No. 07-___ 08-100 JUL 21 2008

IN THE

Supreme Court of the United States

SOUTH FORK BAND, WINNEMUCCA INDIAN COLONY, DANN BAND, TE-MOAK TRIBE OF WESTERN SHOSHONE INDIANS, BATTLE MOUNTAIN BAND, ELKO BAND AND TIMBISHA SHOSHONE TRIBE,
Petitioners,

v.

UNITED STATES OF AMERICA, WESTERN SHOSHONE NATIONAL COUNCIL, RAYMOND YOWELL, ALLEN MOSS, JOE KENNEDY, JOHN WELLS, CARRIE DANN, JOHNNY BOBB, BENNY RILEY, TIMBISHA SHOSHONE TRIBE,
Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Can constructive notice under the limitations provision of the Quiet Title Act, 28 U.S.C. § 2409a(g), be construed on a motion to dismiss to extinguish any remedy for land rights of an Indian tribe under a treaty with the United States that have not before been litigated or adjudicated?

2. Is the Ninth Circuit's decision on constructive notice under the limitations provision of the Quiet Title Act in conflict with the "adverse interest" rule established in other courts of appeals, as well as the Ninth Circuit's prior decisions, under which constructive notice requires the government's assertion of not just any interest in the subject land, but rather an interest that is adverse to the claim set forth in the quiet title action?

PARTIES TO THE PROCEEDING

The Petitioners in this case consist of Native American tribes, bands and groups, all of whom are part of the Western Shoshone nation, and include South Fork Band, Winnemucca Indian Colony, Dann Band, Te-Moak Tribe of Western Shoshone Indians, Battle Mountain Band, Elko Band and Timbisha Shoshone Tribe. The Respondent is the United States of America, which is adverse to Petitioner. Also, named as Respondents in accordance with Rule 12.6 of the Supreme Court Rules is another group of Western Shoshone tribes, bands and members, who were Appellants in the Court of Appeals in a consolidated case, no. 06-16214, and include Western Shoshone National Council, Raymond Yowell, Allen Moss, Joe Kennedy, John Wells, Carrie Dann, Johnny Bobb, Benny Riley and Timbisha Shoshone Tribe. This Petition concerns exclusively the Court of Appeals' decision addressing issues raised under the Quiet Title Act, 28 U.S.C. §2409a, in case no. 06-16252. The two groups of Western Shoshone parties made different claims and filed separate pleadings in the District Court and separate notices of appeal to the Ninth Circuit. The appeals were consolidated at case nos. 06-16214 (Western Shoshone National Council et al. Appellants) and 06-16252 (South Fork Band et al. Appellants).

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The South Fork Band, et al. respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

The Memorandum Opinion of the Court of Appeals (App. 1a-2a) is an unpublished disposition. The opinion and order of the District Court for the District

of Nevada granting the United States' motion to dismiss (App. 3a-12a) is reported at 415 F. Supp. 2d 1201 (D. Nev. 2006). The opinion of the District Court denying motion for rehearing (App. 13a-16a) is unpublished.

JURISDICTION

The judgment of the Court of Appeals (App. 1a-2a) was entered on April 21, 2008. This Court's jurisdiction rests on 28 U.S.C. § 1254(1).

STATUTE AND TREATY INVOLVED

The limitations provision of the Quiet Title Act, 28 U.S.C. § 2409a(g), which is at the center of this Petition, is as follows:

> 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.

The Treaty with the Western Shoshone, 1863, 18 Stat. § 689 (the "Treaty of Ruby Valley"), is set forth in the Appendix at 21a-24a.

STATEMENT OF THE CASE

This case involves the assertion of rights in land arising under an Indian treaty that have not before been litigated, adjudicated or most significantly, the subject of an adverse claim by the United States. Despite this, the Ninth Circuit Court of Appeals affirmed the decision of the U.S. District Court for the District of Nevada dismissing the claims in this case for lack of subject-matter jurisdiction pursuant

to Fed. R. Civ. P. 12(b)(1), on the basis of constructive notice under the 12-year statute of limitations of the Quiet Title Act, 28 U.S.C. § 2409a(g).

The subject of this action is the Western Shoshone people's claim of title to approximately 60 million acres of land in Nevada and California under the Treaty of Ruby Valley. Beginning in 1951, the Western Shoshone were involved in protracted litigation with the United States before the Indian Claims Commission ("ICC"). The only land issue litigated by the ICC, however, was the Western Shoshone's claim to *aboriginal* title to a specific 24 million acre tract of land. The Western Shoshone's *treaty* title to 60 million acres described in the Treaty of Ruby Valley,[1] as well as their aboriginal title to land described in the Treaty outside the litigated tract, were not at issue before the ICC nor were they subsequently challenged by the United States in other federal court litigation. The Ninth Circuit Court of Appeals and the District Court held that the litigation of aboriginal title rights gave notice of an adverse claim by the United States to treaty title. Through an overbroad construction of notice under the Quiet Title Act, the courts below have effectively denied the Western Shoshone a remedy for their treaty land rights. This Court has held that "Indian treaty rights are too

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[1] In a related case, the Federal Circuit in an unpublished decision dated May 22, 2008 affirmed the dismissal of other claims brought by the South Fork Band et al. against the United States in the Court of Federal Claims. *Western Shoshone National Council v. United States*, 2008 WL 2166051 (Fed.Cir. 2008). Among other rulings, the Federal Circuit rejected an interpretation of the Treaty of Ruby Valley as conveying treaty title. Petitioners intend to file a Petition for Writ of Certiorari in that case (the time for such filing has not yet run in that case).

fundamental to be cast aside." *United States v. Dion*, 476 U.S. 734, 739-740 (1986). Yet in this case the courts below have done just that through the constructive notice provision of the Quiet Title Act's statute of limitations.

1. Claims Alleged in this Action

The operative pleading filed by the South Fork Band et al. in the District Court sets forth claims for relief in two counts. Count I is to quiet title to land described in the Treaty of Ruby Valley on the basis that the Western Shoshone own these lands by "treaty" title, also known as recognized title. (App. 35a-37a). Count II is to quiet title to 36 million acres of land claimed by the Western Shoshone under aboriginal title, also know as "Indian" title, which were not addressed in the ICC. (App. 38a-39a).

The pleading alleges treaty title, as follows:

> Under the Treaty of Ruby Valley, the Western Shoshone Nation granted the United States certain privileges for use of and access to the land described in the Treaty and, in exchange, the United States recognized Western Shoshone ownership of the land which under U.S. law equates to statutory or fee title.

(App. 29a ¶ 21). It is further alleged that the issue of treaty title was never actually litigated in the ICC, and no judgment or order was ever issued pertaining to the issue of treaty title. (App. 31a-33a, ¶¶ 31-38). Rather, the ICC litigated the extinguishment of aboriginal title to approximately 24 million acres of land, as of the stipulated date of July 1, 1872. (App. 31a-33a, ¶¶ 31, 33, 34, 36, 37). The Treaty of Ruby Valley, which was proclaimed just a few years prior to that stipulated date, delineated 60 million acres of

land within the Western Shoshone's boundaries. (App. 27a-30a). The ICC did not consider or adjudicate treaty title to this land, nor aboriginal title outside the 24 million acre tract addressed in the ICC case. (App. 30a-33a).

Also pertinent to this Petition are the *Dann* cases, which were litigated in federal courts in the 1970's and 1980's. These were trespass actions brought by the United States against two Western Shoshone members, who defended against the government's action by asserting exclusively aboriginal rights in the land. The issue of treaty title was expressly not before the courts. *See United States v. Dann*, 706 F.2d 919, 921 n.1 (9th Cir. 1983), *rev'd and remanded*, 470 U.S. 39 (1985). The scope of the *Dann* cases was no broader than the ICC litigation—they concerned only aboriginal title rights of the Western Shoshone.

2. District Court Proceedings

The District Court issued an Order dated January 17, 2006, containing its opinion, which dismissed the claims filed under the Quiet Title Act for lack of subject matter jurisdiction. The court set forth the grounds for its decision as follows:

> The extensive litigation that preceded the current actions makes it impossible to conclude that South Fork Band neither knew nor should have known that the United States claimed an interest in the land covered by the Treaty of Ruby Valley, adverse to that of South Fork Band, more than 12 years ago. The initial 1951 litigation was more than sufficient to place a reasonable landowner on notice that the United States claimed an interest in the land. The sole purpose of that litigation was to determine who owned

> the disputed property; property which included nearly half of the land covered by the Treaty of Ruby Valley. The United States' assertion of a right to land settled by its citizens that includes half of the land demarcated by a prior treaty would provide clear notice to a reasonable landowner that the United States claimed significant property interests adverse to that owner.

(App. 10a). The court held that "this [aboriginal title] interest claimed by the United States was adverse to any claim of ownership by the Shoshone and effectively began the running of the statute of limitations." (App. 12a). The District Court further relied upon the *Dann* cases, finding that the United States argued in that litigation "that it had effectively terminated the rights of the Shoshone people to own the land or even graze cattle on it", without distinguishing between the treaty title rights asserted in this action and the aboriginal title rights to 24 million acres exclusively at issue in *Dann*. (App. 11a).

The South Fork Band et al. moved for a rehearing on the grounds that the District Court's decision failed to adequately address the distinction between aboriginal title and treaty title, which was the gravamen of their argument against the finding of constructive notice under the Quiet Title Act. The court denied the motion for rehearing, without engaging in further analysis of the pertinent issue, as follows:

> In ruling on the United States' motion, the Court was fully aware of South Fork Band's arguments, considered them, and found them without merit. In addition, South Fork Band's argument that application of the constructive notice doctrine of the Quiet Title Act is not appropriate when

> treaty rights are involved is more appropriately raised on appeal if one is taken. The court applied the law of the circuit to the facts of the case. The fact that South Fork Band does not think the law should apply does not demonstrate clear error.

(App. 15a-16a). In neither its opinion granting the motion to dismiss nor the opinion on motion for rehearing did the District Court expressly address the issue of whether a claim adverse to aboriginal title rights is necessarily and implicitly adverse to title rights under the Treaty of Ruby Valley alleged in the South Fork Band et al.'s claim.

3. The Court of Appeals Decision

The Ninth Circuit Court of Appeals resolved the South Fork Band et al.'s appeal in one sentence, as follows: "The District Court properly dismissed the quiet title claims which are barred by the 12-year statute of limitations in the Quiet Title Act." *See* 28 U.S.C. § 2409a(g). The Court of Appeals thus adopted the District Court's opinion on the pertinent issues.

4. Basis for Federal Jurisdiction

Federal jurisdiction was asserted in the court of first instance under 28 U.S.C. §§ 1331, 1362, 2201 and 2409a. This is an action by an Indian tribe or band seeking declarations of quiet title against the United States. This Petition concerns the Ninth Circuit Court of Appeals' affirmance of the District Court's dismissal of the South Fork Band et al's claims for lack of subject matter jurisdiction under 28 U.S.C. § 2409a.

REASONS FOR GRANTING THE PETITION

This Court has never ruled on the scope of constructive notice under the 12-year limitations provision of the Quiet Title Act, 28 U.S.C. § 2409a(g). Under this provision, an action is deemed to have accrued "on the date that the plaintiff or his predecessor in interest knew or should have known of the claim of the United States." There are two reasons why this Petition should be granted.

First, the decision of the Ninth Circuit Court of Appeals departs from those of other courts of appeals which have held that constructive notice must be based on an interest claimed by the United States that is adverse to that asserted by the plaintiff in the quiet title action. *See, e.g., Werner v. United States*, 9 F.3d 1514, 1517-1519 (11th Cir. 1993) (reversing summary judgment in favor of United States which had improperly lumped together interests asserted by the government over time for purposes of the Quiet Title Act's statute of limitations). The constructive notice found to bar the Western Shoshone's claim in this case concerned a separate and distinct interest in property—aboriginal title to a 24 million acre tract—from the property rights arising under the Treaty of Ruby Valley that are claimed in this action.

Second, the Ninth Circuit's decision denies a remedy to significant treaty rights by an overbroad construction of the notice provision of the Quiet Title Act, 28 U.S.C. § 2409a(g). This Court in *United States v. Mottaz*, 476 U.S. 834 (1986), held that the Quiet Title Act's waiver of sovereign immunity for claims against the United States to title to real property, along with its statute of limitations, applied to Indian plaintiffs the same as other plaintiffs. *Mottaz*, 476 U.S. at 851. However, the expansive reach of

constructive notice under the holding in this case broadly affects treaty land rights, denying them a remedy and effectively extinguishing them on faint notice. The issue concerning the interplay between treaty rights and constructive notice under the Quiet Title Act raised in this case is one of great importance that should be decided by this Court.

I. THE COURT OF APPEALS' DECISION ON THIS IMPORTANT MATTER AFFECTING TREATY RIGHTS IS IN CONFLICT WITH OTHER COURTS OF APPEALS' DECISIONS

The ICC and federal court *Dann* litigation relied upon by the Court of Appeals and District Court for constructive notice concerned only the Western Shoshone's claim to aboriginal title to a certain tract of land. The present action seeks to quiet title to different interests in land, which were never litigated nor addressed outside the Quiet Title Act's limitations period, principally Western Shoshone treaty title under the Treaty of Ruby Valley. This decision is in conflict with the Eleventh Circuit's decision in *Werner v. United States*, 9 F.3d 1514 (11th Cir. 1993). In *Werner*, the owners of land that was bordered on three sides by water and on the fourth side by Eglin Air Force Base brought an action to quiet title to a roadway easement through the Air Force's land. The district court granted judgment for the government under the Quiet Title Act's 12-year statute of limitations on the basis that "plaintiffs and their predecessors in interest knew of should have known for more than 12 years before filing suit that the government claimed some interest in or ownership of the Eglin property." *Id.* at 1516. In reversing the district court, the Eleventh Circuit noted that the proper issue

under the Quiet Title Act was not whether the plaintiff knew that the government had an interest in the property, but rather "when did plaintiffs know, or should have known, that the government had changed its position, and, adversely to the interests of plaintiffs, denied or limited the use of the roadway for access to plaintiffs' property." *Id.* The court explained the district court's error as follows:

> The primary position of the government is that the notice that triggers the statute of limitations need be only that the government claims some interest—any interest—in the property. *We reject this theory. For statute of limitations purposes, the first inquiry must define the government's claim* and then one must look to the time that the government, acting adversely to the interest of others, seeks to expand that claim. The district court erred in deciding the limitations issue by summary judgment.

Id. at 1518-1519 (emphasis supplied).

The court in *Werner* relied upon cases from other courts of appeals, including the Ninth Circuit, where the issue was likewise framed as when the government first sought to expand its claim to land by asserting *an interest adverse to that raised in the quiet title action. Narramore v. United States*, 852 F.2d 485 (9th Cir. 1988); *Park County, Montana v. United States*, 626 F.2d 718 (9th Cir. 1980); *Kinscherff v. United States*, 586 F.2d 159 (10th Cir. 1978). The Court of Appeals here, in affirming and adopting the District Court's opinion, did not rely upon this "adverse interest" rule. Rather the court appears to have applied the overbroad theory of constructive notice rejected in *Werner*. There is therefore an apparent conflict in this decision with those of

other courts of appeals on this important matter, which in this case affects substantial treaty land rights.

Reference to the "contours" doctrine under *Knapp v. United States*, 636 F.2d 279 (10th Cir. 1980), does not avoid this conflict. In *Knapp*, the court held that the plaintiff's claim was barred under the 12-year limitation period of the Quiet Title Act, rejecting the plaintiff's argument that, despite the existence of recorded deeds, the limitations period did not accrue until the government performed a survey of the disputed land "and thereby set forth a definitive title claim." *Id.* at 283. In so holding, the court noted that "[k]nowledge 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.* *See also Spirit Lake Tribe v. North Dakota*, 262 F.3d 732, 737-38 (8th Cir. 2001) (citing the "contours" doctrine, and holding that a quit claim deed to the land that was widely reported by local media outlets constituted notice).

The Ninth Circuit Court of Appeals has in the past distinguished *Knapp* where it was not shown that, outside the 12-year limitations period, the government claimed an interest adverse to the particular interest claimed by the plaintiff in the quiet title action. In *Fadem v. U.S.*, 52 F.3d 202 (9th Cir. 1994), the court held "that application of the 'contours' doctrine established by *Knapp* is improper in this case." *Id.* at 207. Specifically, the court in that case held that notice of the government's claim to the "eastern" section of disputed property did not imply notice of its claim to the "western" section of that property. *Id.* The plaintiff in *Fadem* had no reason to believe that his dispute with the United States

extended to the other portion of the property. The contours of the government's respective claims to the eastern and western sections were separable. *Id.* Likewise, in this case, aboriginal title and treaty title are separate and distinct interests, and the government's claim relating to aboriginal title would have no bearing on that pertaining to treaty title.

Although an aboriginal interest in land is denominated as "title", only "treaty" title connotes a traditional and common understanding of ownership. *See Miami Tribe of Oklahoma v. U.S.*, 146 Ct. Cl. 421, 175 F. Supp. 926 (Ct. Cl. 1959). Aboriginal title, in contrast, is *not* a property right, but instead a possessory interest:

> [Indian title or aboriginal title] means mere possession not specifically recognized as ownership by Congress. After conquest they were permitted to occupy portions of territory over which they had previously exercised 'sovereignty,' as we use that term. This is not a property right but amounts to a right of occupancy which the sovereign grants and protects against intrusion by third parties but which right of occupancy may be terminated and such lands fully disposed of by the sovereign itself without any legally enforceable obligation to compensate the Indians.

Tee-Hit-Ton Indians v. U.S., 348 U.S. 272, 279 (1955).

The means of proving aboriginal title is very different from that for treaty title. *See U.S. v. Pueblo of San Ildefonso*, 206 Ct. Cl. 649, 513 F.2d 1383 (Ct. Cl. 1975) ("[i]n order for an Indian claimant to prove aboriginal title, there must be a showing of actual, exclusive and continuous use and occupancy for a

long time . . .") (internal quotations and citations omitted) Unlike aboriginal title, treaty title presents a matter of treaty interpretation or construction, which is ascertained by the written words of the treaty, its history and negotiations, and the practical construction of the treaty adopted by the parties. *U.S. v. State of Washington*, 135 F.3d 618, 630 (9th Cir. 1998). This Court has held that a tribe which has recognized title to land has rights in the land akin to fee simple title, such that the tribe is entitled to due process and just compensation before the government may execute a power and take an interest in the land. *United States v. Sioux Nation of Indians*, 448, U.S. 371, 421-422 (1980). The Western Shoshone people's claim to recognized title was never at issue in the ICC proceedings or the *Dann* cases, and the rulings and orders of the ICC accordingly addressed only claims relating to aboriginal title. (App. 30a-33a, ¶¶ 26-38).

The Ninth Circuit Court of Appeals in *Michel v. United States*, 65 F.3d 130 (9th Cir. 1995), quoted the "adverse interest" rule set forth in *Werner* in distinguishing a claim of ownership from a claim of non-possessory easement. The court held that notice of the government's claim to title to land was insufficient to trigger constructive notice of an interest adverse to the plaintiff's claimed easement rights: "[K]nowledge of a government claim of ownership may be entirely consistent with a plaintiff's claim." *Id.* at 132. The court noted that the "adverse interest" rule was well grounded in policy:

> A contrary holding would lead to premature, and often unnecessary, suits. If a government claim to title were sufficient to trigger the running of the limitations period on any claim affecting use

> of the property, a claimant of a right of access would be forced to bring suit within twelve years even though the government gave no indication that it contested the claimant's right. The claimant would be compelled to sue to protect against the possibility, however remote, that the government might someday restrict the claimant's access. The statute should not be read to create such an undesirable result.

Id.

In this case, the government's claim to specific land held by aboriginal title is entirely consistent with the Western Shoshone's claim of treaty title. The Treaty of Ruby Valley grants the government extensive privileges, rights of use and access to the land, which were provided by the Western Shoshone in exchange for recognized ownership to the land described in the Treaty. (App. 21a-24a). The Treaty allows the "white men" routes of travel (Article 2), utility lines (Article 3), and prospecting, mines, ranches and agricultural settlements in the territory (Article 4). (App. 21a-22a). Accordingly, the encroachment found by the ICC which extinguished aboriginal title to a 24 million acre tract of land is consistent with the Western Shoshone's rights set forth in the Treaty of Ruby Valley, and would have had no effect upon the title specifically and expressly reserved to the Western Shoshone in the Treaty. (App. 27-32a).

The issue of constructive notice in this case gives rise to a factual dispute on the accrual of the Western Shoshone's claim to title under the Treaty. The Court of Appeals affirmed the dismissal of this case at the pleadings stage despite this issue of fact. Although the Quiet Title Act's statute of limitations is jurisdictional, a dismissal at the pleading stage on

the factual issue of the accrual of the statute of limitations is premature absent clear and unambiguous notice, and is otherwise properly addressed at the summary judgment stage. *See Michel v. U.S.*, 65 F.3d 130, 132 (9th Cir. 1995) (reversing dismissal of complaint based on the Quiet Title Act statute of limitations); *Patterson v. Buffalo National River,* 76 F.3d 221, 224 (8th Cir. 1996) (reversing summary judgment based on Quiet Title Act statute of limitations); *Amoco Production Co. v. U.S.*, 619 F.2d 1383 (10th Cir. 1980) (affirming grant of summary judgment); *Chesney v. U.S.*, 632 F. Supp. 867 (D. Ariz. 1985) (granting summary judgment motion); *Devils' Lake Sioux Tribe v. State of North Dakota*, 917 F.2d 1049 (8th Cir. 1990) (reversing summary judgment based on Quiet Title Act statute of limitations). Further, in a prior Ninth Circuit decision, the court stated that "[t]he statute of limitations is not triggered when the United states' claim is ambiguous or vague." *Schultz v. Department of Army*, 886 F.2d 1157 (9th Cir. 1989). The facts relied upon by the Court of Appeals and District Court to find notice in this case, pertaining to prior litigation of aboriginal title rights to specific land, are, by their nature, ambiguous and vague when viewed in conjunction with a claim to treaty title.

The Court of Appeals, in affirming the District Court's decision to grant the government's motion to dismiss under Fed. R. Civ. P. 12(b)(1), has denied the South Fork Band et al. access to the courts to have their claims to title under the Treaty of Ruby Valley decided on the merits. This decision is in conflict with the "adverse interest" rule set forth in *Werner*, as well as prior cases of the Ninth Circuit Court of Appeals that have applied this rule. This is an important matter that concerns rights under an

Indian treaty that have never been litigated or adjudicated. At this point, only this Court can vindicate those rights.

II. THE ISSUE OF CONSTRUCTIVE NOTICE IN THIS CASE IS ONE OF GREAT IMPORTANCE WHICH HAS NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT

This case raises an important question regarding the reach of constructive notice under the Quiet Title Act to rights asserted under an Indian treaty. "A treaty, including one between the United States and an Indian tribe, is essentially a contract between two sovereign nations." *State of Washington v. Washington State Commercial Passenger Fishing Vessel Ass'n*, 443 U.S. 658, 675 (1979). Treaties are accorded special rules of contract interpretation: "[T]reaties are to be interpreted liberally in favor of the Indians, . . . and treaty ambiguities to be resolved in their favor." *Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172, 194 (1999). At the same time, [t]reaties between the United States and Indian tribes are congressional acts akin to statutes." *Menominee Indian Tribe of Wisconsin v. Thompson*, 161 F.3d 449, 457 (7th Cir. 1998). "Only Congress may abrogate Indian treaty rights, but it must clearly express its intent to do so." *Mille Lac's Band*, 526 U.S. at 202. Such intent "is not be lightly imputed. . . . Indian treaty rights are too fundamental to be cast aside." *United States v. Dion*, 476 U.S. 734, 739 (1986).

The South Fork Band et al. in this case seek to vindicate their treaty rights through the Quiet Title Act. For purposes of this Petition, it is accepted that Indian tribes and bands can only vindicate treaty

rights against the United States through this Act. *Block v. North Dakota*, 461 U.S. 273 (1983). The statute of limitations provision in the Quiet Title Act is a condition to the waiver of sovereign immunity, which defines the Court's jurisdiction. *Block*, 461 U.S. at 287; *United States v. Mottaz*, 476 U.S. 834, 841 (1986). Nonetheless, given the significance and sanctity of treaty rights, care should be exercised in determining that the constructive notice provision of the 12-year statue of limitations under the Quiet Title Act bars a remedy against the United States concerning land rights under a valid treaty. Indian tribes and bands are particularly vulnerable to an overbroad, expansive view of the constructive notice provision of the Quiet Title Act. Indian parties have generally been immersed in litigation with the United States for many years concerning various land issues. The ICC was the venue for many of these disputes. If interests in land are lumped together, and the "adverse interest" rule relaxed or ignored to the point that litigation of a particular tribal interest in land results in a statute of limitations bar on other distinct real property claims under a treaty, then important treaty rights will be subtly, yet broadly, washed away on the thin thread of constructive notice.

The scope of constructive notice under the Quiet Title Act need not be construed in this instance so broadly as to impair the Western Shoshone people's remedy to assert substantial treaty rights. The prior litigation of aboriginal title to a particular tract of land in the ICC and the *Dann* litigation did not concern or affect the Western Shoshone people's claim to treaty title, and their claim to treaty title is entirely consistent with the extinguishment of Western Shoshone aboriginal lands.

The Court of Appeals, nonetheless, relied upon the District Court's analysis in dismissing the quiet title claims, although the District Court's opinion notes that the issue of conflict between an expansive view of constructive notice and the sanctity of treaty rights is "more appropriately raised on appeal. . . ." (App. 16a). If anything, given the importance of treaties and the rights they provide to their beneficiaries, constructive notice should be construed circumspectly when land rights under a treaty are at issue. Here, the Court of Appeals did the opposite, waiving a broad brush that blurs distinct land rights and interests. The Court of Appeals' decision thus creates a significant threat to treaty rights, which will likely prompt tribes to engage in more litigation to avoid the potential loss of these rights.

It is thus now within the domain of this Court to decide the appropriate balance between, on one side, constructive notice under the 12-year limitations period and jurisdictional prerequisite of the Quiet Title Act, and on the other side, valid and substantial treaty rights. In reaching this balance, the Western Shoshone people are entitled to be accorded a remedy that is no more restrictive in application than that available to non-treaty based quiet title claims. The Court of Appeals' decision does not achieve this balance. Accordingly, the issue of federal law raised in this case one of great importance that has not been, but should be, considered and settled by this Court.

CONCLUSION

Petitioners, the South Fork Band et al. respectfully request that this Petition for Writ of Certiorari be granted.

Respectfully submitted,

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