NOTE: This disposition is nonprecedential.

United States Court of Appeals for the Federal Circuit

CHEYENNE RIVER SIOUX TRIBE,
Plaintiff-Appellant

v.

UNITED STATES,
Defendant-Appellee

2025-1086

Appeal from the United States Court of Federal Claims in No. 1:20-cv-00126-DAT, Judge David A. Tapp.

Decided: October 21, 2026

STEVEN J. GUNN, St. Louis, MO, argued for plaintiff-appellant.

JOHN LUTHER SMELTZER, Appellate Section, Environment and Natural Resources Division, United States Department of Justice, Washington, DC, argued for defendant-appellee. Also represented by JACOB DAVID ECKER, ADAM R.F. GUSTAFSON.

Before DYK, CHEN, and STOLL, *Circuit Judges*.

CHEN, *Circuit Judge*.

The Cheyenne River Sioux Tribe (the Tribe) sued the United States, asserting claims for breach of contract, breach of trust, and a taking without just compensation under the Fifth Amendment concerning the deteriorating condition of an administrative building, known as "Building 2001," on the Tribe's reservation.

The United States Court of Federal Claims (Claims Court) determined that the government and the Tribe never entered into a contract and granted summary judgment on the breach-of-contract claim. *Cheyenne River Sioux Tribe v. United States*, 168 Fed. Cl. 465, 474 (2023) (*Decision I*). After a bench trial on the breach-of-trust and takings claims, the court entered judgment for the United States. *Cheyenne River Sioux Tribe v. United States*, 172 Fed. Cl. 634, 637 (2024) (*Decision II*). For the following reasons, we *affirm*.

BACKGROUND

I

The Tribe, located on the Cheyenne River Sioux Reservation in South Dakota, is a federally recognized and constituent tribe of the Great Sioux Nation. In 1868, the Great Sioux Nation and the United States entered into the Fort Laramie Treaty, which required the United States to set aside a reservation for the various Sioux Tribes along the east bank of the Missouri River. Under Article IV of the Treaty, the United States agreed "to construct at some place on the Missouri [R]iver . . . an agency building for the residence of the agent, to cost not exceeding three thousand dollars." Treaty Between the United States of America and Different Tribes of Sioux Indians, art. IV, 15 Stat. 635, 636 (Apr. 29, 1868) (Fort Laramie Treaty or Treaty). And under Article V of the Treaty, the United States agreed "that the agent for said Indians shall in the future make his home at the agency building" and "that he shall reside

among them, and keep an office open at all times for the purpose of prompt and diligent inquiry into such matters of complaint by and against the Indians." *Id.* art. V.

In 1889, Congress divided the Great Sioux Nation's reservation into separate reservations, including the Tribe's. Around that time, the United States constructed what is now referred to as the "Old Agency Building." The Old Agency Building was located on tribal land held in trust by the United States for the benefit of the Tribe and housed the United States' agent for the Tribe. The Old Agency Building was also used by the Tribe for government and various administrative services.

The Old Agency Building remained until Congress authorized construction of the Oahe Dam along the Missouri River in 1944, forcing the Tribe to relocate. In 1954, the United States agreed to purchase tribal lands for the planned dam and pay for relocating and reestablishing the Tribe in South Dakota pursuant to the Cheyenne River-Oahe Act (Oahe Act). Pub. L. No. 83-776, § IV, 68 Stat. 1191 (1954). Relevant here, Section IV of the Oahe Act required the United States "to appropriate" funds "which shall be expended for the *relocation* and *reconstruction* of Cheyenne River Agency." *Id.* at 1191 (emphases added). Separately, Section V appropriated funds "for the purpose of complete rehabilitation for all members of said Tribe who are residents of the Cheyenne River Sioux Reservation" "and for relocating and reestablishing members of said Tribe who reside upon such lands conveyed to the United States to the extent that the economic, social, religious, and community life of all said Indians shall be restored to *a condition not less advantageous* to said Indians than the condition that the said Indians now are in." *Id.* at 1192 (emphasis added).

In 1959, the United States constructed the new Agency building, now known as Building 2001 (or simply the Building), on tribal lands in Eagle Butte, South Dakota. Prior

to the construction, the Tribe and United States discussed whether the Building should sit on government-owned or tribal land. Ultimately, the United States agreed with the Tribe that the Building would be located on tribal lands held in trust by the United States.

Against this backdrop, the Tribal Council passed two resolutions relevant to the Tribe's breach-of-contract claim. The first resolution set aside the tribal land for the Building and specified that anything built on the land would "revert to tribal ownership when the [g]overnment no longer has need for them." J.A. 178–79. The second resolution set aside additional lands for the construction of some of the relocated facilities, including the Building, and included a reversionary right to those additional lands like the first resolution. J.A. 194–95. The Tribe requested that the United States approve the second resolution. J.A. 195. The Commissioner of the Bureau of Indian Affairs (BIA) approved it but did not discuss the condition listed in the second resolution. J.A. 197.

Since its construction in 1959, Building 2001 had served as the Cheyenne River Agency as well as the Tribal government's headquarters for more than 50 years. The Building provided office space for BIA agency personnel and space for the Tribal government to work and hold Tribal Council meetings. In 1977, the Tribe constructed an addition (Tribal Addition) abutting the Building to house additional Tribal administrative offices.

Over many decades, Building 2001 experienced severe winter-weather-induced damage. The Building suffered from frequent leaks, and BIA performed numerous repairs, such as annual roof repairs and a replacement of the roof. In early 2012, the Building suffered from heavy flooding. BIA sought to replace the roof but lacked funding to do so. In 2014, an inspection identified mold and fungi in the Building, which led BIA to cease operations in the Building. The Tribe also ceased using the Tribal Addition. BIA

determined not to restore the Building because the cost of repair exceeded its value. BIA then explored the idea of demolishing the Building but lacked funding to do so. The Building and the Tribal Addition have remained vacant, and BIA and Tribal offices relocated to other buildings nearby in Eagle Butte.

II

In 2020, the Tribe sued the United States, alleging that (1) the United States breached a contract with the Tribe by failing to maintain and repair Building 2001, (2) the United States breached trust obligations to maintain and repair the Building, and (3) the state of disrepair amounted to a taking under the Fifth Amendment.

A. Breach-of-contract claim

Before the Claims Court, the Tribe argued that it formed a contract with the United States when the United States approved the second tribal resolution. *See Decision I*, 168 Fed. Cl. at 472. According to the Tribe, the tribal resolution constituted an offer, and the United States manifested its assent by approving it. *Id.*

The Claims Court granted the government's summary judgment motion, determining that "[f]ar from constituting an offer and acceptance, both the Tribal [r]esolution and BIA's approval of the [r]esolution were ministerial actions required by law" because "the Secretary's authority behind issuing the approval letters flowed directly from the Oahe Act." *Id.* at 472–73. The court explained that "when rights and obligations are prescribed by statute and regulations rather than determined through the mechanics of a bilateral exchange, there is no contract in the usual sense of that word." *Id.* at 472 (internal quotation marks and citations omitted). The court determined that the Tribe failed to identify "language in the regulatory or statutory language that implies a contractual relationship." *Id.* at 473

(citing *Brooks v. Dunlop Mfg. Inc.*, 702 F.3d 624, 630–31 (Fed. Cir. 2012)).

The court also rejected the Tribe's contention that the parties formed an implied-in-fact contract based on the United States' performance, namely construction of Building 2001. *Id.* at 474. The court reiterated that "the Oahe Act mandated BIA's construction of Building 2001" and noted that "[t]he Tribe d[id] not provide more than a 'cloud of evidence' to show that the BIA Commissioner had the authority to bind the United States to a contract that expanded the conditions expressly set out in the Oahe Act." *Id.* (citation omitted). Having concluded that the Tribe failed to meet its burden of proving the existence of a contract between the parties, the court granted the government's motion for summary judgment. *Id.*

B. Breach-of-trust claim

The Tribe contended that the United States' responsibility to construct an agency building on the reservation is evidence of continuing obligations for the maintenance and repair of the Building. *Decision II*, 172 Fed. Cl. at 646. After the bench trial, the Claims Court concluded that the Tribe failed to meet its burden of identifying trust-creating language in the Fort Laramie Treaty or the Oahe Act that imposed a duty on the United States to maintain and repair Building 2001. *Id.* at 648. The court looked at the text of the Treaty and determined that the duties are confined to "construct" an agency building on the reservation and for the agent to "make his home at the agency building." *Id.* at 647. The court similarly found that the Oahe Act is silent about the future of Building 2001 after the "relocation and reconstruction of Cheyenne River Agency." *Id.* at 647–48 ("Section 4 contained no express language about maintenance or preservation beyond that relocation to Eagle Butte, South Dakota."). The court also rejected the Tribe's reliance on Section V of the Act, which provides that "the economic, social, religious, and community life . . . shall be

restored to a condition not less advantageous [to the Indians' condition in 1954]," as well as testimony that Building 2001 plays a role in the Tribe's community and social life, concluding that these arguments were unsupported by the language or structure of the Act. *Id.* at 648 (internal quotation marks and emphasis omitted).

The court also found a deficiency in the Tribe's damages case. *Id.* at 648. The court found that "the Tribe failed to offer any credible testimony on how to calculate damages" and that the Tribe's expert "lacked credibility and admitted to countless errors in "his expert report" in "produc[ing] inflated valuation calculations." *Id.*

C. Takings claim

The Tribe argued that the tribally-owned Tribal Addition and the land beneath the Building were taken by the United States. *Decision II*, 172 Fed. Cl. at 648–49. As a preliminary matter, the Claims Court noted that the Tribe did not have a cognizable Fifth Amendment property interest in the Building because it is "federal property[,] and the Tribe recognized BIA's control over it." *Id.* at 649.

The court noted the parties' agreement that the Tribal Addition and the land beneath the Building are cognizable property interests for a takings claim and inquired if those interests were "taken." *Id.* at 649. As to the Tribal Addition, the court credited testimony by BIA's representative, Mr. Bourland, that the Tribal Addition "is self-contained and functionally separate from Building 2001" and that "[i]t was the Tribe's own concerns about mold that led to vacation of the Tribal Addition." *Id.* at 650. The court found that no taking occurred because BIA did not physically prevent or pass a regulation preventing the Tribe from accessing the Tribal Addition. *Id.* And the court also determined that the Tribe's property interest in the land was neither physically taken (because "[i]t is undisputed that the land beneath the Building is held in trust by the United States for the benefit of the Tribe") nor regulatorily

taken (because "the Tribe's use has not yet been limited"). *Id.* (internal quotation marks omitted).

Separately, the court found that the Tribe failed to present an adequate damages case. *Id.* ("Even if a taking occurred, the Tribe offered no evidence—either documentary or testimonial—which could form a basis for any valuation of the Tribal Addition or the land underneath Building 2001.").

The Tribe timely appealed. We have jurisdiction under 28 U.S.C. § 1295(a)(3).

STANDARD OF REVIEW

We review grants of summary judgment de novo. *Anderson v. United States*, 23 F.4th 1357, 1361 (Fed. Cir. 2022) (citation omitted). "Summary judgment is appropriate where the movant shows that there is no genuine dispute as to any material fact, and that the movant is entitled to judgment as a matter of law." *Id.* (citations omitted). In viewing the evidence, we draw all reasonable inferences in favor of the non-movant. *Id.*

On appeal from a bench trial, we review the Claims Court's legal determinations de novo and its factual findings for clear error. *Reoforce, Inc. v. United States*, 853 F.3d 1249, 1265 (Fed. Cir. 2017). "A finding is clearly erroneous when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *Id.* (citation and internal quotation marks omitted).

DISCUSSION

On appeal, the Tribe argues that (1) the Tribe and the United States formed a contract for maintenance and repair of the Building, (2) the Fort Laramie Treaty and/or the Oahe Act created a trust duty to maintain and repair the Building, and (3) the failure to maintain and repair the Building amounted to a taking. We discuss each in turn.

I

The Tribe argues that the Tribal resolution established a contract between the Tribe and the United States "for the relocation, ownership, maintenance, and repair of Building 2001." Appellant Br. 33–40. According to the Tribe, an express contract was formed upon the United States' approval of the second Tribal resolution. *Id.* at 35 (arguing that "[t]he United States formally accepted the Tribe's offer of tribal land, along with the unambiguous conditions"). Alternatively, the Tribe argues that an implied-in-fact contract was formed, relying in part on the United States' construction of the Building. *Id.* at 36. In so arguing, the Tribe contends that "the United States guaranteed tribal ownership" of the Building "[b]y agreeing to construct and constructing Building 2001 on tribal trust land" because "ownership of the improvements follows title to the land." *Id.* at 37 (citing, e.g., *Banner v. United States*, 238 F.3d 1348, 1356 (Fed. Cir. 2001)).

We are not persuaded by the Tribe's contract-based arguments. Four requirements must be met to form a binding agreement with the government: "(1) mutuality of intent to contract; (2) lack of ambiguity in offer and acceptance; (3) consideration; and (4) a government representative having actual authority to bind the United States in contract." *Anderson v. United States*, 344 F.3d 1343, 1353 (Fed. Cir. 2003) (citations omitted). The same four requirements apply for both an express contract and an implied-in-fact contract. *Id.* at 1353 n.3.

As the Claims Court correctly reasoned in *Decision I*, 168 Fed. Cl. at 472, the government's actions—whether approving the second Tribal resolution or constructing Building 2001—reflect its performance of its "sovereign functions [that] do[] not create contractual obligations" and thus fails to meet at least the first requirement, mutuality of intent to contract. *See D & N Bank v. United States*, 331 F.3d 1374, 1378–79 (Fed. Cir. 2003). It is the Oahe Act that

mandates "the relocation and reconstruction of Cheyenne River Agency." § IV, 68 Stat. at 1191. Thus, we agree with the Claims Court that the United States' "ministerial actions" carrying out its sovereign function directed by the Oahe Act cannot create a contractual obligation. *Id.* at 472.

The Tribe asserts that the approval of the Tribal resolution "was not merely a ministerial act [because] [i]t signified the acceptance by the United States of the Tribe's offer of land for agency relocation purposes." Appellant Br. 39 n.2.; *see also* Appellant Reply Br. 12. We disagree because BIA's approval letter, J.A. 197, lacks unambiguous terms of performance. There, the BIA Commissioner stated that "the entire acreage on which the Agency was to be relocated plus the additional acreage acquired was directed to be put in an administrative reserve status." *Id.* Nowhere in the letter does BIA reference the purported offer or any of the conditions that the Tribe contends the government accepted. *See id.* Accordingly, the court correctly determined the letter to be missing an unambiguous acceptance of an offer. *See Decision I*, 168 Fed. Cl. at 473–74. Indeed, as the government explains, BIA routinely reviews and approves Tribal resolutions in various contexts, including when required by the Tribe's constitution. Appellee Br. 13–14; *see* J.A. 416–17 (Tribal Constitution requiring "the approval of the Secretary of the Interior" for various actions). This letter was not addressed to the Tribe but was instead an internal BIA correspondence. Like the Claims Court, we decline to read BIA's approval of a particular Tribal resolution as evidence of an intent to form a contract, especially when the relevant letter lacks unambiguous terms of performance, and, in particular, makes no mention of repair or maintenance duties. *See Decision I*, 168 Fed. Cl. at 473.

In a similar vein, we reject the Tribe's argument that the parties formed a contract obligating BIA to maintain and preserve the Building when the United States "guar-

anteed to the Tribe a future interest in the [B]uilding." Appellant Br. 38. In support, the Tribe references BIA's 1956 letter, which referenced the Commissioner's earlier statement that "if and when the agency buildings . . . became surplus to the needs of the [g]overnment, such property would be made available to the tribe." J.A. 176. But as the 1956 letter indicates, "[t]his procedure is a part of established Bureau policy," *id.*, which comes from Public Law No. 84-991, 70 Stat. 1057, which authorizes the Secretary of the Interior "to convey . . . title to any federally owned buildings . . . that are no longer required by the Secretary for the administration of Indian affairs." It follows that the government is carrying out its sovereign functions by implementing the law, which is insufficient to create contractual obligations. *D & N Bank*, 331 F.3d at 1378–79.

As to the implied-in-fact contract argument, the Tribe relies solely on the construction of Building 2001, not the government's decades-long conduct of maintaining and repairing Building 2001.[1] *See* Appellant Br. 36–37. But that

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[1] To the extent that the Tribe contends that the government's prior maintenance and repair of the Building recognized an obligation to maintain and repair the Building, and that performance should guide our interpretation of a contract, we find that argument forfeited for being "skeletal or underdeveloped." *See Fusong Jinlong Wooden Grp. Co. v. United States*, 185 F.4th 1363, 1367 (Fed. Cir. 2026). The same is true with regard to any such argument made regarding the breach-of-trust claim. During oral argument, the Tribe was asked to identify where it had made that argument and pointed to various pages of its briefs. *See* Oral Arg. at 05:12–07:32, 34:05–34:42 (available at https://www.cafc.uscourts.gov/oral-arguments/25-1086_09082026.mp3). But those pages merely state, without further explanation, that the government "assum[ed] comprehensive supervision and control of the [B]uilding [2001]."

construction of the Building is not acceptance by performance of a contractual obligation to maintain and preserve the Building. As the Claims Court correctly observed, BIA was simply carrying out its responsibility under the Oahe Act to "relocat[e] and reconstruct[] [thoe] Cheyenne River Agency." *See Decision I*, 168 Fed. Cl. at 474, 470 (quoting Oahe Act, § IV, 68 Stat. at 1191). Moreover, nothing in the Oahe Act or the Tribal resolution or any approval letter mentions repair or maintenance duties. *Id.*

Because we agree with the Claims Court that, on this record, the Tribe failed to establish that it had formed a contract with the government that could be a basis for its breach-of-contract claim, the Claims Court properly dismissed it on summary judgment.

II

Next, the Tribe argues that the Fort Laramie Treaty or the Oahe Act supports a trust duty to preserve and maintain the Building. Appellant Br. 43. The Tribe relies on the "duty to construct the Agency building" under the Treaty and the duty "to reconstruct the Cheyenne River Agency" under the Oahe Act. *Id.* According to the Tribe, the "government's statutory duty to relocate the agency buildings and to place the Indians in 'not less advantageous' a position than they were in at the Old Agency Building implicitly included an agreement not to permit the new Agency building to fall into disrepair." *Id.* at 45.

"The [g]overnment assumes Indian trust responsibilities only to the extent it expressly accepts those responsibilities by statute." *United States v. Jicarilla Apache Nation*, 564 U.S. 162, 177 (2011). As such, to establish a breach-of-trust claim under the Tucker Act, a tribe must

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See, e.g., Appellant Br. 39, 48. We find that these cursory discussions are insufficient to preserve the argument.

"identify a substantive source of law that establishes specific fiduciary or other duties, and allege that the [g]overnment has failed faithfully to perform those duties." *United States v. Navajo Nation*, 537 U.S. 488, 506 (2003) (citation omitted). "If that threshold is passed, the court must then determine whether the relevant source of substantive law can fairly be interpreted as mandating compensation for damages sustained as a result of a breach of the duties the governing law imposes." *Id.* (citation modified).

Here, the Tribe's claim fails at the threshold step of identifying a duty-imposing substantive source of law. We start with the Fort Laramie Treaty, which mandates that the United States "construct . . . an agency building for the residence of the agent" (Article IV) and "that he shall . . . keep an office open at all times for the purpose of prompt and diligent inquiry into such matters of complaint by and against the Indians" (Article V). 15 Stat. at 636. Both articles of the Treaty lack language "that establishes specific fiduciary or other duties," *Navajo Nation*, 537 U.S. at 506, to maintain and repair the Building.

First, we reject the Tribe's contention that the "to construct" provision in Article IV implicates a maintenance-and-repair duty of the Building after its construction. *See* Appellant Reply Br. 18. Our reading of Article IV is that it plainly imposes a one-time obligation to "construct" an agency building. This one-time obligation to construct is further evidenced from the language that follows, "to cost not exceeding three thousand dollars," which indicates an intent to appropriate a certain amount for that specified purpose. Art. IV, 15 Stat. at 636. We decline to rewrite or expand the plain language of the Treaty to encompass any duties of subsequent maintenance and repair of the agency building. *See Choctaw Nation of Indians v. United States*, 318 U.S. 423, 432 (1943) ("Indian treaties cannot be rewritten or expanded beyond their clear terms to remedy a claimed injustice or to achieve the asserted understanding of the parties.").

Second, we find the Tribe's reliance on Article V of the Treaty unpersuasive. *See* Appellant Br. 46. Article V requires the United States' agent to the Tribe to "make his home at the agency building" and "keep an office open at all times for the purpose of prompt and diligent inquiry into such matters of complaint by and against the Indians." Art. V, 15 Stat. at 636. As the Treaty plainly states, the purpose of "keep[ing] an office open at all times" is for the United States' agent to conduct "prompt and diligent inquiry [regarding] matters of complaint by and against the Indians." *Id.* In other words, Article V is silent as to any duty owed to the Tribe by the United States to maintain or repair the agency building. Like the Claims Court, *Decision II*, 172 Fed. Cl. at 647, we decline to interpret this language as imposing such a duty.

Next we discuss the Oahe Act. Relying on Section V of the Act, the Tribe argues that "[t]he government's statutory duty to relocate the agency buildings and to place the Indians in 'not less advantageous' a position than they were in at the Old Agency Building implicitly included an agreement not to permit [Building 2001] to fall into disrepair." Appellant Br. 45.

We again are not persuaded. The Oahe Act reflects one-time appropriation for "the relocation and reconstruction of Cheyenne River Agency" (Section IV) and "complete rehabilitation for all members of said Tribe" (Section V). §§ IV–V, 68 Stat. at 1191–92. Nothing in the Act provides for the maintenance or repair of the agency building after its relocation and reconstruction. As the Claims Court correctly explained, Section V—whether by the express language or structure of the Act—does not address the agency building at all. *Decision II*, 172 Fed. Cl. at 648. Congress addressed the agency building in Section IV and community life in Section V, and the structure of the Act, in addition to the text, forecloses the Tribe's reading. The Tribe's contention that Building 2001 is intertwined with its com-

munity and social life, even if supported by various testimonies, is insufficient to create a duty where the statutory text is silent. *See Navajo Nation*, 537 U.S. at 506; *see Decision II*, 172 Fed. Cl. at 648 (explaining the Tribe's testimonies about the role of Building 2001). Accordingly, the Claims Court correctly rejected the Tribe's breach-of-trust claim based on the Oahe Act for "contraven[ing] the Act's express language and structure." *Decision II*, 172 Fed. Cl. at 648.

We conclude that neither the Treaty of Fort Laramie nor the Oahe Act imposes a trust duty on the United States to maintain and repair Building 2001. Because we find that the relevant language is unambiguous, we need not consider the Indian canon of statutory construction and reject the Tribe's argument relying on that canon. *See Thompson v. Cherokee Nation of Oklahoma*, 334 F.3d 1075, 1090 n.15 (Fed. Cir. 2003).

III

We now turn to the Tribe's takings claim. The Tribe points to three purported property interests: (1) Building 2001, (2) the land beneath the Building, and (3) the Tribal Addition to the Building. Appellant Br. 54–55. The Claims Court determined that as to the Building itself, the Tribe failed to establish a cognizable property interest, and as to the land and the Tribal Addition, the Tribe failed to show a taking. *Decision II*, 172 Fed. Cl. at 649–50. We agree.

We apply a two-part test to determine whether a taking has occurred. "First, as a threshold matter, the court must determine whether the claimant has established a property interest for purposes of the Fifth Amendment." *Am. Pelagic Fishing Co. v. United States*, 379 F.3d 1363, 1372 (Fed. Cir. 2004) (citation omitted). "Second, after having identified a valid property interest, the court must determine whether the governmental action at issue amounted to a compensable taking of that property interest." *Id.*

First, we agree with the Claims Court that Building 2001 is not a cognizable property interest. Under federal law, which governs the disposition of property between the United States and Indian tribes, *Oneida Indian Nation v. Cnty. of Oneida*, 414 U.S. 661, 670 (1974), an ownership interest in the Building turns on whether "an Act of Congress has specifically recognized the Indians' ownership rights." *Karuk Tribe v. Ammon*, 209 F.3d 1366, 1380 (Fed. Cir. 2000). Here, the Oahe Act is silent on the Tribe's ownership rights in the Building. *See* §§ IV–V, 68 Stat. at 1191–92. Regarding the Building, the Oahe Act appropriates funds, without more, "for the relocation and reconstruction of Cheyenne River Agency." *Id.* at 1191. Elsewhere in the Oahe Act, Congress conveyed property rights for "individual members of [the] Tribe whose lands are within the . . . taking area" for the Oahe Dam. *Id.* at 1193. But Congress did not expressly convey property rights to the Building. In the absence of the Oahe Act specifically recognizing the Tribe's ownership rights in the Building, we discern no error in the Claims Court's conclusion that the Building, which is a federal property, is not a cognizable property interest.[2] *See Decision II*, 172 Fed. Cl. at 649.

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[2] To the extent that the Tribe relies on its purported reversionary interest in the Building, *see* Appellant Br. 55, we discern no error in the Claims Court's determination that "the Tribe failed to produce any supporting evidence of a future property interest in the Building itself." *Decision II*, 172 Fed. Cl. at 649. The Tribe relies on its assertion that the United States agreed to a right of reversion as a matter of contract. *See* Appellant Br. 30. Because the Tribe's contract claim fails, we are not persuaded by its argument relying on the reversionary interest.

Second, the Tribe did not challenge the court's determination regarding the land beneath the Building in its opening brief and thus forfeited its argument before us. *See SmithKline Beecham Corp. v. Apotex Corp.*, 439 F.3d 1312, 1319 (Fed. Cir. 2006) (citation omitted). In any event, regarding the Tribe's property interest in the land as a trust asset, the court noted that "the land is held in trust because it is the site of Building 2001." *Decision II*, 172 Fed. Cl. at 650. The court found that the United States had not taken any action that had either physically or regulatorily "taken" the land. *Id.* In view of these findings, we see no error in the court's conclusion that the United States committed no taking of the land beneath the Building.

Lastly, regarding the Tribal Addition, the Tribe argues that it is "connected to Building 2001" and that "the evidence at trial showed that the Tribal Addition cannot be maintained, used, or occupied if Building 2001 is not repaired, rehabilitated, or demolished." Appellant Br. 55. Based on the record, however, the Claims Court had an adequate basis to find that the Tribal Addition "is self-contained and functionally separate from Building 2001." *See Decision II*, 172 Fed. Cl. at 650. The court further found that there was no evidence that the United States prevented the Tribe from accessing the Tribal Addition; rather, "[i]t was the Tribe's own concerns about mold that led to vacation of the Tribal Addition." *Id.* The Tribe does not explain how these findings are clearly erroneous. Accordingly, we see no basis to disturb the court's determination that the Tribe failed to show a taking. *See id.*

CONCLUSION

We have considered the Tribe's remaining arguments and find them unpersuasive. For the foregoing reasons, we affirm.

AFFIRMED