No. 20-35745

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

LARRY STEVEN WILKINS; JANE B. STANTON,

Plaintiffs – Appellants,

v.

UNITED STATES OF AMERICA

Defendant – Appellee.

On Appeal from the United States District Court
for the District of Montana
No. 9:18-cv-00147-DLC-KLD
Honorable Dana L. Christensen, District Judge

APPELLANTS' OPENING BRIEF

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INTRODUCTION

Plaintiffs-Appellants Larry Steven "Wil" Wilkins and Jane Stanton (the landowners) live on Robbins Gulch Road in rural Ravalli County, Montana. 2-ER-262; 2-ER-286. Their property is burdened by a road easement, owned by the federal government and managed by the United States Forest Service (Forest Service). 2-ER-262; 2-ER-286–87; 2-ER-282; 2-ER-227. This lawsuit arises from a dispute about the lawful use of the easement and the government's obligations as the easement holder.

Until recently, the Forest Service's management of the easement has ensured that use of the easement does not unreasonably burden Mr. Wilkins's and Mrs. Stanton's property. But in the last decade, Mr. Wilkins, Mrs. Stanton, and their neighbors have had to deal with people trespassing on their private property, illegally shooting at their homes and pets from the road, illegally hunting both on and off the easement, and travelling at dangerous speeds on and around Robbins Gulch Road. 3-ER-359 (Depo. Wilkins, 132:22–133:24); 3-ER-410 (Depo. Stanton, 79:5–80:22); 2-ER-111 ¶¶ 12–13; 2-ER-114–115 ¶¶ 5–13. When Mr. Wilkins, Mrs. Stanton, and their neighbors asked the Forest Service

for help dealing with this unreasonable use of the easement, the Forest Service declined. 2-ER-116 ¶ 26. Instead, the agency responded that it could allow whomever it wanted on its easement and it had no obligations to the underlying landowners. *Id.*; 2-ER-64.

Unable to obtain assistance from the Forest Service, the landowners filed this lawsuit. The landowners filed this quiet title action to resolve four disputes about the terms of the easement. Specifically, the landowners assert that: (1) the easement does not allow the general public to use the road; (2) easement users do not have the right to park alongside the road; (3) the government has a duty to repair and maintain the easement to prevent unreasonable interference with the servient estates; and (4) the government has a duty to patrol the easement to ensure that those using the easement do not unreasonably damage or interfere with the landowners' use of their property. *See* 3-ER-562.

A year after filing its answer, the government filed a motion to dismiss for lack of subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1). 1-ER-35. The magistrate judge recommended denying the motion to dismiss, but the District Court disagreed. *Id.* The District Court granted the motion, holding that the lawsuit was barred

by the Quiet Title Act's statute of limitations. 1-ER-14–15. The District Court determined that all of the landowners' claims accrued at the same time, and they accrued more than twelve years before the Complaint was filed. 1-ER-33.

The District Court committed four errors in granting the government's motion to dismiss, each of which is independently sufficient to resolve this appeal for the landowners. First, the District Court erred in granting the government's motion to dismiss for lack of subject matter jurisdiction because the Quiet Title Act's statute of limitations is not jurisdictional. *See United States v. Kwai Fun Wong*, 575 U.S. 402, 408–12 (2015). Second, even if the statute of limitations were jurisdictional, a 12(b)(1) motion to dismiss is improper because the Quiet Title Act provides the basis for both determining when a claim accrues and determining the merits of the action. *See Thornhill Publ'g Co. v. Gen. Tel. & Elecs. Corp.*, 594 F.2d 730, 734 (9th Cir. 1979). Third, the District Court erred in holding that all of the landowners' claims accrued at the same time because the landowners brought separate claims that address separate title disputes. *See Michel v. United States*, 65 F.3d 130, 132 (9th Cir. 1995). Finally, contrary to the District Court's

determination, the record demonstrates that all of the landowners' claims accrued sooner than twelve years before they filed this suit. This Court should vacate the judgment of the District Court and remand for further proceedings.

JURISDICTION

The landowners filed their quiet title action under 28 U.S.C. § 1346(f), which grants district courts "exclusive original jurisdiction of civil actions under section 2409a to quiet title to an estate or interest in real property in which an interest is claimed by the United States." This Court has jurisdiction under 28 U.S.C. § 1291 because the appeal is from the final judgment of the district court which disposes of all parties' claims. The appeal is timely under Fed. R. App. P. 4(a)(1)(B)(ii) and 4(a)(4)(A)(iv). Judgment was entered on May 26, 2020. 1-ER-9. The landowners filed a timely motion to alter or amend the judgment under Federal Rule of Civil Procedure 59(e). The District Court denied the landowners' motion to alter or amend on August 11, 2020. 1-ER-2. The notice of appeal was filed on August 26, 2020. 3-ER-564.

STATUTORY AUTHORITIES

28 U.S.C. § 1346 provides, in relevant part:

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> (f) The district courts shall have exclusive original jurisdiction of civil actions under section 2409a to quiet title to an estate or interest in real property in which an interest is claimed by the United States.

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28 U.S.C. § 2409a provides, in relevant part:

> (a) 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. This section does not apply to trust or restricted Indian lands, nor does it apply to or affect actions which may be or could have been brought under sections 1346, 1347, 1491, or 2410 of this title, sections 7424, 7425, or 7426 of the Internal Revenue Code of 1986, as amended (26 U.S.C. 7424, 7425, and 7426), or section 208 of the Act of July 10, 1952 (43 U.S.C. 666).
>
> ***
>
> (d) The complaint shall set forth 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.
>
> ***
>
> (g) 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.

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ISSUES PRESENTED FOR REVIEW

1. Whether the Quiet Title Act's "ordinary, run-of-the-mill" statute of limitations—separate from the Act's grant of jurisdiction—is nonjurisdictional. *Weil v. Elliott*, 859 F.3d 812, 814 (9th Cir. 2017).

2. Whether the question of when the landowners' claims accrued is intertwined with the merits of the action because the Quiet Title Act provides the basis for both.

3. Whether landowners' separate claims about who may use the easement, whether easement users can park alongside the road, and the federal government's obligations under the easement accrued at separate times.

4. Whether the landowners timely filed all or part of their Complaint within the Quiet Title Act's twelve-year statute of limitations.

STATEMENT OF THE CASE

I. Factual Background.

Larry Steven "Wil" Wilkins is a military veteran diagnosed with post-traumatic stress disorder. 2-ER-110 ¶ 3. In 2004, he purchased property in rural Montana and moved to Robbins Gulch Road in Ravalli County. *Id.* ¶ 4. Across the road lives Jane Stanton, who purchased property and moved to Robbins Gulch Road in 1990 with her husband. 3-ER-394 (Depo. Stanton, 17:1). Since 2013, when Mrs. Stanton's husband passed away, she has been the sole owner of her property. 2-ER-261.

Both Mr. Wilkins's and Mrs. Stanton's properties are burdened by the road easement at issue in this case. 2-ER-262; 2-ER-286–87; 2-ER-282; 2-ER-227.[1] Until recently, the Forest Service's management of the

[1] Both Mr. Wilkin's and Mrs. Stanton's deeds state that the property is taken subject to visible easements on the premises. 2-ER-262; 2-ER-287; 2-ER-282. The deed of one of Mr. Wilkins' predecessors references the easement by name. *Compare* 2-ER-282 ("SUBJECT TO an easement and right-of-way in favor of the United States of America as recorded in Book 119 of Deeds, page 243.") *with* 2-ER-227 (stating that the easement is recorded at Book 119 of deeds, page 243). This express reference in a predecessor's deed demonstrates that the land is burdened by the referenced easement. *Lincoln v. Pieper*, 798 P.2d 132, 135 (Mont. 1990) (holding that land was burdened by an appurtenant easement in part

easement has ensured that use of the easement does not unreasonably burden Mr. Wilkins's and Mrs. Stanton's property. But in September of 2006, the Forest Service commissioned a sign to be installed along Robbins Gulch Road that read "public access thru private lands." 3-ER-516; 3-ER-518. Since that sign was installed, traffic along the easement has worsened. 3-ER-333 (Depo. Wilkins, 28:17). This increased use of the easement has interfered with Mr. Wilkins's and Mrs. Stanton's use and enjoyment of their property. 3-ER-359 (Depo. Wilkins, 132:22–133:24); 3-ER-410 (Depo. Stanton, 79:5–80:22).

Mr. Wilkins, Mrs. Stanton, and their neighbors have had to deal with people trespassing on their private property, theft of their personal property, people shooting at their houses, people hunting both on and off the easement, and people travelling at dangerous speeds on and around Robbins Gulch Road. 3-ER-359 (Depo. Wilkins, 132:22–133:24); 3-ER-410 (Depo. Stanton, 79:5–80:22); 2-ER-114–115 ¶¶ 5–13. In September of 2019, someone travelling along the road shot Mr. Wilkins's cat. 2-ER-

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because chain of title provided "at least constructive, if not actual, notice that they took their property subject to easements"); *see also* Mont. Code Ann. § 70-16-202 (an owner of land bounded by a road or street is presumed to own to the center thereof).

111 ¶¶ 12–13. Thankfully, the cat recovered, but the problems persist. The public's recent excessive use of the road and adjacent property has even caused some neighbors to move. 2-ER-116 ¶ 27.

Additionally, the increased use of the easement has caused erosion of the road that affects the adjacent property. 3-ER-542 ¶ 15. The condition of the road has caused sediment and silt to build up on the underlying properties, and has caused washout on those properties. 3-ER-352 (Depo. Wilkins, 103:3–6). The Forest Service maintenance of the easement, however, has become more sporadic in recent years. 3-ER-351 (Depo. Wilkins, 100:25–101:8).

In 2017, the property owners who live along Robbins Gulch Road requested that the Forest Service help address these problems. 2-ER-116 ¶ 26; 3-ER-433 (Depo. Winthers, 14:14–15:17). After all, the owners of an easement have duties to the servient estate. *Mattson v. Montana Power Co.*, 215 P.3d 675, 689–90 (Mont. 2009) (citing, *inter alia*, Restatement (Third) of Prop.: Servitudes § 4.10 (2000)).[2] The owner of

[2] Montana law governs the easement at issue here. *See Oregon ex rel. State Land Bd. v. Corvallis Sand & Gravel Co.*, 429 U.S. 363, 378–79 (1977) ("Under our federal system, property ownership is not governed by a general federal law, but rather by the laws of the several States");

an easement cannot exceed the scope of the easement. *Guthrie v. Hardy*, 28 P.3d 467, 475 (Mont. 2001); *see also Quarter Circle JP Ranch, LLC v. Jerde*, 414 P.3d 1277, 1281 (Mont. 2018). And use of an easement cannot unreasonably interfere with the use and enjoyment of the burdened properties. *Mattson*, 215 P.3d at 689–90. "[T]he general rule in Montana [is] that the owner of an easement has not only the right *but the duty* to keep the easement in repair ...." *Anderson v. Stokes*, 163 P.3d 1273, 1287–88 (Mont. 2007) (emphasis added); *see also Walsh v. United States*, 672 F.2d 746, 749 (9th Cir. 1982) (this Court is "confident that if the case should arise, Montana courts will hold that the private owner of an easement has the privilege and duty of repair and maintenance to prevent unreasonable interference with the uses of the servient tenement").

The terms of the easement lay out the proper use of the easement and reinforce the government's duties as the easement holder. 2-ER-227. The easement in question was granted in 1962 by the landowners' predecessor in interest to the United States. 2-ER-227; 2-ER-234. It was

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see also 3-ER-519–20 (Stipulation that Montana law governs in this case).

granted in two separate deeds that contain substantially the same language. *Id.* The easement conveys to the United States "and its assigns" a 60-foot easement "for a road as now constructed and in place and to be re-constructed, improved, used, operated, patrolled, and maintained and known as the Robbins Gulch road, Project Number 446." 2-ER-227.

Although the deed explicitly references the Forest Service's form easements in the Forest Service Handbook, the 1962 easement differs in significant ways from the forms. *Id.* Namely, the form easements purport to grant the United State an easement for "highway purposes," 2-ER-149, whereas the 1962 deeds state that the easements are "for a road as now constructed and in place." 2-ER-227. Also unlike the form easements, the 1962 deeds state that the easement road will be "patrolled." *Id.*

But when the property owners asked the Forest Service to ensure proper use of the easement, the Forest Service rejected any responsibilities. 2-ER-116 ¶ 26. Not only did the Forest Service disagree that the easement is limited in scope, it disclaimed any obligations under the easement. 2-ER-64; 3-ER-544 (Answer denying that landowners are

entitled to requested relief). It stated that it would manage the easement however it wished, and that it owed no duties to the underlying landowners. 2-ER-116 ¶ 26.

II. Proceedings Below.

Mr. Wilkins and Mrs. Stanton filed this suit in August of 2018. *See* 3-ER-548. They seek to quiet title to the easement along Robbins Gulch Road, to determine the lawful use of that easement and the government's duties under the easement. *See* 3-ER-562.

Based on the language and history of the easement, as well as governing Montana law, Mr. Wilkins and Mrs. Stanton asserted claims about lawful use of the easement and the government's obligations under the easement. 3-ER-360–62. The Complaint's First Cause of Action involves two title disputes about use of the easement: who may use the easement and what uses are allowed on the easement. 3-ER-560–61. Specifically, the landowners alleged that the easement does not grant an easement for general public use, but rather for use by the United States, its agencies (namely, the Forest Service), and those who hold specific permits or licenses issued by the United States (such as grazing or logging permits). 3-ER-560–61 ¶¶ 30–34. Furthermore, the

easement is for ingress and egress to the National Forest, and does not allow everyone using the road to park within the easement. The landowners' Second Cause of Action concerns two title disputes about the government's duties under the easement and alleges that the United States has an obligation to both maintain and patrol the easement. 3-ER-561 ¶¶ 35–38.

On October 24, 2018, the government filed its answer. 3-ER-540. Under the court's scheduling order, the parties filed a stipulated statement of facts and both parties filed a preliminary pretrial statement expressing their respective theories of the case. *See* 3-ER-521; 3-ER-533.

In October 2019, the government moved to dismiss for lack of subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1). It advanced two theories: (1) that the suit is barred by the Quiet Title Act's statute of limitations; and (2) that the landowners lacked standing because their properties are not burdened by the easement at issue. 1-ER-38. Mr. Wilkins and Mrs. Stanton responded to the motion to dismiss, and later filed a motion for summary judgment.

Magistrate Judge DeSoto recommended that the motion to dismiss be denied. 1-ER-54. Relevant to this appeal, Judge DeSoto concluded that the Quiet Title Act's statute of limitations is not jurisdictional. 1-ER-50. As a result, the magistrate judge determined that Defendant's motion to dismiss for lack of jurisdiction was improper, and its statute of limitations arguments are better suited for a motion for summary judgment. 1-ER-53. In analyzing the motion to dismiss, Judge DeSoto recognized that the landowners brought multiple claims, 1-ER-36, and that those claims could have accrued at different times. 1-ER-52 ("[I]t is disputed whether the USFS's operation and management of the easement have remained consistent.").

Judge DeSoto also determined that the landowners had standing to bring the suit. 1-ER-46. Under Montana law, an owner of land bounded by a road or street is presumed to own to the center thereof, and the government did not overcome that presumption. 1-ER-42 (citing Mont. Code Ann. § 70-16-202). Alternatively, Judge DeSoto stated that, even if the landowners did not own to the center of the road, they still have standing to bring this lawsuit. 1-ER-45. The easement at issue is sixty feet wide, while Robbins Gulch Road is only twelve feet wide. *Id.*

Therefore, the landowners own at least some land burdened by the easement sufficient to have standing to bring this Quiet Title Action. 1-ER-46.

The government objected to the findings and recommendations, and reiterated the arguments made in its motion to dismiss. 1-ER-14. The District Court only considered the government's statute of limitations argument, determining that it was dispositive. *Id.* It did not rule on the government's standing arguments. *Id.*

The District Court held that the Quiet Title Act's statute of limitations is jurisdictional, 1-ER-25, and that it is appropriate to evaluate the timeliness of the Complaint at the motion to dismiss stage. 1-ER-29. The court determined that all of Mr. Wilkins's and Mrs. Stanton's claims accrued at the same time, and held that those claims accrued more than twelve years before the Complaint was filed. 1-ER-33. The District Court granted the government's motion to dismiss, and denied the pending motion for summary judgment as moot. *Id.*

Mr. Wilkins and Ms. Stanton filed a motion to alter or amend the judgment under Federal Rule of Civil Procedure 59(e). The landowners requested that the District Court reconsider its determination that all of

their claims accrued at once, and allow their claims about the government's obligations under the easement, and whether parking is allowed on the easement, to move forward. 1-ER-3. On August 11, the court denied the motion, stating that the landowners' claims accrued at the same time because the government has no independent duty to maintain and patrol the easement. 1-ER-5. It also concluded that claims about public use of the easement could not be separated from claims about whether easement users can park alongside the road and the government's obligations under the easement. 1-ER-6.

Mr. Wilkins and Mrs. Stanton timely filed this Appeal on August 26, 2020. 3-ER-564.

SUMMARY OF THE ARGUMENT

The District Court committed four errors in granting the government's motion to dismiss for lack of subject matter jurisdiction. Any of these errors is independently sufficient to resolve this appeal. This Court should vacate the judgment of the District Court, and remand for further proceedings.

First, the District Court erred in holding that the Quiet Title Act's Statute of Limitations is jurisdictional. Absent a clear statement from

Congress to the contrary, an act's statute of limitations is not jurisdictional. *United States v. Kwai Fun Wong*, 575 U.S. 402, 409–12 (2015). In passing the Quiet Title Act, Congress did not clearly state its intention to differ from this default rule. Instead, the Quiet Title Act's statute of limitations is "an ordinary, run-of-the-mill statute of limitations, specifying the time within which a particular type of action must be filed." *Weil*, 859 F.3d at 814. Furthermore, the Act separates the grant of jurisdiction from the rest of the Act, including the statute of limitations, indicating that the statute of limitations is not jurisdictional. Pub. L. No. 92-562, 86 Stat. 1176, 1176 (Oct. 25, 1972); *Wong*, 575 U.S. at 411.

Second, even if the Quiet Title Act's statute of limitations were jurisdictional, the District Court erred in holding that the statute of limitations question is not intertwined with the merits of the action. Particularly in a Quiet Title Act case dealing with an easement, jurisdictional issues are intertwined with the merits. As this Court has stated, a motion to dismiss for lack of subject matter jurisdiction is improper, "when a statute provides the basis for both the subject matter jurisdiction of the federal court and the plaintiffs' substantive claim for

relief ….” *Thornhill Publ’g Co.*, 594 F.2d at 734 (quotations omitted). The Quiet Title Act provides the basis for both the subject matter jurisdiction and the substantive claim for relief. Pub. L. No. 92-562, 86 Stat. at 1176–77. And, if the statute of limitations is jurisdictional, the jurisdictional issue and merits are necessarily intertwined because the statute of limitations is codified in the same section of the U.S. Code as the basis for the substantive claim for relief. 28 U.S.C. § 2409a.

Third, the District Court erred in holding that all of the landowners’ claims accrued at the same time. Under the Quiet Title Act, a claim accrues when a property owner knew or should have known of the government’s adverse claim in the property. 28 U.S.C. § 2409a. Not all claims affecting an interest in property, however, accrue at the same time. *Michel*, 65 F.3d at 132. With an easement, knowledge of the government’s claim over one aspect of the easement does not cause all potential claims regarding that easement to accrue. *Id.* Instead, each claim must be analyzed separately to determine when they individually accrued.

Finally, the District Court erred in holding that the landowners’ claims are untimely. All of the landowners’ claims were filed within the

twelve-year statute of limitations. This Complaint was filed on August 23, 2018. 3-ER-561. Defendant first disclaimed any patrol and maintenance duties under the easement in December of 2017. 3-ER-432–33 (Depo. Winthers, 12:9–15; 14:14–15:17); 3-ER-435–36 (Depo. Winthers, 25:8–26:5); 2-ER-64. The Forest Service did not state its view that the public can park on all 60 feet of the easement until 2018, the same year the Complaint was filed. 2-ER-134. Finally, the earliest indication of Defendant's position that the public can use the road came when it installed a sign stating "public access thru private lands" on the road. 3-ER-516, 3-ER-518. This sign was installed no earlier than September 2006, 11 years and 11 months before this lawsuit. 2-ER-175–76.

This Court should vacate the judgment of the District Court and remand for further proceedings.

ARGUMENT

I. The Quiet Title Act's Statute of Limitations Is Nonjurisdictional Because It Is an Ordinary, Run-of-the-Mill Statute of Limitations That Is Separate From the Grant of Jurisdiction in the Act.

A. Reviewability and Standard of Review.

The District Court held that the statute of limitations is jurisdictional in its order granting the motion to dismiss. 1-ER-25. This Court reviews de novo the District Court's interpretation of a statute and its decision to dismiss for lack of subject-matter jurisdiction. *United States ex rel. Hartpence v. Kinetic Concepts, Inc.*, 792 F.3d 1121, 1126 (9th Cir. 2015) (en banc).

B. In Passing the Quiet Title Act, Congress Did Not Clearly State That the Statute of Limitations Is Jurisdictional.

Below, the government filed a motion to dismiss under Federal Rule of Civil Procedure 12(b)(1) and argued that the court lacked subject matter jurisdiction. 1-ER-11. The District Court granted the motion, holding that the landowners did not bring their claims within the Quiet Title Act's twelve-year statute of limitations. 1-ER-33. In granting the motion, the District Court incorrectly held that the government's Rule

12(b)(1) motion was proper because the Quiet Title Act's statute of limitations is jurisdictional. 1-ER-25.

Absent a clear statement from Congress to the contrary, an act's statute of limitations is not jurisdictional. *Wong*, 575 U.S. at 409–10. In passing the Quiet Title Act, Congress did not clearly state its intention to differ from this default rule. The Act separates the grant of jurisdiction from the rest of the Act, including the statute of limitations. Pub. L. No. 92-562, 86 Stat. at 1176. Indeed, Congress codified the grant of jurisdiction in a separate section of the U.S. Code than the rest of the Act. *Compare* 28 U.S.C. § 1346(f) *with* 28 U.S.C. § 2409a. Because the statute of limitations is not jurisdictional, the District Court erred in granting the government's motion to dismiss for lack of subject matter jurisdiction. *Cf. Weil*, 859 F.3d at 814 (Bankruptcy Appellate Panel's decision that bankruptcy court lacked subject matter jurisdiction was wrong as a matter of law because the time limit imposed by relevant statute was not a jurisdictional constraint).

The Supreme Court's recent decision in *Wong* is dispositive here. At issue in *Wong* was the statute of limitations in the Federal Tort Claims Act. *Wong*, 575 U.S. at 405. The Court held that the statute of

limitations was non-jurisdictional because Congress made no clear statement to the contrary. *Id.* at 410. In reaching its conclusion, the Court noted the "mundane statute-of-limitations language, saying only what every time bar, by definition, must: that after a certain time a claim is barred." *Id.* The Court also recognized that the grant of jurisdiction in the Federal Tort Claims Act is separate from the statute of limitations, which indicates that the time bar is not jurisdictional. *Id.* at 411–12. The Court also rejected the argument that the time bar must be jurisdictional because the Federal Tort Claims Act is a waiver of sovereign immunity. *Id.* at 419–20. "[I]t makes no difference that a time bar conditions a waiver of sovereign immunity …." *Id.* at 420. The only question is whether Congress clearly stated that the time bar is jurisdictional.

Like the Federal Tort Claims Act, the Quiet Title Act uses "mundane statute-of-limitations language …." *Wong*, 575 U.S. at 410. Indeed, the statute of limitations language is practically the same. The Quiet Title Act states that "[a]ny civil action under this section … shall be barred unless it is commenced within twelve years of the date upon which it accrued." 28 U.S.C. § 2409a(g). The only difference is the

Federal Tort Claims Act's statute of limitations is more forceful, stating that an out of time action "shall be *forever* barred …." 28 U.S.C. § 2401(b) (emphasis added). If the Federal Tort Claims Act's statute of limitations is not jurisdictional, then the similarly worded, less restrictive, Quiet Title Act statute of limitations is not either.

Also like the Federal Tort Claims Act, Congress separated the Quiet Title Act's statute of limitations from its grant of jurisdiction. 28 U.S.C. §§ 1346(f), 2409a(g). The Quiet Title Act grants federal district courts "exclusive original jurisdiction of civil actions under section 2409a to quiet title to an estate or interest in real property in which an interest is claimed by the United States." Pub. L. No. 92-562, 86 Stat. at 1176, *codified at* 28 U.S.C. § 1346(f). This grant of jurisdiction is not only in a different section of the Act, it is codified in a separate section of the U.S. Code. *Id.* Like in *Wong*, this separation demonstrates the non-jurisdictional nature of the Quiet Title Act's statute of limitations. *Wong*, 575 U.S. at 411.

Furthermore, the Supreme Court has never previously considered whether the Quiet Title Act's statute of limitations is jurisdictional. In *Wong*, the Court did not upset its previous holding that the Tucker Act's

statute of limitations is jurisdictional. *Id.* at 416. But it respected *stare decisis* for that Act only. *Id.*; *see also Herr v. U.S. Forest Serv.*, 803 F.3d 809, 816 (6th Cir. 2015) (In *Wong*, the Supreme Court only named one case where it was respecting its previous holding that an act's statute of limitations is jurisdictional.). For other acts, if the Supreme Court has "not previously considered whether" the statute of limitations is jurisdictional, then lower courts must apply the standards articulated in *Wong*. 575 U.S. at 416–17. Absent a clear statement from Congress, a lower court should treat a statute of limitations period as non-jurisdictional. *Id.*

In the few cases where the Supreme Court discussed the Quiet Title Act, it never directly addressed the question of whether the statute of limitations is jurisdictional. Contrary to the District Court's belief, neither *Block v. North Dakota* nor *United States v. Beggerly* hold that the Quiet Title Act's statute of limitation is jurisdictional. 1-ER-22–23 (citing *Block*, 461 U.S. 273 (1983), and *Beggerly*, 524 U.S. 38 (1998)).

In *Block*, the Supreme Court considered (1) whether the Quiet Title Act provides the exclusive procedure by which a claimant can judicially challenge the title of the United States to real property and (2) whether

the Quiet Title Act's statute of limitations is applicable where the plaintiff is a state. 461 U.S. at 276–77. *Block* did not, however, "consider[] whether" the Quiet Title Act's statute of limitations was jurisdictional and, thus, does not bind this Court on that question. *Wong*, 575 U.S. at 416. In reaching its decision, the *Block* Court noted that the Quiet Title Act waives sovereign immunity. 461 U.S. at 280. But, "it makes no difference" to the jurisdictional question "that a time bar conditions a waiver of sovereign immunity …." *Wong*, 575 U.S. at 420.

The Court made one passing reference in the conclusion of its opinion that the courts below would lack jurisdiction if the suit is barred by the statute of limitations. *Block*, 461 U.S. at 292. But as the Supreme Court has noted, is has often been casual with the use of the term "jurisdiction." *Sebelius v. Auburn Reg'l Med. Ctr.*, 568 U.S. 145, 153 (2013). It has admittedly "sometimes mischaracterized claim-processing rules or elements of a cause of action as jurisdictional limitations, particularly when that characterization was not central to the case, and thus did not require close analysis." *Reed Elsevier, Inc. v. Muchnick*, 559 U.S. 154, 161 (2010).

To prevent the "untoward consequences" of labeling a rule jurisdictional, the Court has "tried in recent cases to bring some discipline to the use of the term jurisdiction." *Sebelius*, 568 U.S. at 153 (quotations and citation omitted). *Wong* is the culmination of that disciplinary work. *Block*, on the other hand, was well before the Court's recent discipline on the proper use of the term jurisdiction. One fleeting use of that word, when that characterization was not central to the case, does not mean that the Court has held that the Quiet Title Act's statute of limitations is jurisdictional.

Beggerly also did not answer the question of whether the Quiet Title Act's statute of limitations is jurisdictional. In fact, the opinion indicates that the Court views the statute of limitations as non-jurisdictional. 524 U.S. at 49. In *Beggerly*, the Court considered whether the Quiet Title Act's statute of limitations allows for equitable tolling. *Id.* at 48–49. The Court concluded that the language of the statute of limitations "effectively allow[s] for equitable tolling" and, as a result, declined to allow any equitable tolling outside the statutory language. *Id.* at 48; *but see id.* at 49–50 (Stevens, J., concurring) (stating that the

Court's decision does not foreclose other equitable considerations for calculating the statute of limitations).

In engaging with the idea that equitable tolling might be available in quiet title actions, the Court indicated that the Act's limitations period is not jurisdictional. For if a time bar is jurisdictional, a court has no authority to hear a case "even if equitable considerations would support extending the prescribed time period." *Wong*, 575 U.S. at 408–09. If the statute of limitations were jurisdictional, that would have answered the question presented in *Beggerly* without further analysis. Instead, the Court had to examine whether and how much equitable tolling is allowed under the Quiet Title Act's statute of limitations because that limitations period is not jurisdictional. Therefore, no binding Supreme Court precedent holds that the Quiet Title Act's statute of limitations is jurisdictional.

This Court has recognized *Wong*'s effect in other circumstances. Recently, in *Weil*, this Court held that a statute of limitations in Chapter 7 of the Bankruptcy Code was not jurisdictional. 859 F.3d at 814. Relying on *Wong*, this Court stated that the provision at issue was "an ordinary, run-of-the-mill statute of limitations, specifying the time within which a

particular type of action must be filed." *Id.* This statute of limitations was non-jurisdictional because "[a]s the Court recently put it, 'Congress must do something special, beyond setting an exception-free deadline, to tag a statute of limitations as jurisdictional.'" *Id.* (quoting *Wong*, 575 U.S. at 410).

Here, the District Court, despite its holding, recognized disagreement about whether *Wong* is decisive on the nonjurisdictional nature of the Quiet Title Act's statute of limitations. 1-ER-14. The District Court noted that its decision created an intradistrict split within the District of Montana because a different division of the court recently held that the Quiet Title Act's statute of limitations is not jurisdictional. *Id.* (citing *Bar K Ranch, LLC v. United States*, No. CV-19-6-BU-BMM, 2019 WL 5328782 (D. Mont. Oct. 21, 2019)). The District Court in this case, however, felt bound by this Court's decisions in *Skranak v. Castenada*, 425 F.3d 1213, 1216 (9th Cir. 2005), and *Kingman Reef Atoll Invs., L.L.C. v. United States*, 541 F.3d 1189, 1195 (9th Cir. 2008). 1-ER-24.

In both *Skranak* and *Kingman Reef*, this Court held that the Quiet Title Act's statute of limitations is jurisdictional. *Skranak*, 425 F.3d at

1216; *Kingman Reef*, 541 F.3d at 1195. Primarily focusing on the Quiet Title Act's waiver of sovereign immunity, *Skranak* held that the statute of limitations is a jurisdictional restraint and could not be waived. *Skranak*, 425 F.3d at 1216. *Kingman Reef*, also focusing on the Quiet Title Act's waiver of sovereign immunity, affirmed a dismissal for lack of subject matter jurisdiction. 541 F.3d at 1195. Both cases, however, were decided before *Wong*.

Wong abrogates this Court's previous decisions. A panel of this Court has an obligation to follow Supreme Court precedent, not prior circuit precedent, when "the reasoning or theory of [the] prior circuit authority is clearly irreconcilable with the reasoning or theory of intervening higher authority …." *Miller v. Gammie*, 335 F.3d 889, 893 (9th Cir. 2003). The issues decided by the higher court need not be identical to allow a three-judge panel to dispense with prior circuit authority. *Id*. at 900. "Rather, the relevant court of last resort must have undercut the theory or reasoning underlying the prior circuit precedent in such a way that the cases are clearly irreconcilable." *Id*.

Wong undercuts the theory or reasoning underlying the prior circuit precedent. *Wong* applies a presumption that a statute of

limitations is not jurisdictional and states that "the Government must clear a high bar to establish that a statute of limitations is jurisdictional." *Wong*, 575 U.S. at 409. This Court's previous decisions make no such presumption. *Skranak*, 425 F.3d at 1216; *Kingman Reef*, 541 F.3d at 1195–96. Furthermore, *Wong* lays out a framework for assessing whether an act's statute of limitations is jurisdictional. This Court has never applied that framework.

Both *Skranak* and *Kingman Reef* rely on premises that are expressly contradicted by *Wong*. In *Skranak*, the Court stated that "[t]he Quiet Title Act is a waiver of sovereign immunity" and "[i]f the statute of limitations has run on a waiver of sovereign immunity, federal courts lack jurisdiction." 425 F.3d at 1216. But, "it makes no difference" to the jurisdictional question "that a time bar conditions a waiver of sovereign immunity …." *Wong*, 575 U.S. at 420.

Kingman Reef also follows the pre-*Wong* assumption that Congress's waiver of sovereign immunity matters in interpreting the jurisdictional nature of the statute of limitations. 541 F.3d at 1195. Crucially, a statute of limitations is not jurisdictional if it "speaks only to a claim's timeliness, not to a court's power." *Wong*, 575 U.S. at 410.

Congress's separation of a filing deadline from a jurisdictional grant indicates that the time bar is not jurisdictional. *Wong*, 575 U.S. at 411. But in *Kingman Reef*, the panel never cited the Quiet Title Act's jurisdictional grant in 28 U.S.C. § 1346(f).[3] Instead, the panel only cited and relied on the Quiet Title Act's waiver of sovereign immunity in 28 U.S.C. § 2409a(a). *Kingman Reef*, 541 F.3d at 1195. As *Wong* makes clear, to determine whether a statute of limitations is jurisdictional, a court must analyze the provision that grants a court jurisdiction. *Kingman Reef* never addressed the Quiet Title Act's jurisdictional grant. *Wong* thus undercuts the reasoning of *Kingman Reef*, and this Court is bound to follow the more recent supreme Court precedent. *Miller*, 335 F.3d at 900.

As demonstrated above, a proper application of *Wong* leads to the conclusion that the Quiet Title Act's statute of limitations is not jurisdictional. Because the statute of limitations is not jurisdictional, the

[3] The panel in *Kingman Reef* incorrectly implied that the whole of the Quiet Title Act is codified at 28 U.S.C. § 2409a. *Compare Kingman Reef*, 541 F.3d at 1195, *with* Pub. L. No. 92-562, 86 Stat. at 1176. The only reference to § 1346(f) is when the panel quotes verbatim 28 U.S.C. § 2409a(e) in footnote 5. *Kingman Reef*, 541 F.3d at 1200 n.5.

District Court erred in granting the government's Rule 12(b)(1) motion to dismiss. This Court should vacate the judgment of the District Court.

II. The Question of When the Landowners' Claims Accrued Is Intertwined With the Merits of the Action Because the Quiet Title Act Provides the Basis for Both.

A. Reviewability and Standard of Review.

The District Court held that the statute of limitations issue is not intertwined with the merits in its order granting the motion to dismiss. 1-ER-29. This Court reviews de novo the District Court's interpretation of an Act and its decision to dismiss for lack of subject-matter jurisdiction. *Hartpence*, 792 F.3d at 1126 (9th Cir. 2015).

B. If the Quiet Title Act Statute of Limitations Is Jurisdictional, Then a Rule 12(b)(1) Motion Is Improper Because the Jurisdictional Issue Is Necessarily Intertwined With the Merits of the Claim.

Even if the District Court were correct that the Quiet Title Act's statute of limitations is jurisdictional, it still erred in dismissing the case under Rule 12(b)(1). A 12(b)(1) motion is improper when the jurisdictional issue and substantive issues are so intertwined that the question of jurisdiction is dependent on the resolution of factual issues going to the merits of an action. *Sun Valley Gasoline, Inc. v. Ernst Enterprises, Inc.*, 711 F.2d 138, 139 (9th Cir. 1983). Specifically, "[t]he

question of jurisdiction and the merits of an action are intertwined where 'a statute provides the basis for both the subject matter jurisdiction of the federal court and the plaintiff's substantive claim for relief.'" *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004) (quoting *Sun Valley*, 711 F.2d at 139). In these situations, "a motion to dismiss for lack of subject matter jurisdiction rather than for failure to state a claim is proper only when the allegations of the complaint are frivolous." *Thornhill Publ'g Co.*, 594 F.2d at 734.

The Quiet Title Act provides the basis for both the court's subject matter jurisdiction and the substantive claim for relief. This is true whether or not the statute of limitations is jurisdictional. Although the grant of jurisdiction is codified in a separate section of the U.S. Code, the grant of jurisdiction and the statute of limitations are in the same act. Pub. L. No. 92-562, 86 Stat. at 1176.

But if, as the District Court held, the statute of limitations is jurisdictional, then the limitations question and the merits are necessarily intertwined. The "jurisdictional" statute of limitations is in the same section of the U.S. Code as the basis for the substantive claim for relief. 28 U.S.C. § 2409a. Therefore, even if the District Court were

correct in determining the statute of limitations is jurisdictional, it still erred in granting the government's 12(b)(1) motion to dismiss.

The District Court held that the jurisdictional issue and substantive issues were not intertwined because those two questions require an examination of different evidence. 1-ER-29. But that is not the standard articulated by this Court. The standard is whether the statute provides the basis for both the subject matter jurisdiction of the federal court and the plaintiff's substantive claim for relief. *Safe Air for Everyone*, 373 F.3d at 1039. As this Court held in *Safe Air*, whether a plaintiff alleged a claim that comes within an Act's reach "goes to the merits of [the plaintiff's] action." *Id.* at 1040 (citing *Sun Valley*, 711 F.2d at 140). Although the District Court cited *Safe Air* in its order, it did not address this crucial aspect of that case. 1-ER-14.[4]

[4] The District Court did not rely on *Kingman Reef* in determining that the statute of limitations is not intertwined with the merits. *Kingman Reef*, 541 F.3d at 1197. However, like the District Court here, the panel in *Kingman Reef* did not address the relevant standard for determining when issues are intertwined. *Id.* The panel in *Kingman Reef* only partially quoted *Thornhill*, and did not discuss *Sun Valley* or *Safe Air*. *Id.*

Furthermore, the same evidence is relevant for both the statute of limitations and the merits of the landowners' action, at least in the context of this case. Under Montana law, if the terms of an easement are ambiguous, courts may allow parties to introduce extrinsic evidence to prove the intent of the parties. *Whitefish Congregation of Jehovah's Witnesses, Inc. v. Caltabiano*, 449 P.3d 812, 819 (Mont. 2019). Pertinent extrinsic evidence includes the "nature and character of the dominant and servient estates, the prior and subsequent use of the properties, the character of the surrounding area, the nature and character of any common plan of development for the area, and the consideration" paid for the easement. *O'Keefe v. Mustang Ranches HOA*, 446 P.3d 509, 520–21 (Mont. 2019).

Much of this evidence, like the subsequent use of the properties, is also relevant to the question of when a claim accrues under the Quiet Title Act. A claim accrues, and the statute of limitations begins to run, based on the government's actions in managing the easement. *McFarland v. Norton*, 425 F.3d 724, 727 (9th Cir. 2005); *Michel*, 65 F.3d at 132. Determining whether there is a disputed interest in property, and resolving that dispute, requires examination of the same evidence.

The issue of when the landowners' claims accrued is intertwined with the merits of the action. The Quiet Title Act provides the basis for both the court's subject matter jurisdiction and the substantive claim for relief, and the same evidence is relevant to resolving both questions. The District Court erred in granting the government's 12(b)(1) motion to dismiss and this Court should vacate the judgment of the District Court.

III. The Landowners' Claims About Who May Use the Easement, Proper Use of the Easement, and the Federal Government's Obligations Under the Easement Accrued at Different Times.

A. Reviewability and Standard of Review.

In its order granting the motion to dismiss, the District Court held that all of the landowners' claims accrued at once. 1-ER-33. The District Court reiterated its position in its order denying the motion to alter or amend the judgment. 1-ER-5–6.

This Court reviews de novo the District Court's interpretation of the Quiet Title Act and its decisions to dismiss for lack of subject matter jurisdiction. *See Hartpence*, 792 F.3d at 1126. A court must construe pleadings "so as to do justice." Fed. R. Civ. P. 8(e).

B. Under the Quiet Title Act, Not All Claims Affecting a Property Interest Accrue at the Same Time and the Timeliness of Separate Claims Must Be Analyzed Separately.

Even if a Rule 12(b)(1) motion to dismiss were proper, the District Court erred in concluding that all of the landowners' claims accrued at once. Under the Quiet Title Act, a claim accrues when a property owner knew or should have known of the government's adverse claim in the property. 28 U.S.C. § 2409a(g). When and whether the government has expressed its adverse claim depends on the property interest at issue. "An easement, of course, is different" from a fee title interest. *McFarland*, 425 F.3d at 726–27. With an easement, knowledge of the government's claim over one aspect of the easement does not cause all potential claims regarding that easement to accrue. *See Michel*, 65 F.3d at 132.

The key difference between disputes over fee title and disputes over easements is how the property owners interact. With easements, "knowledge of a government claim of ownership may be entirely consistent with a plaintiff's claim." *Michel*, 65 F.3d at 132. In many situations, the servient estate's view of the easement can "peacefully coexist" with the dominant estate's view of the easement. *See San Juan*

Cty. v. United States, 754 F.3d 787, 794 (10th Cir. 2014). The servient estate owners may not dispute that the government owns an easement but may dispute the specifics of the easement. Knowledge of the easement does not cause claims about the specifics of the easement to accrue. *Michel*, 65 F.3d at 132.

Peaceful coexistence between property owners is especially likely when the dominant estate is a federal agency that has the power to regulate. In these situations, determining when a claim accrues is "more complicated" than in other situations because "the landowner could reasonably presume that the federal entity concerned has the power to regulate." *McFarland*, 425 F.3d at 727. That an agency regulates the easement does not necessarily put the underlying landowners on notice of the agency's view of the scope of the easement. "To avoid forcing landowners and the government into 'premature, and often unnecessary, suits,'" courts "should not lightly assume that regulatory or supervisory actions … will trigger the statute of limitations." *Id.* (quoting *Michel*, 65 F.3d at 132); *see also Poverty Flats Land & Cattle Co. v. United States*, 706 F.2d 1078, 1079–80 (10th Cir. 1983) (for limitations period to run,

government's actions "must be so clear that it would have been unreasonable for the plaintiff to believe otherwise").

Here, the landowners challenge "the nature or extent of the government's interest" in the Robbins Gulch Road Easement. *Werner v. United States*, 9 F.3d 1514, 1516 (11th Cir. 1993). Specifically, Mr. Wilkins and Mrs. Stanton challenge whether the easement allows the public at large to use the easement, whether easement users can park alongside the road, and what the government's obligations are under the easement. Again, courts analyze the statute of limitations differently when a plaintiff challenges the extent of the government's interest, rather than the existence of the interest itself. *Id.* "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 interests of others, seeks to expand that claim." *Id.* at 1519.

Just as knowledge of the easement does not trigger claims about the specifics of the easement, claim accrual for one aspect of the easement does not trigger the statute of limitations for all potential claims over the easement. A government claim of title is not "sufficient

to trigger the running of the limitations period on any claim affecting use of the property." *Michel*, 65 F.3d at 132. Instead, the limitations period runs "from the time the government attempted to restrict benefits the plaintiffs previously enjoyed with respect to government property, rather than from the time plaintiffs knew of the government's title." *Id.* at 132 n.1. In other words, the government's actions in one context do not trigger the statute of limitations is all contexts.

Here, the landowners alleged separate claims that accrued at separate times. The Complaint's First Cause of Action challenges the use of the easement: who may use the easement, and how they may use it. Specifically, the landowners assert (1) that the easement does not allow the general public to use the road and (2) easement users do not have the right to park alongside the road. The Second Cause of Action challenges the government's obligations under the easement. Specifically, the landowners assert that the government has (1) a duty to repair and maintain the easement to prevent unreasonable interference with the servient estate; and (2) a duty to patrol the easement to ensure that those using the easement do not unreasonably damage or interfere with the landowners' use of their property. 3-ER-

562. The landowners' knowledge of the government's position on any one of these claims does not establish knowledge of the government's position on all of the claims. What the landowners knew or should have known about the government's position must be analyzed separately for each claim. The District Court, however, held that all of the landowners' claims accrued at once. 1-ER-33.

C. The District Court Improperly Held That All of the Landowners' Separate Claims Accrued at the Same Time.

In its opinion the District Court equated all of the landowners' claims for relief and failed to analyze the statute of limitations separately. 1-ER-33; 1-ER-5–6. The District Court held that all of the claims accrued when the owners knew or should have known that the government believed it had the right to allow the public to use the easement. 1-ER-33. But the government's actions expressing its view of its rights under the easement will not necessarily express its views of its obligations under the easement. *Michel*, 65 F.3d at 132.

1. The landowners' claims about the federal government's obligations under the easement accrued after their claims about the use of the easement accrued.

The District Court's primary justification in analyzing all of Mr. Wilkins's and Mrs. Stanton's claims together was that if they succeeded on their claim that the public cannot use the easement, then they would necessarily succeed on their other claims. 1-ER-5–6; 1-ER-11 n.2. The District Court believed that the only problem the landowners face is the public's use of the easement, so the court concluded that all of the claims necessarily follow from the dispute over use of the easement. 1-ER-11 n.2 (District Court concluding that the landowners did not allege that "the Forest Service failed to 'patrol' or 'maintain' against any threat other than public use").

The Second Cause of Action, however, alleges that the government has obligations to mitigate *excessive* use of the easement, even by those otherwise authorized to use it. 3-ER-561. Mr. Wilkins and Mrs. Stanton have experienced problems beyond mere public use of the road. Among those alleged unauthorized uses are "trespassing, illegal hunting, speeding and disrespectful activities often aimed at the Plaintiffs and other neighboring owners of private lands traversed by the road." 3-ER-

551 ¶ 13. They also alleged that unregulated use of the easement has caused increased erosion that affects their properties. 3-ER-552 ¶ 15.

Furthermore, even though the landowners believe the easement is limited in scope, they also believe that the government has an obligation to limit excessive use of the easement even if the road is not open to the general public. Mr. Wilkins and Mrs. Stanton do not dispute that the United States can use the Robbins Gulch Road easement and that it can allow certain people to use the road. 3-ER-555. Namely, the landowners' believe the easement allows those with Forest Service permits and licenses to use the road to access the National Forest. *Id.* They also believe that the government still has obligations with respect to those permit and license holders. Just because only a few people can use the easement does not mean that those people can use the easement however they want.

In fact, some of the excessive use might be from those who hold Forest Service permits. 3-ER-402–03 (Depo. Stanton, 49:25–50:16). For example, Mr. Wilkins's and Mrs. Stanton's neighbors have alleged unreasonable use of the easement by cattlemen who hold grazing permits on the National Forest. *Id.* These neighbors state that the

cattlemen once drove off the road and ran over the neighbors' dogs. *Id.* If true, that is excessive use of the easement by people who can legally use the easement.[5]

While grazing permit holders can use the easement, they must do so reasonably. *See Mattson*, 215 P.3d at 689–90; *Walsh*, 672 F.2d at 749. But the government disputes it has an obligation to ensure reasonable use of its easement through patrol and maintenance. 2-ER-116 ¶ 26; 2-ER-64; 3-ER-544. Therefore, even if the landowners succeed on their claim about public use of the easement, the court would still need to decide the government's patrol and maintenance obligations under the easement. An order stating the government must ensure reasonable use of the easement does not necessarily follow from an order limiting public use of the easement. That is why the landowners alleged separate causes of action.

Of course, the landowners believe that problems related to excessive use of the easement would be mitigated if the public did not

[5] Ultimately, it does not matter whether the neighbors are correct about the cattlemen's actions. Even if this were a hypothetical incident, it still demonstrates why the District Court was incorrect to assume that resolving the public use dispute in landowners' favor would necessarily provide relief under the Second Cause of Action.

use the road. Their claim about public use of the easement reflects that belief. But regardless of whether they succeed on their claim that the general public cannot use the easement, the problems related to excessive use can still be mitigated if the government recognizes its obligations under the terms of the easement. That is why Mr. Wilkins and Mrs. Stanton brought their Second Cause of Action.

Moreover, even if the government can allow public use of the easement, the landowners are entitled to maintain a Quiet Title Act action to establish the government's obligations under the easement. The Second Cause of Action specifically alleges that "[u]nder the plain text of the 1962 easement, the United States has an obligation to 'patrol[]' the Robbins Gulch Road to ensure that the road is secure and that unauthorized trespasses are not occurring, and to 'maintain[]' the road." 3-ER-561 ¶ 36. The Complaint alleges that "Forest Service enforcement officers have verbally disavowed any willingness to patrol the Robbins Gulch Road to limit the excessive and unauthorized uses of it which have become rampant." 3-ER-554 ¶ 19. The landowners' claims in their Second Cause of Action do not depend on the outcome of their claims about public use of the easement.

Contrary to the District Court's determination, the government's duties under the easement are independent of its rights under the easement. *See* 1-ER-5 (stating that "there is no independent duty to maintain and patrol"). Under Montana law, the "longstanding and well-settled" rule is that the holder of an easement cannot cause unreasonable damage to the servient estate or interfere unreasonably with the servient estate's enjoyment. *Mattson*, 215 P.3d at 689–90; *Walsh*, 672 F.2d at 749. The government has an obligation to ensure that those it allows to use its easement do so reasonably. *Id.* These obligations are separate from an easement holder's rights, but the government disavows these obligations. 2-ER-64; 3-ER-544 (Answer denying that landowners are entitled to requested relief).

Similarly, "the general rule in Montana [is] that the owner of an easement has not only the right *but the duty* to keep the easement in repair ...." *Anderson*, 163 P.3d at 1287–88 (emphasis added). If easement users unreasonably damage or interfere with the use and enjoyment of the servient estate, then the government must maintain and repair the easement to correct that damage or interference. *See Walsh*, 672 F.2d at 749. Again, these duties are independent of the government's rights

under the easement and present a separate question under a quiet title action. *Id.*

Thus, the question of who may use the road is a separate question from the government's obligations to ensure proper use of the road. Even if the public can use the road, some of their actions may be "excessive and unauthorized." 3-ER-554 ¶ 19. The District Court, however, implied that the public's unreasonable use of the easement was a necessary part of a public use easement. 1-ER-6. In other words, the District Court believed that if one knew of the public's right to use the easement, he or she would know that the government would allow the public to act however they wanted on the easement.

Even for public easements, however, there is a duty to not unreasonably interfere with the servient estate. *Mattson*, 215 P.3d at 689–90; *Walsh*, 672 F.2d at 749. The Second Cause of Action asks if the government must respond to excessive and unauthorized use of the easement. Certainly, what constitutes reasonable maintenance and reasonable patrol of the easement varies with who uses the easement. If only a few permittees use the easement each year, then maintenance obligations will be less than if the public constantly uses the easement.

More use will cause more erosion and will necessitate more repairs. But just because the government's particular obligations are different depending on who uses the easement, does not mean that the public use claim is the same as the maintenance and patrol claims.

Importantly, the Complaint does not ask a court to determine whether the government is reasonably fulfilling its obligations under the easement. The government denies it has any responsibilities under the easement whatsoever, so a court must first interpret whether the easement imposes any patrol or maintenance obligations at all. And whether the government has any obligations under the easement does not depend on who can use the easement.

The District Court, however, felt that the landowners were required to specifically allege that the Forest Service failed to perform its duties to maintain and patrol. 1-ER-11 n.2. For the purposes of the Quiet Title Act, however, the landowners do not need to make such an allegation. The dispute over the meaning of the easement, including the government's patrol and maintenance obligations under the easement, triggers the Act's statute of limitations and creates a cause of action under the Quiet Title Act. 28 U.S.C. §§ 2409a(a); 2409a(g). The Forest

Service explicitly stated in 2017 and throughout this litigation that it does not believe it is required to maintain or patrol the road. 2-ER-116 ¶ 26; 2-ER-64; 3-ER-544; 3-ER-435–36 (Depo. Winthers, 25:8–26:5). Even if the Forest Service were currently maintaining and patrolling the road, there is no guarantee it will continue to do so in the future. But because the government has now put the landowners on notice of its position, they are required to bring a QTA action before the statute of limitations runs.[6]

Furthermore, as the magistrate judge correctly recognized, the landowners did allege "changes in the scope of the [Forest Service's] operation and management of the easement." 1-ER-52–53. These changes in the management of the easement, and specifically the government's express disclaimer of any obligations under the easement, caused those claims to accrue. When those claims accrued is a separate

[6] The landowners requested, both in their opposition to the motion to dismiss, and in their motion to alter or amend the judgment, for leave to amend if the government's obligations under the easement fall outside the scope of the Quiet Title Act. The government, however, agrees that any allegations about its obligations under the easement are properly brought under the Quiet Title Act. 1-ER-7–8. If this Court disagrees, this Court should instruct the District Court to grant Plaintiffs leave to amend to bring a claim under the Administrative Procedure Act.

question from when claims about public use of the easement accrued. The District Court, however, incorrectly conflated these claims and held that the statute of limitations ran all at once.

The Complaint clearly identifies different claims regarding the lawful use of the easement and the government's obligations under the easement. 3-ER-560–62; 1-ER-36. Mr. Wilkins and Mrs. Stanton clarified this position in their preliminary pretrial statement, which was filed early in the case shortly after the government filed its Answer. 3-ER-525–26. Therefore, the landowners have clearly and repeatedly asserted that their maintenance and patrol claims are separate from the claims regarding the use of the easement—and that their claim regarding public use of the easement is separate from their claim regarding parking within the easement. The District Court should have separately analyzed when those claims accrued. *See* Fed. R. Civ. P. 8(e) ("Pleadings must be construed so as to do justice.").

2. The landowners' claims about who can use the easement and how the easement may be used accrued separately.

The District Court again improperly assumed that success on the public use claim would necessarily mean success on the parking claim.

1-ER-7. The landowners believe that regardless of whether the public—or only a limited number of permit holders—can use the easement, easement users can only use the easement as a thoroughfare to and from the National Forest. 3-ER-560 ¶ 32; 3-ER-562. Only the government can park within the easement in specific situations, namely when it is carrying out its duties to maintain or patrol the road.

The easement specifically states that the government has "reasonable rights of occupancy" of the grantors' land "immediately adjacent to said right-of-way as may be necessary for the construction, maintenance, and repair of said road." 2-ER-227. The meaning of this provision presents a separate question from those defining the use of the easement. Therefore, the landowners' claim about the use of the easement accrued at a separate time than its claim about the use of the easement.

Like with their claims about the obligations under the easement, the landowners clarified that the public use and parking claims were separate early in the litigation. 3-ER-526. In their preliminary pretrial statement, they stated "[f]urthermore, the easement grants a right of access to the United States that does not include a right to park

alongside the road, unless such parking is related to the United States' obligation to maintain and patrol the road." *Id.* Although the question of parking is within the First Cause of Action, they have repeatedly made clear that the question of parking is separate from the question of public use of the road. The District Court should have analyzed these claims separately.

The government's rights and responsibilities under the easement are separate questions and must be analyzed separately. Whether or not the public is allowed to use the road has no relationship to the government's obligations to maintain and patrol the easement. Furthermore, even if the public is allowed to use the easement, the easement is for ingress and egress only, and does not allow the public to park within the easement. All of these claims are separate, and accrued at separate times. The District Court, however, analyzed them as one claim. This Court should vacate the judgment of the District Court and remand with instructions to separately analyze when all of the landowners' claims accrued.

IV. The Landowners Timely Filed Their Complaint.

The District Court erred in dismissing the landowners' Complaint under Federal Rule of Civil Procedure 12(b)(1). Additionally, even if a Rule 12(b)(1) motion to dismiss were proper, the District Court erred by not analyzing the landowners' claims separately. Either of these errors are sufficient to resolve the appeal, and this Court can vacate and remand the case to the District Court.

But if this Court wishes to evaluate the government's arguments about the statute of limitations, the evidence in the record demonstrates the timeliness of the landowners' Complaint. Even if this Court reviews the government's motion to dismiss under Rule 12(b)(1), it should vacate the judgment of the District Court.

A. Reviewability and Standard of Review.

In its order granting the motion to dismiss, the District Court held that the landowners' claims accrued twelve years before the Complaint was filed. 1-ER-33. This Court reviews de novo the District Court's decision to dismiss for lack of subject-matter jurisdiction. *Hartpence*, 792 F.3d at 1126.

Where the District Court relied on findings of fact to draw its conclusions about subject-matter jurisdiction, this Court reviews those

factual findings for clear error. *Id.* at 1127. "A finding of fact is clearly erroneous when the evidence in the record supports the finding but the reviewing court is left with a definite and firm conviction that a mistake has been committed." *N.B. v. Hellgate Elementary Sch. Dist., ex rel. Bd. of Directors, Missoula Cty., Mont.*, 541 F.3d 1202, 1207 (9th Cir. 2008) (quotations and citation omitted).

Mixed questions of fact and law are reviewed de novo, unless the mixed question is primarily factual. *Id.* Mixed questions of fact and law include the interpretation of historical documents. *See Gay v. Waiters' & Dairy Lunchmen's Union, Local No. 30*, 694 F.2d 531, 544 n.12 (9th Cir. 1982) (citing *Glasson v. City of Louisville*, 518 F.2d 899, 903 (6th Cir. 1975), for the proposition that "whether termed ultimate facts or conclusions of law, determinations by district court which attach legal significance to historical facts are reviewable free of clearly erroneous standard").

B. The Landowners' Claims Accrued When the Government Clearly Stated Its Adverse Position.

The Quiet Title Act's statute of limitations states that a plaintiff must bring a case "within twelve years of the date upon which" the claims accrued. 28 U.S.C. § 2409a(g). A claim under the Quiet Title Act

accrues "on the date the plaintiff or his predecessor in interest knew or should have known of the claim of the United States." *Id.*

The statute of limitations applies differently for suits involving easements than suits over fee title. *McFarland*, 425 F.3d at 726–27. Mere regulatory action does not trigger the statute of limitations. *Id.* at 727. Rather, the government must clearly state its adverse position in order for the statute of limitations to begin to run. Until recently, none of the Forest Service's actions made it clear that the agency was acting adversely to the interests of the landowners.

To determine when the statute of limitations for each of the landowners' claims began to run, this Court must look at the Forest Service's actions. *Werner*, 9 F.3d at 1519. It must not assume that any regulatory or supervisory action triggered the statute of limitations. *McFarland*, 425 F.3d at 727. Instead, this Court must inquire when the Forest Service made it clear that it was going to act adversely to the interests of the landowners by allowing the public to use the road, allowing easement users to park within the easement, and disclaiming any obligations to patrol and maintain the road. Until recently, none of

the Forest Service's actions made it clear that it was acting adversely to the interests of the landowners or their predecessors.

C. The Landowners' Claims About the Government's Obligations Under the Easement Accrued Less Than a Year Before the Landowners Filed Their Complaint.

The landowners' claims regarding the government's duty to maintain and patrol the easement accrued when it expressly disclaimed those duties. *See Michel*, 65 F.3d at 132 n.1. For most of the history of the easement, the Forest Service had reasonably maintained and patrolled the road. 3-ER-554 ¶ 18; 1-ER-52–53. Based on these actions, the landowners and their predecessors would have reasonably assumed that the Forest Service believed it had obligations under the easement. But the Forest Service's tone changed nine months before the Complaint was filed.

In 2017, the Forest Service stated its position that it had no obligations under the terms of the easement to maintain or patrol the road. 3-ER-433 (Depo. Winthers, 14:14–15:17); 2-ER-64. Specifically, on December 4 of that year, then-District Ranger Eric Winthers met with several residents of Robbins Gulch Road. 3-ER-432 (Depo. Winthers, 12:9–18). At the meeting, residents expressed concern about the

problems caused by the Forest Service's lack of road maintenance, and Mr. Winthers implied that the Forest Service had no duty to maintain the easement. 3-ER-433 (Depo. Winthers, 14:14–15:17). Mr. Winthers' implication was made explicit seven months later in a letter from an attorney in the Forest Service's general counsel office. 2-ER-64. That letter disclaimed any duty to maintain the easement. The landowners filed their lawsuit nine months after the meeting and one month after the general counsel's letter.

That July letter also expressly disclaimed any duty to patrol the easement. 2-ER-64. The only other indication of the government's position on patrolling the easement was earlier that year, when Forest Service law enforcement officer Stephanie Zacha mistakenly told a resident of Robbins Gulch Road that the Forest Service had no jurisdiction over the off-Forest portion of Robbins Gulch Road. 3-ER-435–36 (Depo. Winthers, 25:8–26:5). Even if the landowners' patrol claim accrued when Officer Zacha made those statements, the Complaint was filed well within the twelve-year statute of limitations.

These explicit statements were the first time the government made it known that it believed it has no duty to maintain or patrol the

easement. None of its previous actions would have put the landowners or their predecessors on notice that the government's interpretation of its obligations under the easement. As Magistrate Judge DeSoto recognized, the landowners brought this action after "alleged changes in the scope of the [Forest Service's] operation and management of the easement." 1-ER-52–53.

Indeed, even after the lawsuit was filed, the Forest Service has taken some actions consistent with its duties. It has graded the road since the lawsuit has filed. A few weeks after the Complaint was filed, the Forest Service responded to complaints when a grazing permittee's cattle got out. 3-ER-437–438 (Depo. Winthers, 32:21–34:10).[7] But these few actions do not mean that the government believes it has any obligations under the easement, or that it is fulfilling its obligations. Furthermore, there is no guarantee that the Forest Service will maintain and patrol the easement in the future.

The Forest Service has expressly stated that it has no obligations under the easement. As a result, the landowners now know of the

[7] This incident is separate from the alleged incident regarding the neighbors' dogs. 3-ER-403 (Depo. Stanton, 50:16).

government's adverse claim about its obligations under the easement. A claim has accrued under the Quiet Title Act, and the landowners were required to file this suit to resolve that claim. Because the claim accrued less than a year before the filing of the Complaint, the District Court can hear it.

D. The Landowners' Claim About Parking in the Easement Accrued Five Months Before the Filing of the Complaint.

Similarly, the landowners' claims regarding parking along the road accrued in March of 2018, when the Forest Service stated that the public can park on all 60 feet of the easement. 2-ER-134. Responding to an email from one of the residents of the road, District Ranger Eric Winthers stated that "The road is open to the public from the highway to the forest boundary. Since the easement is 60 feet in width, people may legally park along the edge of the road." *Id.* This was the first time that the government explicitly stated its position that the easement was not just for ingress and egress, but allowed parking along the road. The landowners filed their Complaint less than six months later.

E. The Landowners' Claims About Public Use of the Easement Accrued 11 Years and 11 Months Before the Filing of the Complaint.

Finally, the District Court erred in its conclusion that the public use claim accrued more than twelve years prior to filing the Complaint. The government first expressed its position that the easement allows for public use when it placed a sign on the road stating "public access thru private lands." 3-ER-516; 3-ER-518. Although it is unknown when this sign was placed, it is undisputed that the sign was not placed earlier than September 2006. 3-ER-518; *see* 2-ER-175–76; 2-ER-111. The landowners filed this action in August of 2018, 11 years and 11 months after September 2006. That is within the Quiet Title Act's twelve-year statute of limitations.

In concluding that the lawsuit was out of time, the District Court primarily relied on Forest Service maps. 1-ER-30–31. These maps do not clearly show that the Forest Service allowed public access on Robbins Gulch Road. The District Court started with examining a 1950 map, stating that it shows Robbins Gulch Road as a non-Forest System Road. *Id.* That 1950 map was produced 12 years before the granting of the easement at issue in this case. 2-ER-227. In 1950, the United States just

had a contract to use Robbins Gulch Road, not a property right in the form of an easement. 2-ER-254–57. The 1950 map merely shows that there was a road along Robbins Gulch, not who could use the road. 3-ER-504.

The District Court then examined later maps. These maps are similar to the 1950 map except that they use the number "446" next to Robbins Gulch Road. *See* 1-ER-31 (citing 3-ER-506–513). This number indicates that the road is a Forest System Road, but not all Forest System Roads are open to the public. 2-ER-183, 2-ER-185. National Forest System Roads fall into two categories: Administrative National Forest System roads and public National Forest system roads. 2-ER-183, 2-ER-185. As the name suggests, only the latter are open to the public. 2-ER-185. Therefore, the use of the number 446 does not clearly indicate that the road was open to the public. Neither does the Forest Service's indication that the road is "improved." 1-ER-31. To this day, the Forest Service states "that not all roads/trails on GPS/maps are open for public access." 2-ER-224.

The District Court also relied on road closure orders allegedly placed in May 2006 to determine that the landowners should have

known about the government's view of the scope of the easement. 1-ER-32–33 (citing 3-ER-501). The road closure orders do not clearly articulate the Forest Service's view of the scope of the easement. Importantly, the landowners do not recall seeing these orders posted along the road. 2-ER-110 ¶¶ 5–6; 3-ER-352 (Depo. Wilkins, 104:8–9); 3-ER-412 (Depo. Stanton, 86:2–4). Rather, they only recall general signs indicating that the road was closed *ahead*. 2-ER-110 ¶¶ 5–6. A sign stating "road closed ahead" would not put landowners on notice of the government's view of the easement at issue in this case.

Even assuming the landowners saw the road closures, these orders merely demonstrate the principle articulated in *McFarland*: Regulation of an easement does not necessarily articulate the extent of the government's claim of ownership of the easement. *McFarland*, 425 F.3d at 727. This is especially true when the road closure orders do not adversely affect the landowners' interests. *Werner*, 9 F.3d at 1516; *cf. Applegate v. United States*, 25 F.3d 1579, 1583 (Fed. Cir. 1994) (Federal Tort Claims Act limitations period was tolled based on the Corps' periodic promises to fix plaintiff's injury); *see also* 2-ER-116 ¶ 23 (Forest Service closed road after residents complained).

Furthermore, the closure orders are not a clear recitation of an adverse view about the scope of the easement. On the contrary, the Forest Service's closure orders restrict general public access—precisely consistent with the landowners' view of the easement. 2-ER-116 ¶ 23. In fact, the roads were closed in response to residents' complaints about public use of the easement. *Id.* The closure orders did not trigger the statute of limitations.[8]

The District Court also cited declarations from those that have used the road to support its conclusion that the lawsuit was out of time. 1-ER-31–32 (citing 3-ER-303–325). But as the District Court itself admitted, it is the government's actions, not other people's perceptions, that triggers the statute of limitations. 1-ER-30 n.3; *Werner*, 9 F.3d at 1519. Thus, whether some people thought the road was open to the

[8] Further demonstrating that the closure orders do not reflect the government's view of the scope of the easement is that the closure orders do not give express permission for residents to use the road. 3-ER-501. The government has admitted in this litigation that its easement does not empower it to prevent residents from reasonably using the road to access their private homes. 2-ER-68–69; 2-ER-73. Therefore, the closure orders do not offer a clear recitation of the government's adverse view—or any view—of the easement. Instead, the closure orders allowed the property owners and the government to peacefully coexist, and no claims arose from their alleged placement.

public is irrelevant. The running of the statute of limitations depends on the Forest Service's actions, not on what others may believe.

Those statements by the government's declarants are especially insignificant when, as here, they are contradicted by statements from those that negotiated the easement. Specifically, prior to her passing, Ida Wildung expressed that she did not intend to convey an easement that allowed general public use of the road. 2-ER-115 ¶¶ 18–21; 2-ER-58; *see also* 2-ER-244 (contemporaneous communications between Ida Wildung and federal government about scope of the easement).

Similarly, whether and how much others used the road is irrelevant. Again, the statute of limitations is determined by the Forest Service's actions, not the actions of others. *Michel*, 65 F.3d at 132 n.1. Until recently, none of the Forest Service's actions made it clear that it was acting adversely to the interests of the landowners or their predecessors.

Finally, the Forest Service's recent actions further demonstrate that this lawsuit is not out of time. Even if the statute of limitations has run, an agency's later actions can cause the statute of limitations to period to be reopened. *See Shultz v. Dep't of Army*, 886 F.2d 1157, 1161

(9th Cir. 1989); *see also Beggerly*, 524 U.S. at 49 (Stevens, J., concurring) (government misconduct may delay the running of the statute of limitations). "The statute of limitations provision in the Quiet Title Act cannot reasonably be read to imply that if the government has once asserted a claim to property, twelve years later any quiet title action is forever barred." *Shultz*, 886 F.2d at 1161.

The statute of limitations must be interpreted within the context of all the government's actions. A stricter approach would lead to premature, often unnecessary suits. *McFarland*, 425 F.3d at 727. The District Court's approach interprets the statute of limitations in a manner that would encourage litigants to bring potentially unnecessary suits. In this case, the government wanted the landowners to file suit as early as possible, even if the problems they seek to redress would have resolved themselves absent litigation. The District Court's order endorses the government's view.

Between 2007 and 2016, the Forest Service conducted travel management planning that could have resolved the landowners' problems without litigation. In late 2007, the Forest Service began its travel management process to determine what roads in the Bitterroot

National Forest would be open to the public. The "starting point" of this process was a proposed action scoping document. 3-ER-291. Part of the proposed action was to not allow public use of Robbins Gulch Road. 3-ER-302. In 2009, the Forest Service adopted a Draft Environmental Impact Statement, which analyzed various alternatives for the roads. 2-ER-121. One of these alternatives was to have no public use of Robbins Gulch Road. 2-ER-131. In March 2016, one year and five months before this lawsuit was filed, the Forest Service issued its final decision, which allowed seasonal public use of Robbins Gulch Road. 2-ER-118.

Although the initial proposed action was not the agency's final decision, that proposal indicated that the travel management process could resolve the issues that the landowners had with public use of the road. Indeed, then-Darby District Ranger Chuck Oliver told Mr. Wilkins that he should participate in the travel management process to resolve his complaints. 2-ER-88 (Depo. Oliver, 38:23–25);[9] *cf. Applegate*, 25 F.3d at 1582. The government cannot tell a landowner to wait to file a lawsuit because his complaints might be resolved, 2-ER-88 (Depo. Oliver, 38:23–

[9] At the time the landowners filed their opposition to the motion to dismiss, the Deposition transcript had not yet been signed.

25), and then later complain that the landowner delayed in filing a lawsuit. *See Banks v. United States*, 314 F.3d 1304, 1309 (Fed. Cir. 2003) (statute of limitations for Tucker Act does not begin to run if "'predictability [and permanence] of the extent of damage to the [plaintiffs'] land' was made justifiably uncertain by" the government's actions (quoting *Applegate*, 25 F.3d at 1583)).

Even if the Quiet Title Act's statute of limitations were jurisdictional, this suit was timely. For decades, there was peaceful coexistence along Robbins Gulch Road. The Forest Service never clearly stated its position regarding public access on the road. The Forest Service even attempted to enforce restrictions on public access, including suggesting that it would do so permanently. Later, and within the twelve years before this lawsuit was filed, the Forest Service reversed that position by placing a "public access" sign and adopting a travel management plan. These actions caused the statute of limitations to begin to run on the public use claim. Because the District Court incorrectly held the landowners' claim accrued earlier, this Court should vacate the judgment below.

CONCLUSION

The District Court erred as a matter of law in several respects. Because any of these errors is independently sufficient to resolve this appeal, this Court vacate the judgment of the District Court and remand for further proceedings.

DATED: December 23, 2020.

Respectfully submitted,

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STATEMENT OF RELATED CASES

Under Circuit Rule 28-2.6, Plaintiffs – Appellants state that they are unaware of any related pending cases before this Court.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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