pay their property taxes. Consequently, McKenzie County acquired title to significant acreage throughout the County through foreclosures. See McKenzie County v. Hodel, 467 N.W.2d 701, 702 (N.D. 1991). Through these tax foreclosures, McKenzie County acquired both the surface estate and the mineral estate for foreclosed land, except McKenzie County acquired only the surface estate for those lands in which the United States had reserved the mineral interest in the original patent. McKenzie County formalized its

ownership of the foreclosed land by quit claim or Sheriff's deed, whether it was both the surface and mineral estates or the surface estate alone.

Due to the economic conditions in the United States, Congress directed the United States Department of Agriculture ("USDA") to acquire failed farmland for conservation and public use purposes. Lands were the subject of the condemnation actions through tax forfeiture proceedings and McKenzie County deeded the forfeited property to the United States with a reservation of a 6¼ royalty interest in oil and gas production. See Doc. No. 20, ¶ 3. In an effort to avoid the claim to a right of redemption under state law by a party who originally forfeited the property and to ensure clear title to the lands, the United States initiated condemnation actions in this Court. Id. The condemnation actions are identified as follows:

1. United States v. 10,683.00 Acres of Land, More or Less, in McKenzie County, State of North Dakota, At Law No. 1000 (D.N.D. June 30, 1937);
2. United States v. 12,344.54 Acres of Land, More or Less, in McKenzie County, State of North Dakota, At Law No. 1001 (D.N.D. Feb. 6, 1938);
3. United States v. 17,463.13 Acres of Land, More or Less, in McKenzie County, State of North Dakota, At Law No. 1002 (D.N.D. Oct. 5, 1938);
4. United States v. 11,994.84 Acres of Land, More or Less, in McKenzie County, State of North Dakota, At Law No. 1006 (D.N.D. Feb. 25, 1938);
5. United States v. 9,914.53 Acres of Land, More

or Less, in McKenzie County, State of North Dakota, At Law No. 1007 (D.N.D. Oct. 11, 1939); and,

6. United States v. 11,626.49 Acres of Land, More or Less, in McKenzie County, State of North Dakota, At Law No. 1028 (D.N.D. June 15, 1938).

Id.

Following an agreement by the parties, a judgment was entered in each condemnation action. See Doc. No. 20-1. Each of the judgments identified the lands to be condemned and used language similar to the language found in judgment No. 1000:

> All the above tracts or parcels of land, with the exception of Tracts 872 and 873, are subject to a 6 ¼% percent royalty reservation in favor of McKenzie County, North Dakota, in the minerals which exist or may be developed therein by said McKenzie County. And subject, also, to and excepting all existing public roads, public utilities, easements and rights of way, is therefore taken for said public use.

See Doc. No. 20-1, p. 6. However, when the United States did not grant a 6 ¼ percent royalty in favor of McKenzie County for tracts, the judgments specifically excluded those tracts from the grant.

The United States Department of Interior ("DOI"), through the Bureau of Land Management ("BLM"), is tasked with the responsibility to monitor and manage the royalty payments owed to landowners and monitored the royalty interest reservation to

McKenzie County following the judgments entered in the condemnation cases. See Doc. No. 20 at ¶ 4. The United States admits that upon entry of the condemnation judgments, BLM annotated its records to recognize the 6¼ percent royalty interest in favor of McKenzie County for those lands that the previous owner held both the surface and mineral estates and were foreclosed by the County prior to the condemnation proceedings. See id. These minerals received from McKenzie County through tax foreclosure are referred to as "acquired minerals." However, BLM did not annotate its records to reflect the 6 ¼ percent mineral interest reserved in favor of McKenzie County for those lands in which the United States had reserved the mineral interest in the original patent. Id. at ¶ 6. These mineral interests are referred to as "public domain minerals." Id. at ¶ 7. The parties agree lands subject to the condemnation judgments included both lands with acquired minerals and with public domain minerals.

After entry of the condemnation judgments, McKenzie County received payments from operators as a result of the 6 ¼ percent mineral interest reservation annotation in BLM's records. These payments ended in 1985 when BLM directed operators to pay the 6 ¼ percent interest to the United States. The BLM's decision to stop payments to McKenzie County was based wholly on the North Dakota Supreme Court's decision of *DeShaw v. McKenzie County*, decided more than 20 years earlier.

B. ***DeShaw v. McKenzie County***

In 1962, in *DeShaw v. McKenzie County*, the North Dakota Supreme Court concluded McKenzie

County is precluded under North Dakota law from retaining a mineral interest and conveying less than all of its rights, title, and interest to property acquired through tax foreclosure. 114 N.W.2d 263, 265 (N.D. 1962). As a consequence of the North Dakota Supreme Court's *DeShaw* decision, more than twenty (20) years later, on June 7,1985, the United States notified McKenzie County that "royalty payments formerly made to the counties [Billings, Golden Valley, and McKenzie] based on the invalid 6 ¼ royalty reservation are payable to the United States." See Doc. No. 20-4 at 1. BLM's letter to McKenzie County included an attachment, referenced in the letter as "Enclosure 1," which purported to identify lands that were acquired by Billings, McKenzie, or Golden Valley Counties through tax proceedings, and were later acquired by the United States through condemnation actions. The letter specifically informed McKenzie County:

> Effective at 12:01 A.M., July 1, 1985, royalty payments formerly made to the counties based on the invalid 6 ¼ percent royalty reservation are payable to the United States. The lease terms of each of the leases listed on Enclosure 1 are amended accordingly and lessees, approved operators, or designated operators are responsible for compliance with the amended lease terms.

Id. at 1. The letter then identifies Enclosure 1 as "Lands Containing Invalid 6 ¼ Percent Royalty Reservation (Producing Leases)." Id. Enclosure 1 is a tract summary, which identifies the legal description and acquisition number for each tract and lists the

serial numbers of leases, unit agreement numbers, and the names of lessees and unit operators. See Doc. No. 20-4, pp. 6-18.

McKenzie County appealed the BLM's letter decision to the Board of Land Appeals, which affirmed the invalidation of the 6 ¼ percent mineral interest reservation in light of *DeShaw*. See Doc. No. 20-5. In its opinion, the Board of Land Appeals stated McKenzie County, along with Billings County and an oil company, were appealing BLM's decision "declaring invalid royalty reservations . . . in lands acquired by those counties through tax proceedings and subsequently acquired by the United States as the result of condemnation proceedings." See Doc. No. 20-5, p. 2. The Board of Land Appeals describes the scope of BLM's June 7, 1985 decision to cover "119 tracts in McKenzie County, 10 tracts in Billings County, and 2 tracts in Golden Valley County." Id. After the Board of Land Appeals issued its decision on October 20, 1987, affirming the BLM's invalidation of the 6 ¼ percent mineral interest, McKenzie County filed suit in federal court against Donald Hodel, then-Secretary of the Interior, and others on December 16, 1987.

C. McKenzie County II

In the 1987 suit, McKenzie County alleged *DeShaw* was inapplicable to the 6 1/4 percent mineral royalty reservation in the condemnation judgements and requested the U.S. District Court for the District of North Dakota declare the 6 ¼ percent mineral interest belonged to McKenzie County, quiet title in favor of McKenzie County to the 6 ¼ percent mineral interest, and order the defendants to reimburse and pay to McKenzie County the monies due pursuant to

the valid 6 ¼ percent mineral interest. See Doc. No. 20-6. McKenzie County's claims were not brought pursuant to the Quiet Title Act. In *McKenzie County v. Hodel* ("*McKenzie County II*"), upon Plaintiff's motion, the Honorable Judge Patrick Conmy certified the question presented in *McKenzie County II* to the North Dakota Supreme Court as follows:

> The question of law can have a different appearance from the 'spin' put on its presentation.
>
> Does a condemnation judgment, pursuant to a stipulation between the parties, recognizing an otherwise invalid reservation of a mineral interest, operate as a conveyance, so as to give validity to the conveyance as between the parties to the stipulation?
>
> Does a condemnation judgment, brought for the purpose of quieting title in the Federal Government to lands acquired from the County, insulating the federal government from any claims of former owners who lost the land to the County through tax title proceedings, which recognizes an invalid mineral interest reservation, operate as a conveyance back to the county of the mineral interest covered so as to make no longer applicable North Dakota statutory provisions declaring the reservation invalid?

McKenzie County v. Hodel, 467 N.W.2d 701, 703 (N.D. 1991). The North Dakota Supreme Court noted the questions posed by the federal district court could be

taken as asking the North Dakota Supreme Court to "construe a federal court judgment and determine its legal effect." Id. Leaving the construction of a federal court judgment to the federal district court, the North Dakota Supreme Court narrowed the questions presented for its consideration to:

> I. Under North Dakota law, may title to real property be transferred through a judgment without compliance with the conveyancing statute?
>
> II. Do Chapter 288, 1931 N.D. Sess. Laws, and the North Dakota Supreme Court's decision in DeShaw prohibit the County from acquiring title to a mineral interest through operation of a condemnation judgment under the facts presented?

In answering the first question, the North Dakota Supreme Court held "North Dakota conveyancing statutes do not affect the validity or enforceability" of federal condemnation judgments because under Rule 70 of the North Dakota Rules of Civil Procedure, as well as its federal counterpart, a judgment may divest the title of a party and vest it in another, having the effect of conveying real property. Id. at 704; see also N.D. R. Civ. P. 70. Therefore, "North Dakota law does not impede the transfer of title to real property by operation of a judgment." Id. at 705.

The North Dakota Supreme Court then turned to the question of whether Chapter 288, 1931 N.D. Session Laws, and its decision in *DeShaw* prohibit the County from "acquiring title to the disputed mineral rights through operation of the condemnation

judgment." Id. The North Dakota Supreme Court concluded nothing in *DeShaw* or Chapter 288 "limits the County's authority to reacquire title to property formerly held by tax title," and more specifically neither *DeShaw* nor Chapter 288 "prohibit the County from acquiring title to mineral interests through operation of a condemnation judgment." Id. at 707.

After the North Dakota Supreme Court issued its order addressing the certified questions, McKenzie County filed a motion for summary judgment in the federal district court case, requesting the Court enter judgment in its favor by confirming McKenzie County's ownership of the 6 ¼ percent mineral interest "in the lands in question" and setting aside the decisions of the BLM and the Board of Land Appeals. Judge Conmy granted the motion, holding "the recognition of a mineral reservation in the County in the federal condemnation judgments operates as a conveyance of that mineral interest to the County." See Doc. No. 20-7 at 2. In the judgment entered, the Court again articulated "a mineral reservation in favor of McKenzie County in the federal condemnation judgments operates as a conveyance of that mineral interest to McKenzie County" and ordered "title to the disputed minerals (6 ¼% royalty) is quieted in McKenzie County; and, the Defendants are barred from any claim in regard to the same or proceeds from the same; that McKenzie County is the owner of the disputed minerals (6 ¼% royalty) free and clear of any claim of the above named defendants." See Doc. No. 20-8 at 3. The judgment was entered June 24, 1991. See id.

D. Events After McKenzie County II

The United States represents to the Court that after Judge Conmy's decision quieting title to the 6 ¼ percent mineral interest in favor of McKenzie County, the BLM "resumed annotating its records to recognize the 6 ¼ percent royalty interest to McKenzie County *for those lands described in its 1987 Complaint*, which were the lands described in the condemnation Judgements that contained acquired minerals." See Doc. No. 20, ¶ 11 (emphasis added). While the BLM directed well operators to resume payment of a 6 ¼ percent mineral interest to McKenzie County, the record reveals as late as 1993, the BLM was still identifying "additional oil and gas leases subject to the 6 ¼% royalty rate reservation" because "lands were not identified on [BLM's] records during [its] initial review." See Doc. Nos. 24-11 and 24-12. McKenzie County represents that the BLM's application of Judge Conmy's decision was not limited to those lands enumerated on Enclosure 1, attached to the BLM's decision letter in 1985, but extended to other lands. Consequently, after the 1991 Judgment, McKenzie County, along with companion counties, made efforts to ascertain what lands within the counties were burdened by the 6 ¼ percent mineral interest in favor of the counties in light of the 1991 Judgment. By at least 1998, McKenzie County had initiated a "Natural Resource Inventory" project to review legal records and condemnation judgments, with State's Attorney Dennis Johnson traveling to Kansas City, Missouri, to retrieve legal records of the 1930's condemnation actions. See Doc. No. 24-2, pp. 5, 36. During this process, on November 17, 2003, Karen Johnson, Chief of the Fluids Adjudication Section in the BLM Billings Field Office, sent a fax to Dennis Johnson and Keith Winter that stated, in part: "Our records show only

the acquired minerals in the Judgments/Partial Judgments of Declarations of Taking At Law Nos. 1000, 1001, 1002, 1006, 1007, 1028, 1036 and 1042 are subject to a 6 ¼% royalty reservations." See Doc. No. 24-4, p. 13.

On December 19, 2003, McKenzie County Commissioner Roger Chinn and Billings County Commissioner Jim Arthaud met with Elaine Kaufman, Karen Johnson, and Joan Seibert from the BLM Fluids Adjudication Section in Billings, Montana, to compare the tracts of lands the records obtained by the Counties of the commendation judgments subject to a 6 ¼ percent royalty reservation and the BLM records. Chinn and Arthaud provided the BLM with copies of the condemnation judgments and documents from the condemnation proceeding, as well as a list of the legal descriptions of the tracts of land in McKenzie, Golden Valley, and Billings Counties that were tied to a specific paragraph in the At Law Judgments recognizing the 6¼ percent royalty interest grant to the Counties. After the meeting, Karen Johnson sent an email to individuals within the BLM indicating the Counties provided the BLM with "a list of legal descriptions which provides reference to the At Law #s and the Tract #s" and "[BLM] will review the information they provided to ensure our records accurately reflect the 6 ¼% outstanding royalty reservation in Slope, Golden Valley, McKenzie, and Billings Counties." See Doc. No. 24-2, p. 84.

On January 27, 2004, Roger Chinn, as McKenzie County Commissioner, received a letter from Karen Johnson from the BLM informing the Counties of the result of the BLM's audit of lands

subject to a 6 ¼ percent mineral interest in favor of the Counties. See Doc. No. 24-2, pp. 92-93. In the letter, Johnson indicated McKenzie County claimed 74,032.81 acres are subject to a 6 ¼ percent royalty reservation, but the BLM's records show only 58,368.94 acres are subject to the reservation; Golden Valley County claimed 5,925.27 acres are subject to a 6 ¼ percent royalty reservation, but the BLM's records show only 3,845.27 acres are subject to the reservation; and Billings County claimed 14,921.63 acres are subject to a 6 ¼ percent reservation, but the BLM's records show only 13,990.94 acres are subject to the reservation. Johnson explains the discrepancy between the Counties' records and the BLM's records: "the acreage differences between our records and yours are primarily because your records included lands with Public Domain minerals. Only lands acquired by the United States in the condemnations are subject to a 6 ¼ percent royalty reservation." Id. The letter also included attachments enumerating lands in McKenzie, Golden Valley, and Billings County in which the BLM does not recognize a 6 ¼ percent mineral reservation in favor of the Counties because those minerals are either public domain minerals or were specifically excluded from the reservation in the original condemnation judgments.

After McKenzie County received Johnson's January 27, 2004 letter, McKenzie and Billings Counties exchanged several letters with the BLM to clarify the status of certain lands. In this correspondence, the Billings Field Office of the BLM indicated it would direct the Counties' request for recognition of the 6 ¼ percent mineral reservation in all lands acquired through condemnation judgements

to BLM's Rock Mountain Field Solicitor "for an opinion regarding [their] claim to a 6 ¼ percent royalty in lands with public domain minerals acquired through condemnation." See Doc. No. 24-2, p. 116. On December 16, 2004, Johnson sent a letter to Chinn and Arthaud indicating BLM's Rocky Mountain Region Field Solicitor reviewed the Counties' claim to a 6 ¼ percent in all lands in the condemnation judgments, and determined "the Bureau of Land Management's decision to issue public domain mineral leases without a royalty reservation to the counties is defensible." See Doc. No. 24-2, p. 118. McKenzie County sent a letter to the United States Department of the Interior, Office of the Solicitor, on March 7, 2005, requesting the office review the opinion of the Rocky Mountain Region Field Solicitor and direct the BLM to recognize a 6 ¼ percent royalty reservation in favor of the Counties for all lands acquired by the United States in the condemnation judgments. See Doc. No. 24-4, pp. 15, 20. According to the record, the Department of the Interior did not respond to McKenzie County's letter.

McKenzie County initiated this action on January 11, 2016, and filed an amended complaint on April 12, 2016. See Doc. Nos. 1 and 7. The sole cause of action in the amended complaint is to quiet title to the 6 ¼ percent mineral interest in favor of McKenzie County for specific tracts of lands. On December 20, 2016, the United States filed a motion to dismiss the County's amended complaint pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure for lack of subject matter jurisdiction. See Doc. No. 18. The United States contends McKenzie County's

complaint is barred by the twelve (12) year statute of limitations in the Quiet Title Act.

II. STANDARD OF REVIEW

The United States requests the Court dismiss McKenzie County's amended complaint pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure. When considering a motion to dismiss, the Court must generally construe the complaint liberally and assume all factual allegations to be true. Eckert v. Titan Tire Corp., 514 F.3d 801, 806 (8th Cir. 2008). Dismissal will not be granted unless it appears beyond a reasonable doubt that the plaintiff can prove no set of facts that would entitle plaintiff to relief.

Rule 12(b)(1) of the Federal Rules of Civil Procedure governs challenges to subject matter jurisdiction. Fed. R. Civ. P. 12(b)(1). Here, the United States asserts a factual challenge to the Court's jurisdiction. In such a factual 12(b)(1) motion, the trial court's jurisdiction – its very power to hear the case – is at issue, and the trial court is "free to weigh the evidence and satisfy itself as to the existence of its power to hear the case." Osborn v. United States, 918 F.2d 724, 730 (8th Cir. 1990). As a result, "no presumptive truthfulness attaches to the plaintiff's allegations" and the existence of disputed material facts will not preclude the trial court from evaluating for itself the merits of jurisdictional claims. Spirit Lake Tribe v. North Dakota, 262 F.3d 732, 744 (8th Cir. 2001). The burden is on the plaintiff to demonstrate jurisdiction exists. Id.

III. LEGAL ANALYSIS

McKenzie County brought this action to "quiet title to the 6 ¼ percent royalty interest in the mineral estate granted to the County as part of the condemnation of the lands by the United States." See Doc. No. 7, p. 18. The United States requests the Court dismiss the County's amended complaint pursuant to Rule 12(b)(1) of the Federal Rule of Civil Procedure because the Plaintiff's claim is untimely pursuant to the Quiet Title Act and, consequently, this Court lacks jurisdiction over the matter. McKenzie County contends its claim is timely as its complaint was filed within the twelve (12) year statute of limitations of the Quiet Title Act and the Court has jurisdiction over the matter. In the alternative, McKenzie County requests leave to file a second amended complaint.

The United States is immune from suit absent a waiver of sovereign immunity. Hart v. United States, 630 F.3d 1085, 1088 (8th Cir. 2011). The Quiet Title Act ("QTA") provides a limited waiver of sovereign immunity:

> The United States may be named as a party defendant in a civil action under this section to adjudicate a disputed title to real property in which the United States claims an interest, other than a security interest or water rights.

28 U.S.C. § 2409a(a). The QTA is the exclusive means by which an adverse claimant can challenge the United States' title to real property. Block v. North Dakota ex rel. Bd. of Univ. & Sch. Lands, 461 U.S. 273, 286 (1983). "Because the QTA waives the

government's sovereign immunity from suit, a plaintiff must comply with the limitations period to effectuate that waiver. Hence the QTA statute of limitations acts as a jurisdictional bar unlike most statutes of limitations, which are affirmative defenses." Spirit Lake Tribe, 262 F.3d at 737-38 (internal citations omitted).[1]

Subsection (g) of 28 U.S.C. § 2409a, describes the statute of limitations applicable to claims brought by persons or entities, such as a county:

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

---

[1]Some circuit courts of appeal have questioned whether the QTA's limitations period serves as a jurisdictional bar. In *Irwin v. Dep't of Veteran Affairs*, the United States Supreme Court concluded the statute of limitations in an employment discrimination action against the United States was subject to equitable tolling. 498 U.S. 89, 95-96 (1990). Courts have interpreted *Irwin* to imply a statute of limitations does not function as a jurisdictional bar for claims against the United States. See, e.g., Wisconsin Valley Improvement Co. v. United States, 569 F.3d 331, 334 (7th Cir. 2009). For example, in *Schmidt v. United States*, the Eighth Circuit concluded the statute of limitations in the Federal Tort Claims Act is not jurisdictional pursuant to the Supreme Court's holding in *Irwin*. 933 F.2d 639, 640 (8th Cir. 1991). Nonetheless, absent an express contrary manifestation by the Eighth Circuit or the United States Supreme Court, this Court follows the Eighth Circuit's determination in *Spirit Lake Tribe* that the QTA's statute of limitations serves as a bar to the district court's jurisdiction. See 262 F.3d at 737-38.

> knew or should have known of the claim of the United States.

28 U.S.C. § 2409a(g). In *Spirit Lake Tribe*, the Eighth Circuit discussed the operation of the statute of limitations of subsection (g). Specifically the Eighth Circuit stated that subsection (g) does not require the government to provide explicit notice of its claim. Spirit Lake Tribe, 262 F.3d at 738. In fact, the government's claim need not be "clear and unambiguous." Id. (citing North Dakota ex rel. Bd. of Univ. & Sch. Lands v. Block, 789 F.2d 1308, 1313 (8th Cir. 1986). "Knowledge of the claim's full contours is not required. All that is necessary is a reasonable awareness that the Government claims some interest adverse to the plaintiff's." Id. (quoting Knapp v. United States, 636 F.2d 279, 283 (10th Cir. 1980)). Courts have consistently held that to trigger the QTA general limitation period in subsection (g) a plaintiff must have a "reasonable awareness that the Government claims some interest *adverse* to the plaintiff's." Knapp, 636 F.2d at 283 (emphasis added); see, e.g., Kane Cnty v. United States., 772 F.3d 1205, 1215 (10th Cir. 2014); Michel v. United States, 65 F.3d 130, 131-32 (9th Cir. 1995); and North Dakota ex rel Bd. of Univ. & Sch. Lands v. Block, 789 F.2d 1308, 1313 (8th Cir. 1986). The only notice sufficient to trigger the limitation period is notice of an *adverse* claim, San Juan Cnty. v. United States, 754 F.3d at 787, 795-96 (10th Cir. 2014), because when the plaintiff claims a non-possessory interest in property, such as a mineral royalty, "knowledge of a government claim of ownership may be entirely consistent" with the plaintiff's claim. Michel, 65 F.3d at 132.

In the present motion, the Court has been asked to determine whether McKenzie County complied with the limitations period of the Quiet Title Act to effectuate a waiver of sovereign immunity by the United States. Because McKenzie County instituted its action on January 11, 2016, its attempt to quiet title is barred if the County "knew or should have known" of the United States' claim to the 6 ¼ percent mineral interest for public domain minerals on lands within the condemnation judgments by January 10, 2004. See Doc. No. 1.

In its motion, the United States contends the limitations period of the QTA bars McKenzie County's claim because the United States has consistently maintained the 6 ¼ percent mineral reservation in the commendation judgment applies only to those minerals acquired by McKenzie County through tax proceedings and does not apply to public domain minerals. Specifically, the United States directs the Court to several events that occurred prior to January 10, 2004, to demonstrate McKenzie County knew or should have known of the United States' claim to the 6 ¼ percent mineral interest in public domain minerals on those lands included in the condemnation judgments; namely: (1) A 1981 Letter from the BLM to McKenzie County; (2) the BLM's historic non-payment of royalties for public domain minerals on those lands included in condemnation judgments; (3) McKenzie County's initiation of its a "Natural Resource Inventory" project to review legal records and condemnation judgments; (4) Minutes for County Commission meetings in McKenzie, Golden Valley, and Billings Counties; (5) the correspondence between

McKenzie County and the BLM after entry of judgment in *McKenzie County II*.

In its response to the United States' motion, McKenzie County contends not only did it timely bring this action, but this Court's holding in *McKenzie County II* already quieted title to the 6 ¼ percent mineral interest in favor of McKenzie County for both acquired and public domain minerals in those lands described in 1930's-1940's condemnation judgments. McKenzie County also contends the doctrines of collateral estoppel and res judicata preclude the United States from denying and relitigating McKenzie County's ownership of the 6 ¼ percent mineral interest in any lands conveyed to the United States in the condemnation judgments.

Before addressing whether those specific events or communications described above triggered the QTA limitation period, the Court first turns to consider whether the judgment entered in *McKenzie County II* or the condemnation judgments preclude the parties from relitigating title to the 6 ¼ percent mineral interest in favor of McKenzie County in this matter. Assuming, *arguendo*, that the Court were to conclude those actions already quieted title to the 6 ¼ percent mineral interest for public domain minerals, such conclusion would certainly alter the landscape of this action.

The Court has carefully and thoroughly reviewed the record in this case, particularly the materials submitted by the parties related to the litigation of *McKenzie County II* in this Court and the condemnation judgments. In *McKenzie County II*, this Court specifically held "the recognition of a mineral reservation in the County in the federal condemnation

judgments operates as a conveyance of that mineral interest to the County." See Doc. No. 20-7. In the judgment entered upon Judge Conmy's grant of summary judgment, the Court again articulated "a mineral reservation in favor of McKenzie County in the federal condemnation judgments operates as a conveyance of that mineral interest to McKenzie County" and ordered "title to the *disputed minerals* (6 ¼% royalty) is quieted in McKenzie County; and, the Defendants are barred from any claim in regard to the same or proceeds from the same; that McKenzie County is the owner of the *disputed minerals* (6 ¼% royalty) free and clear of any claim of the above named defendants." See Doc. No. 20-8 (emphasis added). The condemnation judgments referred to in the *McKenzie County II* judgment, plainly state: "All the above tracts or parcels of land . . . are subject to a 6 ¼% percent royalty reservation in favor of McKenzie County, North Dakota, in the minerals which exist or may be developed therein by said McKenzie County." See Doc. No. 20-1, p. 6. Whether the *McKenzie County II* judgment, along with the earlier condemnation judgments, has quieted title to the mineral interest in dispute here (i.e. public domain minerals) turns on the breadth of Judge Conmy's decision and the scope of the phrase "disputed minerals" as used in the *McKenzie County II* judgment. The Court combed the records from *McKenzie County II* submitted by the parties to help provide context for the phrase "disputed minerals." The Court looked to the complaint in McKenzie County II, in which the County described the dispute as follows:

> 2. This lawsuit consists of a dispute over ownership of a 6 ¼% interest under

> certain lands located in McKenzie County (said lands are described in Enclosure 1 of Exhibit A attached hereto and made a part hereof, and will be herein referred to as "subject lands"). All of the subject lands were patented by the United States Government into private ownership. McKenzie County acquired the lands by tax sale proceedings.

Doc. No. 20-6. Neither this allegation or other allegations of the complaint, or any other pleading from *McKenzie County II* submitted by the parties, define the scope of the lawsuit in terms of "disputed minerals," and the United States' answer to the complaint in *McKenzie County II* is not part of the record before the Court. Although there is reference in the McKenzie County II complaint to "Enclosure I" (originating from the BLM's 1985 letter to McKenzie County), nothing in the record defines the "disputed minerals." With these considerations, the Court is convinced that title to the 6 ¼ percent mineral interest in the lands identified in the complaint filed in this action was already quieted by this Court in the 1991 judgment or the condemnation judgments. In fact, based upon the plain language of the condemnation judgments (stating "[a]ll the above tracts or parcels of land . . . are subject to a 6¼% percent royalty reservation in favor of McKenzie County, North Dakota, in the minerals which exist or may be developed therein by said McKenzie County.") and the holding of the North Dakota Supreme Court in *DeShaw* and *McKenezie County*, the Court is left with the clear impression the 6 ¼ percent mineral interest in dispute in this case may have already been quieted.

If such is the case, the Court's jurisdictional inquiry changes substantially because the actions of the BLM since the 1930's described in the United States' motion to dismiss have forced the County to relitigate an issue already decided and seek relief from this Court to enforce judgments previously entered against the United States. Therefore, under these circumstances, the Court concludes it is in the interests of justice to grant McKenzie County leave to file a second amended complaint to assert additional claims supported by the record.

IV. CONCLUSION

The Court has carefully scrutinized, considered, and weighed each of the hundreds of documents in the record. Based on the foregoing, the Court **DENIES** the United States' motion to dismiss McKenzie County's amended complaint (Doc. No. 18) and **GRANTS** McKenzie County leave to file a second amended complaint. McKenzie County is to file its second amended complaint on or before August 30, 2019.

IT IS SO ORDERED.

Dated this 6th day of August, 2019.

/s/ Daniel L. Hovland

Daniel L. Hovland, Chief Judge

United States District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA

McKenzie County, North Dakota, Plaintiff, vs. United States of America, Defendants.	)	**ORDER DENYING UNITED STATES' MOTION TO DISMISS SECOND AMENDED COMPLAINT** Case No. 1:16-cv-001

Before the Court is the Defendant "United States' Motion to Dismiss Amended Complaint" filed on November 4, 2019. See Doc. No. 43. The Plaintiff, McKenzie County, North Dakota, filed a response to the motion on December 16, 2019. See Doc. No. 47. The United States filed a reply brief on December 30, 2019. See Doc. No. 48. For the reasons set forth below, the United States' motion to dismiss the second amended complaint is denied.

I. PROCEDURAL BACKGROUND

The Court has previously discussed the origins of the parties' dispute and will not repeat it here. See Doc. No. 36, pp. 1-11. However, a brief review of the procedural history of this matter is helpful.

McKenzie County, North Dakota, filed its original complaint against the United States on January 11, 2016. See Doc. No. 1. In its complaint, McKenzie County alleged a single cause of action: to quiet title to the 6 ¼ percent royalty interest in the mineral estate granted to the County in condemnation judgments entered by this Court in the 1930s and 1940s. McKenzie County filed an amended complaint on April 12, 2016. See Doc. No. 7. On December 20, 2016, the United States filed a motion to dismiss the action pursuant to Federal Rule of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction because McKenzie County's complaint was untimely pursuant to the Quiet Title Act, 28 U.S.C. § 2409a ("Quiet Title Act"). On August 6, 2019, the Court denied the United States' motion to dismiss. See Doc. No. 36. However, in its order denying the United States' motion to dismiss, the Court granted McKenzie County leave to file a second amended complaint. See Doc. No. 36, pp. 17-18. In its order, the Court addressed whether the judgment entered in *McKenzie County II* or the condemnation judgments entered in the 1930s and 1940s "preclude the parties from relitigating title to the 6 ¼ percent mineral interest in favor of McKenzie County in this matter." See id. at 16. Specifically, this Court stated:

> Whether the *McKenize County II* judgment, along with the earlier condemnation judgments, has quieted title to the mineral interests in dispute here (i.e. public domain minerals) turns on the breadth of Judge Conmy's decision and the scope of the phrase "disputed

> minerals" as used in the *McKenzie County II* judgment.

See id.

McKenzie County filed a second amended complaint on August 30, 2019. See Doc. No. 37. In its second amended complaint, McKenzie County alleges two causes of action: (1) enforcement of judgements previously entered by the District Court for the District of North Dakota, and (2) quiet title to 6 1/4 percent royalty interest in the mineral estate granted to McKenzie County in the condemnation judgments. See id. at 25-28. In response to the second amended complaint, the United States filed the pending motion to dismiss pursuant to Federal Rules of Civil Procedure 12(b)(1) and (6). See Doc. No. 43. In its motion, the United States contends McKenzie County's claim to enforce previously entered judgments should be dismissed pursuant to Fed. R. Civ. P. 12(b)(6) and the claim to quiet title to the 6 ¼ percent royalty interest should be dismissed pursuant to Fed. R. Civ. P. 12(b)(1). McKenzie County filed a response to the motion, contending dismissal pursuant to Rule 12(b)(1) and 12(b)(6) is not warranted.

II. STANDARD OF REVIEW

The United States requests the Court dismiss McKenzie County's first cause of action to enforcement previously entered judgments pursuant to Rule 12(b)(6). Rule 8(a)(2) of the Federal Rules of Civil Procedure requires a pleading to contain a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2).

Rule 12(b)(6) of the Federal Rules of Civil Procedure mandates the dismissal of a claim if there has been a failure to state a claim upon which relief can be granted. In order to survive a motion to dismiss under Rule 12(b)(6), a complaint must contain "sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (internal quotations omitted). A plaintiff must show that success on the merits is more than a "sheer possibility." Id. A complaint does not need detailed factual allegations, but it must contain more than labels and conclusions. Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007).

The court must accept all factual allegations of the complaint as true, except for legal conclusions or "formulaic recitation of the elements of a cause of action." Iqbal, 556 U.S. at 678. A complaint does not "suffice if it tenders 'naked assertion[s]' devoid of 'further factual enhancement.'" Id. The determination of whether a complaint states a claim upon which relief can be granted is a "context-specific task that requires the reviewing court to draw on its judicial experience and common sense." Id. at 679. Dismissal will not be granted unless it appears beyond doubt the plaintiff can prove no set of facts entitling him to relief. Ulrich v. Pope Cty., 715 F.3d 1054, 1058 (8th Cir. 2013). The burden is on the moving party to prove that no legally cognizable claim for relief exists. 5B Wright & Miller, Federal Practice and Procedure § 1357 (3d ed. 2004); Mediacom Se. LLC v. BellSouth Telecomms., Inc., 672 F.3d 396, 399 (6th Cir. 2012) (the moving party bears the burden on a Rule 12(b)(6) motion).

III. LEGAL ANALYSIS

In its motion, the United States seeks to dismiss McKenzie County's first cause of action (enforcement of judgments) pursuant to Federal Rule of Civil Procedure 12(b)(6) and dismiss McKenzie County's second cause of action (quiet title to the royalty interest in the mineral estate) pursuant to Federal Rule of Civil Procedure 12(b)(1). The Court first addresses the United States' request to dismiss the first cause of action – enforcement of judgments.

A. MOTION TO DISMISS PURSUANT TO RULE 12(b)(6)

In its motion to dismiss, the United States contends the Court should dismiss McKenzie County's first cause of action to enforce the previous judgments of this Court conveying and quieting title to the "enumerated 6 ¼ percent royalty interests in the mineral estates granted to the County as part of the condemnation of the lands by the United States" because McKenzie County fails to state a claim upon which relief can be granted. See Doc. No. 37, pp. 1, 25-27. Specifically, the United States posits the first cause of action in the second amended complaint is conclusory and "unsupported by even the allegation of facts sufficient to establish it . . ." See Doc. No. 44, p. 9.

In its second amended complaint, McKenzie County brings a claim, requesting: "this Court issue a writ of assistance or mandamus to enforce the condemnation judgments, which conveyed the royalty rights in all minerals including certain public domain

minerals described in Paragraph 60 to McKenzie County more than 80 years ago." See Doc. No. 37, p. 25. The County brings this claim pursuant to 28 U.S.C. § 1361, 28 U.S.C. § 1651, and Rule 70(c) of the Federal Rules of Civil Procedure. Id.

In its brief in support of its motion to dismiss, the United States presents several broad legal bases to dismiss the County's claim to enforce previously entered judgments, even contending this Court's Order of August 6, 2019, effectively determined McKenzie County is required to submit additional factual allegations as part of its second amended complaint to survive a Rule 12 motion. However, the United States does not identify or analyze any elements of McKenzie County's claim or the legal standards which apply to McKenzie County's claim to enforcement of prior judgments. Despite bearing the burden, the United States fails to identify the facts which McKenzie County failed to allege to support its legal claim to enforce prior judgments. Accordingly, the United States' motion to dismiss the claim must be denied. See Spirit Lake Tribe v. Jaeger, 2020 U.S. Dist. LEXIS 22162, *16 (D.N.D. Feb. 10, 2020) (citing Ross v. United States Capitol Police, 195 F. Supp. 3d 180, 192 (D.D.C. 2016) (concluding denial of defendant's motion to dismiss for failure to state a claim based upon the defendant's failure to enumerate or analyze the elements of the plaintiff's claim warranted).

In its second amended complaint, McKenzie County makes detailed factual allegations of the history and background of the western North Dakota settlement and the United States' reacquisition of land and establishment of land utilization projects.

See Doc. No. 37, pp. 5-10. McKenzie County also makes detailed factual allegations describing condemnation judgments entered by this Court from 1935 to 1941:

> 30. Due to the landowners' failure to pay property taxes, McKenzie County foreclosed on a significant acreage of the land within the County and acquired the lands by tax sale proceedings. Prior to the issuance of the tax deed, the County acquired by quit claim or a Sheriff's deed for the full ownership interest of the land owned by the individual landowners. This included the surface and mineral estate for those lands patented under the early homestead laws or purchased from the Railroad, and the surface estate for those lands patented under the Mineral Lands and Mining Act of 1914 and the Stock-Raising Homestead Act of 1916.
>
> 31. Pursuant to the appropriations laws and programs described in Paragraphs 20 through 25, the United States then acquired these lands from the County for the LUPs in North Dakota. The United States sought to extinguish any right of redemption by the original landowners, so it initiated condemnation actions against the County to ensure that title passed without any right of redemption. The declarations of taking took title to the lands in fee simple subject to the County's 6¼ percent royalty interest in

mineral production. *See infra* ¶ 60a-f, Declarations of Taking, At Law Nos. 1000, 1001, 1002, 1006, 1007, 1028.

32. The subsequent condemnation judgments entered by this Court from 1935 to 1941 conveyed the County's royalty rights on tracts previously owned by the County without regard to whether the mineral estate was "acquired" or "public domain" minerals. *See infra* ¶ 60a-f, Judgment, At Law Nos. 1000, 1001, 1002, 1006, 1007, 1028. The condemnation judgments specifically state:

> That the United States of America is the owner in fee simple of the lands hereinbefore described, subject, however, to the rights of McKenzie County, North Dakota to a 6¼% perpetual royalty in minerals which exist or may be developed on said lands, and also subject to and excepting all existing public roads, easements and rights of way, such reserved rights to be exercised only in accordance with all pertinent rule and regulations of the Department of Agriculture.

See e.g. United States of Am. v. 10,683.00 Acres of Land, More or Less, in McKenzie County, North Dakota, et al., Judgment, At Law No. 1000 at p. 8 (Aug. 15, 1939).

> 33. The condemnation judgments also stated: "That this Court shall retain jurisdiction of this cause for the purpose of entering such further orders or decrees as may be necessary in the premises." *See id.* at p. 9.

See Doc. No. 37, pp. 11-12. McKenzie County's second amended complaint also contains the factual underpinnings which led to the cases of *McKenzie County v. Hodel*, 467 N.W.2d 701, 703 (N.D. 1991), and *McKenzie County v. Hodel*, No. A4-87-211 (D.N.D. 1991) ("*McKenzie County II*"), the procedural history of those cases, and the actions of the United States subsequent to those cases. The allegations of the second amended complaint well articulate the dispute between the parties. Accordingly, after a careful review of the detailed allegations in the second amended complaint, the Court cannot say McKenzie County has failed to state a claim upon which relief may be granted.

B. MOTION TO DISMISS PURSUANT TO RULE 12(b)(1)

The United States next contends McKenzie County's second cause of action – to quiet title to the 6 ¼ percent royalty interest in the mineral estate granted to the County as part of the condemnation judgments entered by this Court in the 1930s and 1940s – should be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(1) because the Plaintiff's claim is untimely pursuant to the Quiet Title Act, and, consequently, this Court lacks jurisdiction over the matter.

In its earlier order in this case, the Court stated:

> Before addressing whether those specific events or communications described above triggered the QTA limitation period, the Court first turns to consider whether the judgment entered in *McKenzie County II* or the condemnation judgments preclude the parties from relitigating title to the 6 ¼ percent mineral interest in favor of McKenzie County in this matter. Assuming, *arguendo*, that the Court were to conclude those actions already quieted title to the 6 ¼ percent mineral interest for public domain minerals, such conclusion would certainly alter the landscape of this action.

See Doc. No. 36, p. 15-16. The Court previously acknowledged that if the 6 ¼ percent mineral interest in dispute here was in fact already quieted in the condemnation judgments or *McKenzie County II*, this Court's jurisdictional inquiry changes significantly. In fact, the scope of Court's jurisdictional inquiry of McKenzie County's quiet title claim is wholly affected by the disposition of the County's first cause of action. Accordingly, at this stage, the Court is reluctant to dismiss the County's quiet title claim.

It is necessary for the Court to determine its own jurisdiction by resolving the merits of the County's first cause of action. Under such circumstances, dismissal pursuant to Rule 12(b)(1) is unwarranted. City of Santa Monica v. United States, 650 Fed. App'x. 326, 327 (9th Cir. 2016) (concluding

that in action brought pursuant to the Quiet Title Act, "[w]hen jurisdictional and substantive issues are so intertwined that the question of jurisdiction is dependent on the merits, it is both proper and necessary for the trial court to resolve the merits of the claim to determine its own jurisdiction.") (internal quotations omitted). See Osborn v. United States, 918 F.2d 724, 728-30 (8th Cir. 1990) (discussing the treatment of Rule 12(b)(1) motions as Rule 56 motions when matters outside the pleadings are considered); Hogan v. Mance, 2013 U.S. Dist. LEXIS 122004, at *3-4 (D. Neb. Aug. 23, 2013) (finding "[a] federal court should not decide the factual dispute over jurisdiction if the jurisdictional issue is so bound up with the merits that a full trial on the merits may be necessary to resolve the issue.") (internal quotations omitted). Therefore, at this stage and without the benefit of briefing on the merits of the County's first cause of action, the Court denies the United States' request to dismiss the County's second cause of action (quiet title to the 6 ¼ percent royalty interest).

IV. CONCLUSION

The Court has carefully reviewed the entire record, the parties' briefs, and the relevant law. For the reasons set forth above, the Court **DENIES** the United States' motion to dismiss McKenzie County's second amended complaint (Doc. No. 43).

IT IS SO ORDERED.

Dated this 9th day of August, 2020.

/s/ Daniel L. Hovland

Daniel L. Hovland, District Judge

United States District Court