UNITED STATES DISTRICT COURT

DISTRICT OF NEW MEXICO

PUEBLO OF SAN FELIPE, a federally recognized Indian tribe, *Plaintiff,* *v.* DEBRA HAALAND, Secretary of the Interior; ROBERT ANDERSON, Solicitor, Department of the Interior; TRACY STONE-MANNING, Director, Bureau of Land Management; JERRY GIDNER, Director, Bureau of Trust Funds Administration; DARRYL LACOUNTE, Director, Bureau of Indian Affairs; PATRICIA MATTINGLY, Acting Regional Director, Bureau of Indian Affairs Southwest Region; SANTEE LEWIS, Superintendent, Bureau of Indian Affairs Southern Pueblos Agency; and DEPARTMENT OF THE INTERIOR, *Defendants.*	**Case No.** **COMPLAINT**

COMES NOW Plaintiff PUEBLO OF SAN FELIPE, a federally recognized Indian tribe, by and through its counsel undersigned, and complains of Defendants, DEBRA HAALAND, Secretary of the Interior; ROBERT ANDERSON, Solicitor, Department of the Interior; TRACY STONE-MANNING, Director, Bureau of Land Management; JERRY GIDNER, Director, Bureau of Trust Funds Administration; DARRYL LACOUNTE, Director, Bureau of Indian Affairs; PATRICIA MATTINGLY, Acting Regional Director, Bureau of Indian Affairs Southwest Region; SANTEE LEWIS, Superintendent, Bureau of Indian Affairs Southern Pueblos Agency; and DEPARTMENT OF THE INTERIOR, as follows:

TABLE OF CONTENTS

TABLE OF CONTENTS 2
INTRODUCTION 4
JURISDICTION AND VENUE 4
PARTIES 6
GENERAL ALLEGATIONS 7
I. Introduction. 7
II. The San Felipe Patent is Issued Pursuant to the Acts of July 22, 1854 and December 22, 1858. 8
III. Santa Ana's "El Ranchito" Private Land Claim is Partially Confirmed and Patented, and Partially Rejected to the Extent the Claim Overlapped the San Felipe Patent. 12
A. Private Land Claims Act. 13
B. Santa Ana Proceedings under the Private Land Claims Act. 17
IV. The 1916 Joy Survey. 23
V. Proceedings Pursuant to the Pueblo Lands Act of 1924. 23
A. Pueblo Lands Act. 23
B. Santa Ana Proceedings under the Pueblo Lands Act. 30
C. San Felipe Proceedings under the Pueblo Lands Act. 32
VI. Subsequent Administrative and Judicial Proceedings Concerning the San Felipe Patent. 36
A. Grant of Right-of-Way to New Mexico Highway Department. 37
B. Other Easements and Rights-of-Way within the San Felipe Patent Boundaries Approved or Granted by the United States. 41
C. Santa Ana's Judicial Claim to a Portion of the Lands for which San Felipe's Title was Extinguished under the Pueblo Lands Act. 42
VII. The Resurvey Actions. 45
A. Santa Ana's Petition to "Correct" the Boundaries of the San Felipe Patent. 45
B. Solicitor's Opinion M-37000. 45
C. 2009 Olver Resurvey and 2012 Hickey Field Investigation. 47
D. Solicitor's Opinion M-37027. 47
E. 2013 BLM Resurvey of Southern Boundary of the San Felipe Patent. 48

F. IBLA Decision Denying San Felipe's Protest of Intent to File BLM Resurvey. 49
G. Filing of 2013 BLM Resurvey..... 50
H. Disbursement of Right-of-Way Trust Funds. 50
VIII. The Department's Actions Harmed San Felipe. 52
FIRST CLAIM FOR RELIEF 53
SECOND CLAIM FOR RELIEF 56
THIRD CLAIM FOR RELIEF 58
FOURTH CLAIM FOR RELIEF 59
FIFTH CLAIM FOR RELIEF 60
PRAYER FOR RELIEF 64

INTRODUCTION

1. The Pueblo of San Felipe ("San Felipe") brings this action under the Administrative Procedure Act, 5 U.S.C. § 706(2)(A), (B) and (C), to set aside agency actions taken by Defendants Department of the Interior and its officials that interfere with San Felipe's property rights to its lands that have been congressionally-confirmed and secured under a land patent from the United States.

2. San Felipe also seeks declaratory and injunctive relief that Defendants are without authority to interfere with San Felipe's quiet enjoyment of its property rights to such congressionally-confirmed and patented lands, except as hereafter may be authorized by Congress, and enjoining Defendants from so doing.

3. This action also seeks, under 5 U.S.C. § 706(1), to compel agency action unlawfully withheld, or mandamus relief under 28 U.S.C. § 1361, or both, requiring the Secretary of the Interior to provide an accounting of a tribal trust fund established to hold compensation for a highway right-of-way upon a portion of San Felipe's patented lands and compensation from an easement across the same; to replenish the tribal trust account to the appropriate balance after accounting for the funds, with interest as of the date of the Court's order; to release and pay the entire tribal trust account balance to San Felipe; and to restore the status of San Felipe's patented lands to San Felipe within the Bureau of Indian Affairs ("BIA") Trust Asset and Accounting Management System ("TAAMS").

JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter of this action pursuant to: 28 U.S.C. § 1331 (federal question), as this is a civil action arising under the Constitution, laws, or

treaties of the United States; 28 U.S.C. § 1362 (federal question action by an Indian tribe), as this is a civil action brought by an Indian tribe or band with a governing body duly recognized by the Secretary of the Interior, wherein the matter in controversy arises under the Constitution, laws or treaties of the United States; and 28 U.S.C. § 1361 (mandamus against federal official), as this is an action in the nature of mandamus to compel an officer or employee of the United States or an agency thereof to perform a duty owed to Plaintiff.

5. This action arises under the Constitution, laws and treaties of the United States, as hereinafter more fully appears, including but not limited to: the Commerce Clause, U.S. Const. Art. I, § 8, cl. 3; the Treaty Clause, U.S. Const. Art. II, § 2, cl. 2; the Treaty of Guadalupe Hidalgo, Feb. 2, 1848, 9 Stat. 922; the Act of Dec. 22, 1854, c. 103, 10 Stat. 308; the Act of Dec. 6, 1858, c. 5, 11 Stat. 374; the Act of March 3, 1891, c. 539, 26 Stat. 854; the Act of June 7, 1924, c. 331, 43 Stat. 636; the Act of May 31, 1933, c. 45, 48 Stat. 108; the Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.* and 701 *et seq.*; the Declaratory Judgments Act, 28 U.S.C. §§ 2201-2202; the Mandamus Act, 28 U.S.C. § 1361; the All Writs Act, 28 U.S.C. § 1651; and the federal common law.

6. Venue is proper in this Court pursuant to 28 U.S.C. §§ 111 and 1391(e)(1), because a substantial part of the events, acts and omissions giving rise to this action occurred within the District of New Mexico, and a substantial part of the property, including all of the real property, that is the subject of the action is situated therein.

PARTIES

7. Plaintiff PUEBLO OF SAN FELIPE is a federally recognized Indian tribe with a governing body duly recognized by the Secretary of the Interior. *See* Indian Entities Recognized . . ., 88 Fed. Reg. 2112, 2114 (Jan. 12, 2023).

8. Defendant DEBRA HAALAND is the Secretary of the Interior. She is sued herein in her official capacity. The Secretary supervises the public business of the United States relating to, *inter alia*, the Bureau of Indian Affairs, the Bureau of Land Management, the Office of the Special Trustee, the Bureau of Trust Funds Administration, and all executive duties pertaining to the surveying of public lands. 25 U.S.C. §§ 2, 4042; 43 U.S.C. §§ 2, 1457; Secretary of the Interior Order No. 3384 (Aug. 31, 2020).

9. Defendant ROBERT ANDERSON is the Solicitor of the Department of the Interior. He is sued herein in his official capacity.

10. Defendant TRACY STONE-MANNING is the Director of the Bureau of Land Management within the Department of the Interior. She is sued herein in her official capacity.

11. Defendant JERRY GIDNER is the Director of the Bureau of Trust Funds Administration within the Department of the Interior. He is sued herein in his official capacity.

12. Defendant DARRYL LACOUNTE is the Director of the Bureau of Indian Affairs within the Department of the Interior. He is sued herein in his official capacity.

13. Defendant PATRICIA MATTINGLY is the Acting Southwest Regional Director of the Bureau of Indian Affairs within the Department of the Interior. She is sued in her official capacity.

14. Defendant SANTEE LEWIS is the Superintendent of the Southern Pueblos Agency of the Bureau of Indian Affairs within the Department of the Interior. She is sued in her official capacity.

15. Defendant DEPARTMENT OF THE INTERIOR is an executive agency of the United States.

GENERAL ALLEGATIONS

I. Introduction.

16. This action is brought to set aside unlawful agency actions by officials of the Department of the Interior altering the congressionally-confirmed boundaries of lands owned by the Pueblo of San Felipe under an 1864 federal land patent. The lands were ordered by Congress to be surveyed and a patent issued to San Felipe in accordance with Congress' confirmation by statute in 1858 of San Felipe's right and title to its lands held under a Spanish land grant, in compliance with the United States' obligations under the 1848 Treaty of Guadalupe Hidalgo between Mexico and the United States.

17. Interior Department officials in 2017 unlawfully changed the southern boundary of San Felipe's patented land, removing approximately 695 acres of land from within the patented boundary. (The acreage varies in the historical documents, plus or minus about 3 acres.) They did this not because of any identified error in the long-established and officially accepted and approved surveys of that boundary, but rather in order to comport with such officials' determination that the Pueblo of Santa Ana ("Santa Ana") had a better claim to ownership of the subject lands under Spanish law. The officials therefore ordered that the common boundary between the lands of the two pueblos, legally established by court decree in

1897 and by survey and patent in 1909, should be altered to remove the subject 695 acres of land from within the boundaries of the 1864 San Felipe land patent, and add them to the lands patented to Santa Ana in 1909.

18. Interior Department officials took such actions notwithstanding that they do not have and never have had legal authority: 1) to alter the official surveyed and patented boundaries of a congressionally confirmed Pueblo Spanish land grant to the detriment of the Pueblo grantee, even if the survey were in error, which it was not; or 2) to entertain or to adjudicate a competing claim of ownership to the lands within the official surveyed and patented boundaries of a congressionally confirmed Pueblo Spanish land grant, even if such claim were viable, which it is not.

19. Interior Department officials entertained and adjudicated the competing ownership "claim" notwithstanding that such claim was rejected when presented for confirmation in 1897 by the congressionally-created Court of Private Land Claims, and has been barred since at least 1934 by the provisions of the Pueblo Lands Act of 1924, as amended, and the results of federal court judicial proceedings mandated under that Act and intended to finally resolve all competing claims to any lands within the boundaries of confirmed and patented lands of Pueblos in New Mexico.

II. The San Felipe Patent is Issued Pursuant to the Acts of July 22, 1854 and December 22, 1858.

20. San Felipe has traditionally occupied the land at issue in this case since time immemorial.

21. San Felipe's contemporary interest in the land at issue was recognized in a formal 1689 Spanish land grant, and by the United States when Congress confirmed the Spanish grant in 1858 and the President issued a fee patent to the land in 1864.

22. In the Treaty of Guadalupe Hidalgo, Feb. 2, 1848, 9 Stat. 922, Mexico ceded to the United States its claims to territory in the American Southwest, including what is now the State of New Mexico.

23. The United States agreed to honor all titles to land in the ceded territory founded upon Spanish or Mexican law.

24. In order to fulfill that obligation, in 1854 the United States Congress created the office of Surveyor General of New Mexico and charged him with the responsibility to "ascertain the origin, nature, character, and extent of all claims to lands under the laws, usages, and customs of Spain and Mexico." He was instructed to "make a full report on all such claims, denoting the various grades of title, with his decision as to the validity or invalidity of the same . . . which report shall be laid before Congress for such action as may be deemed just and proper, with a view to confirm *bona fide* grants." Act of July 22, 1854, c. 103, § 8, 10 Stat. 308, 309.

25. The Surveyor General was further instructed to "also make a report [to Congress] in regard to all pueblos existing in the Territory, showing the extent and locality of each … and the nature of their titles to the land." *Id.*

26. The Secretary of the Interior provided additional detailed instructions to the Surveyor General later that year. Report of the Commissioner of the General Land Office, 1854, printed in S. Ex. Doc. No. 1, 33rd Cong., 2nd Sess., at 87-103 (Dec. 4, 1854). Among other things, the Surveyor General was instructed to "give proper public notice" to "make known your

readiness to receive notices and testimony in support of the land claims," and to examine the "extent of conflicting claims, if any." *Id.* at 90-91. The Surveyor General issued the notice as instructed. Annual Report of the Surveyor General of New Mexico, Sept. 30, 1855, printed in H.R. Ex. Doc. No. 1, 34th Cong., 2d Sess., at 302, 305-07 (Feb. 14, 1856).

27. Santa Ana submitted to the Surveyor General a claim based on a grant made by the government of Spain to Santa Ana, which the Surveyor General examined and approved. *Id.* at 303. As Santa Ana would later state before the Court of Private Land Claims, its claim to the Surveyor General did not involve the same lands that were the subject of the claim it asserted in the Court of Private Land Claims. *See* § III(B), *infra*.

28. San Felipe submitted to the Surveyor General its claim under a Spanish land grant dated September 20, 1689.

29. The 1689 grant, as translated from Spanish by the Translator's Department of the Surveyor General's Office in 1855, set forth the boundaries of the land as follows:

> on the North the large grove (Bosque Grande) which is toward the east, and on the east one league, and on the west one league and on the south a little grove, which is in front of a hill called Culcura, opposite the fields of the Santa Ana Indians.

Annual Report of the Surveyor General of New Mexico, Sept. 30, 1856, printed in H.R. Ex. Doc. No. 1, 34th Cong., 3d Sess., at 503-504 (Dec. 18, 1856).

30. Other copies of the certified translation use the word "Culebra" instead of "Culcura." *See, e.g.*, Pueblo of San Felipe Land Status, Report Prepared by the Land Division, United Pueblos Agency, U.S. Dep't of Interior, Office of Indian Affairs (Apr. 1, 1940).

31. The Surveyor General reported on September 30, 1856, that San Felipe's title to its 1689 Spanish land grant was valid and recommended that Congress confirm San Felipe's claim. Annual Report of the Surveyor General, 1856, *supra*, at 411.

32. On December 22, 1858, Congress accepted the recommendation and confirmed San Felipe's claim, directed that the land be surveyed as recommended for confirmation by the Surveyor General, and directed that a patent be issued for the land as surveyed. Act of Dec. 22, 1858, c. 5, 11 Stat. 374.

33. As the Supreme Court held, the action of Congress confirming land claims such as San Felipe's was not and is not subject to judicial review. *United States v. Conway*, 175 U.S. 60, 67 (1899); *Tameling v. U.S. Freehold & Emigration Co.*, 93 U.S. 644, 662 (1876). Quoting *Tameling*, the Court in *Conway* explained:

> No jurisdiction over such claims in New Mexico was conferred upon the courts; but the surveyor-general, in the exercise of the authority with which he was invested, decides them in the first instance. The final action on each claim reserved to Congress, is, of course, conclusive, and therefore not subject to review in this or any other forum.
>
> It is obviously not the duty of this court to sit in judgment upon either the recital of matters of fact by the surveyor general, or his decision declaring the validity of the grant.
>
> ***
>
> Congress acted upon the claim "as recommended for confirmation by the surveyor-general." The confirmation being absolute and unconditional, without any limitation as to quantity, we must regard it as effectual and operative for the entire tract.

Conway, 175 U.S. at 67 (quoting *Tameling*, 93 U.S. at 662-63).

34. The congressionally ordered survey of the confirmed San Felipe grant boundaries by Reuben E. Clements was approved by the Surveyor General on October 25, 1860. The

Clements survey located the boundaries consistent with the boundaries described in the 1689 grant.

35. President Abraham Lincoln signed and issued the San Felipe Patent, from the United States to San Felipe, on November 1, 1864. The Patent recites and incorporates the metes and bounds description of the boundaries as surveyed by Clements.

III. Santa Ana's "El Ranchito" Private Land Claim is Partially Confirmed and Patented, and Partially Rejected to the Extent the Claim Overlapped the San Felipe Patent.

36. No claim in conflict with the San Felipe Patent was brought until the late 1800's when Santa Ana brought an action before the Court of Private Land Claims to obtain confirmation of five adjoining parcels of land Santa Ana had purchased from holders of private Spanish grants in the 18th century, located south and west of the San Felipe Patent.

37. Santa Ana abandoned the majority of its original claim before the Court, and obtained partial confirmation and partial rejection of the remainder of its claim by decree in 1897. After approval of the necessary surveys to establish the boundaries of the entire extent of the remainder of its claim acted upon by the Court, and to delineate the boundary of such part of the claim as was confirmed and such part as was rejected, a federal patent was issued to Santa Ana for the confirmed part of such claim in 1909. The 1897 decree expressly excluded from confirmation all parts of such claim as would conflict with the boundaries of the San Felipe Patent, as was required by the Act of Congress that created the Court. By express reference to the terms and conditions of such Act of Congress and of the Court decree, the 1909 patent excluded from its boundaries all lands within the boundaries of the 1864 San Felipe Patent.

A. Private Land Claims Act.

38. In 1891, Congress passed the Act of March 3, 1891, which created a Court of Private Land Claims to hear and determine the claims of any persons or corporation claiming lands within the territory ceded to the United States by Mexico (excepting California) presented to the court within two years following the date the act took effect. Act of March 3, 1891, c. 539, 26 Stat. 854 ("Private Land Claims Act"); *see id.* § 1, first paragraph (establishing court), § 6, first paragraph (describing nature of claims to be heard), and § 12 (barring claims not filed within two years).

39. The Private Land Claims Act required persons petitioning the Court of Private Land Claims to "set forth fully the nature of their claims to the lands," with the petitioners required to state several particulars, including "the name or names of any person or persons in possession of or claiming the same, or any part thereof, otherwise than by the lease or permission of the petitioner." Private Land Claims Act § 6, second paragraph.

40. The Court of Private Land Claims was "authorized and required to take and exercise jurisdiction of all cases or claims presented by petition" under the Act. Private Land Claims Act § 6, third paragraph. The Court of Private Land Claims possessed "full power and authority to hear and determine all questions arising in cases before it relative to the title to the land the subject of such case, the extent, location, and boundaries thereof, and other matters connected therewith fit and proper to be heard and determined, and by a final decree to settle and determine the question of the validity of the title and the boundaries of the grant or claim presented for adjudication." *Id.* § 7. When the Court of Private Land Claims confirmed a claim

in whole or in part, the Court's decree was to "specify plainly the location, boundaries, and area of the land the claim to which is so confirmed." *Id.*

41. The powers conferred upon the Court of Private Land Claims were subject to express limitations set forth in section 13 and other provisions of the Act, including several provisions that protected existing federal patents such as the San Felipe Patent. Section 13 stated in relevant part:

> That all the foregoing proceedings and rights shall be conducted and decided subject to the following provisions as well as to the other provisions of this act, namely:
>
> ***
>
> Second. No claim shall be allowed that shall interfere with or overthrow any just and unextinguished Indian title or right to any land or place.
>
> ***
>
> Fourth. No claim shall be allowed for any land the right to which has hitherto been lawfully acted upon and decided by Congress, or under its authority.
>
> Fifth. No proceeding, decree, or act under this act shall conclude or affect the private right of persons as between each other, all of which rights shall be reserved and saved to the same effect as if this act had not been passed; but the proceedings, decrees, and acts herein provided for shall be conclusive of all rights as between the United States and all persons claiming any interest or right in such lands.

Private Land Claims Act § 13.

42. Section 8 of the Private Land Claims Act similarly provided in relevant part that the confirmation of any claim determined to be valid "shall be for so much land only as such perfect title shall be found to cover, always excepting any part of such land that shall have been disposed of by the United States, and always subject to and not to affect any conflicting private

interests, rights, or claims held or claimed adversely to any such claim or title, or adversely to the holder of any such claim or title." Private Land Claims Act § 8.

43. Section 14 of the Private Land Claims Act provided, once again, that if the lands confirmed to any claimant included land that the United States had sold or granted to another person, the "title from the United States to such other person shall remain valid, notwithstanding such decree." Private Land Claims Act § 14. Instead of receiving a patent for such lands, the claimant would be entitled to recover damages "against the United States for the reasonable value of said lands." *Id.*

44. Any party aggrieved by a decision of the Court of Private Land Claims had the right to appeal to the United States Supreme Court, which would hear the case de novo. Private Land Claims Act § 9. Under this provision, either the United States or a claimant whose claim was rejected "in whole or in part" could appeal "within six months from the date of such decision." *Id.* "Should no appeal be taken as aforesaid the decree in the court below shall be final and conclusive." *Id.*

45. Once a confirmation decree became final under the Private Land Claims Act, there began a process for surveying the boundaries of the tract confirmed and ultimately issuing a patent. Private Land Claims Act § 10. The tract was to be surveyed and platted, after which the Surveyor General was to publish four weekly notices and provide ninety days in which objections to the survey may be filed "by any party claiming an interest in the confirmation or by any party claiming an interest in the tract embraced in the survey or any part thereof." *Id.* The survey and any objections were transmitted "to the court in which the final decision was made," which court could require corrections or find that the "survey is in substantial accordance with

the decree of confirmation." *Id.* A survey approved by the court was returned to the Commissioner of the General Land Office, "who shall as soon as may be cause a patent to be issued thereon to the confirmee." *Id.*

46. In a case involving "overlapping grants," one confirmed by Congress in 1858, and the other by the Court of Private Land Claims, the Supreme Court held that the congressional confirmation must control. The Court declared:

> Nothing can be plainer from the language of the private land claim act that the lands 'that shall have been disposed of by the United States' should be excepted from the decree of confirmation (sec. 8); that no claim shall be allowed which shall interfere with or overthrow any just or unextinguished Indian title (sec. 13); that no claim shall be allowed for any land the right to which has been lawfully acted upon and decided by Congress (sec. 13); and that no proceeding under the act shall conclude or affect the private rights of persons as between each other (sec. 13).

United States v. Conway, 175 U.S. 60, 67-68 (1899).

47. As the Court further emphasized three years after *Conway*, the language of the Private Land Claims Act is "too clear to be misunderstood or evaded." *United States v. Baca*, 184 U.S. 653, 659 (1903).

48. The *Baca* Court explained:

> The manifest intent of Congress appears to have been that with any land, of the right to which Congress, in the exercise of its lawful jurisdiction, had itself assumed the decision, the court of private land claims should have nothing to do. … The peremptory declaration of Congress, that "no claim shall be allowed for any land, the right to which has hitherto been lawfully acted upon and decided by Congress," necessarily prohibits the court from passing upon the merits of any such claim.

Baca, 184 U.S. at 659.

49. Thus, the Supreme Court ruled in *Conway* that, in order to be valid, a decree of confirmation by the Court of Private Land Claims and any patent issued thereunder must exclude

any lands already patented by the United States. The Court stated, "Under these provisions, if the court were to confirm this grant for lands already granted, such confirmation would be void, as nothing is better settled by this court than that a patent issued by the United States to lands which they do not own is a simple nullity." *Conway*, 175 U.S. at 68.

B. Santa Ana Proceedings under the Private Land Claims Act.

50. On March 2, 1893, Santa Ana petitioned the Court of Private Land Claims to confirm its claim to the El Ranchito Purchase lands.

51. Santa Ana's petition disclosed a potential conflict at the northern boundary of the El Ranchito Purchase with lands previously patented to San Felipe. Its petition alleged in part that its claim "does not conflict in whole or in part with other grants derived from Spain or Mexico, other than as the same may be infringed upon in the northern part thereof by the patented lands of the Pueblo of San Felipe, to what extent your petitioners are not now able to state." *Pueblo of Santa Ana v. United States*, No. 157, Amended Petition ¶ 19 (Ct. Prvt. Land Cls., May Term 1896). This area at the north end of the El Ranchito Purchase and south end of the San Felipe Patent is sometimes known as the "overlap area" or "dispute area," and is referred to herein as the "Conflict Area."

52. Santa Ana's petition also confirmed that its "claim has never been considered or acted upon by or under the authority of Congress." *Id.* ¶ 21.

53. On March 25, 1897, a trial was held by the Court of Private Land Claims, and the United States objected to the initial claim of land by Santa Ana as being excessive.

54. Santa Ana amended its land claim, reducing it to an estimated total of 8,000 acres from its initial claim of over 95,000 acres.

55. On December 19, 1897, the Court of Private Land Claims issued a Decree in which it partially confirmed and partially rejected the claim to the El Ranchito Purchase. *Pueblo of Santa Ana v. United States*, Decree (Dec. 19, 1897).

56. The Decree ordered the entire initially confirmed tract to be surveyed. The Decree's eighteenth finding of fact directed that "This tract shall be surveyed with the limits and boundaries set forth in the fourteenth finding of fact hereof." *Id.* ¶ 18. The fourteenth finding of fact stated that "the several tracts of land claimed in this cause … lie contiguous to each other, and form one tract, bounded and described" by metes and bounds as set forth thereafter. *Id.* ¶ 14.

57. The Decree's sixteenth finding of fact excepted from confirmation any land previously sold or granted by the United States, as required by the Private Land Claims Act. The Decree stated, "This confirmation shall not pass to the confirmees herein any right or title to any lands heretofore sold or granted by the United States to any other parties." *Id.* ¶ 16.

58. The Decree then specifically addressed the possibility that a survey might demonstrate that part of the lands initially confirmed lay within the San Felipe Patent (as Santa Ana had advised the Court in its Amended Petition), and that in that event, Santa Ana had expressly waived its right to damages under section 14 of the Private Land Claims Act due to the San Felipe patented lands being excepted from final confirmation and patent. The Decree stated,

> [S]hould a survey of the tract herein confirmed develope that a part of the same lies within the lands heretofore patented to the Indians of San Felipe pursuant to or purporting to be pursuant to the act of Congress approved December 22, 1858, then and in that event such conflict shall create no liability as against the United States, to the confirmees herein or to any other parties for damages for the land thus patented, any such claim for damages for land so patented by the United States to said Pueblo of San Felipe having been expressly waived on the hearing of this cause by the claimants herein.

Id.

59. These provisions together demonstrate that the Court of Private Land Claims by its Decree did not intend nor did the Court authorize the boundaries of the tract surveyed to be the boundaries of the tract confirmed by the Court in the event such survey established that a part of the El Ranchito claim overlapped the San Felipe Patent.

60. Rather, the Decree of the Court of Private Land Claims directed that the result of such survey would determine whether part of the El Ranchito claim, as surveyed, overlapped the San Felipe Patent, and in the event that it did, such part as overlapped the San Felipe Patent was excluded from the Court's confirmation of the El Ranchito claim.

61. In accordance with the Private Land Claims Act and Supreme Court decisions such as *Conway* and *Baca*, the validity of the confirmation itself was dependent upon the Decree having excepted the Conflict Area from confirmation.

62. No appeal was taken from any decision of the Court of Private Land Claims in *Pueblo of Santa Ana v. United States.*

63. In October 1898, the Surveyor General directed John H. Walker to perform original surveys of the provisionally confirmed El Ranchito claim and the nearby Bernalillo and Angostura Grants, and, in order to determine the extent of the conflict of the El Ranchito Tract and Angostura Grant, to perform a retracement of the San Felipe Patent. Walker did not locate sufficient original markers to retrace Reuben E. Clements' boundaries of the San Felipe Patent, so he performed a resurvey of portions of the east and west boundaries and the south boundary of the San Felipe Patent.

64. In February 1900, Thomas M. Hurlburt made a field examination of Walker's partial resurvey of the San Felipe Patent. He completed the field examination in February 1900,

noting an apparent discrepancy between Walker's resurvey and Clements' original survey: although each survey located the south boundary in approximately the same place, Clements' field notes described its location as one mile closer to San Francisco Creek than Walker's did.

65. In May 1900, Hurlburt conducted a field examination of the Clements survey. He concluded that relying on Walker's resurvey would correct public and private land surveys connected to the San Felipe Patent. Hurlburt also called "special attention" to the south boundary call for the San Felipe grant, "on the south a little grove which is in front of a hill called Culebra (Snake) opposite the fields of the Santa Ana Indians." He reported that "running the course as defined by [Clements], namely N 87° West, the line will intersect about the center of this peculiar hill, which is very prominent object at the foot of the hills on the west side of the Rio Grande river." This observation supports Clements' and Walker's placement of the south boundary of the San Felipe Patent on a straight line from the southeast corner to the southwest corner, angled three degrees north of due west, that points toward "La Culebra" (now "Canjilon Hill").

66. On August 30, 1900, Quinby Vance, the Surveyor General for the District of New Mexico, submitted his report to the General Land Office Commissioner as required by the Private Land Claims Act. The report included his review of the work and reports of surveyors Walker and Hurlburt, and recommended the acceptance and approval of the Walker survey of the El Ranchito tract, leaving the location and extent of the Conflict Area undetermined.

67. Surveyor General Vance's report noted that, in accordance with section 10 of the Private Land Claims Act, due notice was published for four consecutive weeks in El Boletin

Popular in Santa Fe and in the Albuquerque Weekly Citizen, notifying all persons claiming any interest in the El Ranchito Purchase to file objections in the Surveyor General's office.

68. After publication, only two objections to the El Ranchito survey and plat were filed within the 90-day period, one by Pedro Perea, asserting that the north and south boundaries as surveyed improperly enlarged the size of the El Ranchito tract, and the other a generic objection by the U.S. Attorney for the Court of Private Land Claims.

69. On December 18, 1900, Surveyor General Vance approved the survey plat for the provisionally confirmed El Ranchito claim. In accordance with the sixteenth finding of fact of the 1897 Decree, the El Ranchito patent did not issue for nine more years, until several months after a subsequent survey finally established the extent to which the El Ranchito claim overlapped the San Felipe Patent.

70. By resurvey undertaken September 25 through October 15, 1907, Wendell V. Hall reestablished the lost corners and boundaries of the San Felipe Patent based on calls to distances rather than the monuments that could not be located. Hall reestablished Reuben E. Clements' 1859-1860 southern boundary for the San Felipe Patent. G. D. D. Kirkpatrick examined Hall's resurvey in 1908, and with recommended corrections, Kirkpatrick found Hall's resurvey satisfactory upon reexamination. The Surveyor General approved Hall's resurvey on January 15, 1909, and the Commissioner of the Department of the Interior General Land Office approved Hall's resurvey on March 19, 1909. *See* **Exhibit A**, Plat of the San Felipe Pueblo Grant as resurveyed by Wendell V. Hall, 1907, and approved in 1909.

71. On October 18, 1909, President William H. Taft issued a patent to Santa Ana for the partially confirmed El Ranchito claim. The patent repeated the metes and bounds description

of Santa Ana's claim as provided in the Decree's fourteenth finding of fact. The patent then stated that the United States granted to Santa Ana "the tract above described … in accordance with the terms of the decree of [the] Court [of Private Land Claims.]" The patent further stated "that the said grant is made subject to all the limitations and terms of the said Act of Congress of March 3, 1891, and all the restrictions and limitations of said decree." These terms incorporated into the patent all the limitations Congress imposed on the Court of Private Land Claims and the limitations expressed in the Court's Decree.

72. Thus, pursuant to section 13 of the Private Land Claims Act, the El Ranchito Patent did not interfere with San Felipe's title or right to the San Felipe Patent, nor grant to Santa Ana any land previously confirmed by Congress to San Felipe.

73. Pursuant to section 8 of the Private Land Claims Act, the El Ranchito Patent excepted the part of the El Ranchito claim that had been patented by the United States to San Felipe.

74. Pursuant to section 14 of the Private Land Claims Act, the title from the United States to San Felipe for the San Felipe Patent remained valid.

75. Pursuant to the Decree, the El Ranchito Patent did not pass to Santa Ana any right or title to any land patented by the United States to San Felipe.

76. Pursuant to the Decree, Santa Ana accepted the exclusion of the San Felipe Patent from the partially confirmed and patented El Ranchito claim, and waived any claim for damages against the United States for the loss of part of the land it claimed.

77. Santa Ana accepted the patent to the partially confirmed El Ranchito claim that excluded title to the Conflict Area without objection.

IV. The 1916 Joy Survey.

78. In 1916, Basil C. Perkins and Francis E. Joy performed a dependent resurvey of the east and south boundaries of the San Felipe Grant (Joy Survey), recovering and accepting Hall's reestablished southeast corner and perpetuating it by setting an iron post with brass cap alongside Hall's stone corner monument. As such, the Joy Survey confirmed the straight-line south boundary of the San Felipe Patent as reestablished by Hall.

79. Congress in the Pueblo Lands Act of 1924, the Pueblo Lands Board established by that Act, and the United States District Court for the District of New Mexico, each relied upon the Joy Survey as establishing the boundaries of Pueblo lands in proceedings under the Pueblo Lands Act. *See* § V, *infra*.

V. Proceedings Pursuant to the Pueblo Lands Act of 1924.

A. Pueblo Lands Act.

80. Congress enacted the Pueblo Lands Act of June 7, 1924, c. 331, 43 Stat. 636, "'to provide for the final adjudication and settlement of a very complicated and difficult series of conflicting titles affecting lands claims by the Pueblo Indians of New Mexico.'" *Mountain States Tel. & Tel. Co. v. Pueblo of Santa Ana*, 472 U.S. 237, 240 (1985), quoting S. Rep. No. 492, 68th Cong., 1st Sess., 3 (1924). Significant uncertainty over the titles to Pueblo land had arisen as a result of the Supreme Court's decision in *United States v. Joseph*, 94 U.S. 614 (1877), that Pueblo Indians were not Indian tribes within the meaning of the Nonintercourse Act, 25 U.S.C. § 177, and therefore were not prohibited from alienating their land; the subsequent New Mexico Enabling Act of 1910, in which Congress provided that Pueblo lands were to be regulated as "Indian country;" and then the Supreme Court's rejection of *Joseph*'s premise, in

United States v. Sandoval, 231 U.S. 28 (1913), which "strongly implied that the restraints on alienation contained in the Nonintercourse Act … might apply to the Pueblos" after all. *Mountain States* at 243. The Supreme Court would definitively hold that the Nonintercourse Act applies to Pueblo Indians in *United States v. Candelaria*, 217 U.S. 432, 441 (1926).

81. In the meantime, Congress passed the Pueblo Lands Act in 1924, the stated purpose of which was "to 'settle the complicated questions of title and to secure for the Indians all of the lands to which they are equitably entitled.'" *Mountain States* at 244, *quoting* S. Rep. No. 492 at 5.

82. Although the Pueblo Lands Act was spurred by the possibility "that the Pueblos had been wrongfully dispossessed of their lands, and that they might have the power to eject the non-Indian settlers," *Mountain States* at 243, Congress did not limit the Act to resolving conflicts between Pueblos and non-Indians, but instead passed the Act to finally adjudicate "any claim or claims of any kind whatsoever adverse to the claim of said Pueblo Indians." Pueblo Lands Act § 1.

83. The Pueblo Lands Act established the Pueblo Lands Board ("Board"). Pueblo Lands Act § 2. Congress first instructed the Board to report its determinations with respect to each Pueblo's *unextinguished* lands. In this regard, it was the Board's duty:

> to investigate, determine, and report and set forth by metes and bounds, illustrated where necessary by field notes and plats, the lands within the exterior boundaries of any land granted or confirmed to the Pueblo Indians of New Mexico by any authority of the United States of America, or any prior sovereignty, or acquired by said Indians as a community by purchase or otherwise, title to which the said board shall find not to have been extinguished in accordance with the provisions of this Act.

Pueblo Lands Act § 2.

84. The Pueblo Lands Act defined the word "purchase" as "the acquisition of community lands by the Indians other than by grant or donation from a sovereign." Pueblo Lands Act § 11. The El Ranchito Purchase constitutes land that Santa Ana acquired by purchase, within the meaning of the Act. The San Felipe Patent constitutes land granted or confirmed to San Felipe by the United States or a prior sovereign, within the meaning of the Act.

85. The Board was instructed to make four copies of its § 2 report pertaining to "each pueblo as a separate unit" and to file one copy "with the United States District Court for the District of New Mexico, one with the Attorney General of the United States, one with the Secretary of the Interior, and one with the Board of Indian Commissioners." Pueblo Lands Act § 2.

86. Once the Board filed the § 2 report, the Attorney General was to bring a quiet title action in the United States District Court for the District of New Mexico on behalf of the Pueblo Indians. Pueblo Lands Act §§ 1, 3. The purpose of this action was to adjudicate "any claim or claims of any kind whatsoever adverse to the claim of said Pueblo Indians." *Id.* § 1.

87. The Board was instructed to segregate from the § 2 report "any claims of non-Indian claimants who, in the opinion of said board after investigation, hold and occupy such claims of which they have had adverse possession, in accordance with the provisions of section 4 of this Act." Pueblo Lands Act § 2.

88. Section 4 of the Pueblo Lands Act listed the elements a claimant would need to satisfy to establish adverse possession, either "under color of title," *id.* § 4(a), or "without color of title," *id.* § 4(b). Thus, it was the Board's duty to determine claims of adverse possession asserted against Pueblos. If the Board unanimously approved a claim based upon adverse

possession or "upon any other ground," the claimant was entitled to a decree in their favor having "the effect of a deed of quitclaim against the United States and said Indians." *Id.* § 5.

89. Claims rejected by the Board were reported pursuant to section 2. The unsuccessful claimants were named as defendants in the quiet title suits brought by the Attorney General on behalf of the Pueblos pursuant to sections 1 and 3.

90. Section 4 of the Pueblo Lands Act expansively permitted "all persons" to assert their claims to the Pueblo lands involved in these quiet title suits. Under section 4, "all persons claiming title to, or ownership of, any lands involved in any such suit, or suits, may in addition to any other legal or equitable defenses which they may have or have had under the laws of the Territory and State of New Mexico, plead [an adverse possession defense]" as provided in sections 4(a) and 4(b). Pueblo Lands Act § 4.

91. The Attorney General was also authorized to plead the specified adverse possession defenses "in favor of the pueblo, or any individual Indian thereof." Pueblo Lands Act § 5.

92. Section 4 of the Pueblo Lands Act also expressly authorized Pueblos to prosecute independent suits within a specified window of time. It provided:

> Nothing in this Act contained shall be construed to impair or destroy any existing right of the Pueblo Indians of New Mexico to assert and maintain unaffected by the provisions of this Act their title and right to any land by original proceedings, either in law or equity, in any court of competent jurisdiction and any such right may be asserted at any time prior to the filing of the field notes and plats as provided in section 13 hereof, and jurisdiction with respect to any such original proceedings is hereby conferred upon the United States District Court for the District of New Mexico with right of review as in other cases.

Pueblo Lands Act § 4.

93. To further advance the objective of providing for the full and final adjudication of Pueblo lands, whether a claimant was an Indian or non-Indian, and whether or not they had presented their claim to the Board or were named in a quiet title action, section 12 of the Act provided:

> That any person claiming any interest in the premises involved but not impleaded in any such action may be made a party defendant thereto or may intervene in such action, setting up his claim in usual form.

Pueblo Lands Act § 12.

94. The independent actions by Pueblos authorized in section 4 were required to be commenced "prior to the filing of the field notes and plats as provided in section 13." Pueblo Lands Act § 4; *see United States v. Thompson*, 708 F.Supp. 1206, 1210-17 (D.N.M. 1989), *aff'd*, 941 F.2d 1074, 1078 (10th Cir. 1991).

95. Under section 13, the Secretary of the Interior was directed to "file field notes and plats for each pueblo … showing the lands to which the Indian title has been extinguished … but excluding therefrom lands claimed by or for the Indians in court proceedings then pending." Pueblo Lands Act § 13. The Secretary was to file the field notes and plats at least two years after the Board filed its report under § 2. *Id.*

96. When the Secretary filed the field notes and plats, the Pueblos' right to bring an independent action claiming lands for themselves was to expire. *Id.* § 4. As discussed *infra*, Congress adjusted this statute of limitations in 1933.

97. The Act then provided one last, brief period for anyone to claim an interest in Pueblo lands, this time only as against another claimant. "[W]ithin thirty days after the Indians'

right to bring independent suits under this Act shall have expired," the Secretary was to publish five weekly notices with the names of the "non-Indian claimants" and

> a description of such several holdings, as shown by a survey of Pueblo Indian lands heretofore made under the direction of the Secretary of the Interior and commonly known as the 'Joy Survey,' … and requiring that any person or persons claiming such described parcel or parcels of land or any part thereof, adversely to the apparent claimant or claimants so named … shall on or before the thirtieth day after the last publication of such notice, file his or their adverse claim in the United States Land Office. … If no such contest is instituted as aforesaid, the Secretary of the Interior shall issue to the claimant … a patent or other certificate of title. … Upon such contest either party may claim the benefit of the provisions of section 4 of this Act to the same extent as if he were a party to a suit to quiet title brought under the provisions of this Act, and the successful party shall receive a patent or certificate of title for the land as to which he is successful in such proceeding.

Pueblo Lands Act § 13.

98. The Pueblo Lands Act provided a special procedure for claims by "any non-Indian party to any such suit" that were "based upon a Spanish or Mexican grant." Pueblo Lands Act § 14. "[I]f the court should finally find that any such claim by the non-Indian is superior to that of the Indian claim, no final decree or judgment of ouster of the said Indians shall be entered," but instead the Pueblo would retain title to the land, despite its junior title. *Id.*; *see United States v. Thompson*, 941 F.2d 1074, 1079-80 (10th Cir. 1991) (noting that in that case the Board ignored this express congressional directive, which although erroneous was within the Board's jurisdiction).

99. Claimants who lost their land in this manner, and good faith claimants whose claims were rejected, were potentially eligible for compensation. Pueblo Lands Act §§ 7, 14, 15 The Court was to "ascertain the area and value of the land," and the Secretary of the Interior was then to report these facts to Congress and make a recommendation for compensating the non-

Indian claimants. *Id.* Losing claimants' lands could also be sold to the highest bidder, including to the claimants themselves. *Id.* § 16.

100. The United States was also liable to compensate the Pueblo Indians for any lost water rights, based on information reported by the Board and subject to court review. Pueblo Lands Act § 6.

101. Congress also contemplated purchasing the lands of successful claimants and transferring such lands to the Pueblo Indians, and directed the Board and the Secretary of the Interior to report information to Congress relevant to that effort. Pueblo Lands Act § 8.

102. To make clear that, for the future, state law was entirely preempted in the area of the Pueblos' land titles, and that Congress had assumed complete jurisdiction over these lands, so that the results of the quiet title suits brought under the Pueblo Lands Act would be the last and final word on title to all unextinguished Pueblo lands and any alienation of Pueblo lands after 1924 could occur only if sanctioned by federal law, section 17 of the Pueblo Lands Act provided in relevant part:

> No right, title, or interest in or to the lands of the Pueblo Indians of New Mexico to which their title has not been extinguished as hereinbefore determined shall hereafter be acquired or initiated by virtue of the laws of the State of New Mexico, or in any other manner except as may hereafter be provided by Congress….

Pueblo Lands Act § 17; *see Mountain States*, 472 U.S. at 252.

103. In 1933, Congress amended the Pueblo Lands Act to authorize settlement of suits brought by various Pueblos and to increase the amount of federal compensation paid to the Pueblos for extinguishing title to portions of their lands. Act of May 31, 1933, c. 45, 48 Stat. 108; *see United States v. Thompson*, 941 F.2d. 1074, 1079 (10th Cir. 1991). The amendment

authorized the Secretary to offer a Pueblo additional compensation if it would abandon pending or contemplated lawsuits. The Pueblo could elect to accept the Secretary's offer, or

> if said election by said pueblo be not made, said pueblo shall have one year from the date of the approval of this Act within which to file any independent suit authorized under section 4 of the Act of June 7, 1924, at the expiration of which the right to file such suit shall expire by limitation.

Act of May 31, 1933, c. 45, § 6.

104. Congress thus substituted a specific date of repose, May 31, 1934, for the statute of limitations that had been tied to the filing of plats and field notes. In doing so, Congress reaffirmed its intent that "litigations and pending and potential litigations, affecting the ownership of these Pueblo lands, will be forever ended." S. Rep. No. 73, 73rd Cong., 1st Sess. 17 (1933); *see United States v. Thompson*, 941 F.2d. 1074, 1079 (10th Cir. 1991).

B. Santa Ana Proceedings under the Pueblo Lands Act.

105. On July 19, 1927, the Pueblo Lands Board issued its reports under section 2 of the Pueblo Lands Act with respect to Santa Ana, including El Ranchito. The Board stated that El Ranchito was "composed of five contiguous tracts and surveyed as one tract," and had been "purchased by the Santa Ana Indians during the eighteenth century, and patented to said Indians October 16, 1909." Pueblo Lands Board, Santa Ana Pueblo El Ranchito Grant or Purchase, Report on Title to Lands Purchased by Pueblo Indians, at 1 (Jul. 19, 1927). The Board identified twenty-one tracts within the El Ranchito Patent to which Santa Ana's title had been extinguished, and five tracts to which Santa Ana's title was unextinguished. *Id.* at 1-2.

106. The Board highlighted the fact that Santa Ana did not have juridical possession of the Conflict Area, and therefore any claims pertaining to the Conflict Area must be deemed adverse to San Felipe, not Santa Ana. The report stated:

> There is a conflict of 695.02 acres lying within the northeasterly part of said purchase … which was excluded from the Santa Ana Purchase by the Court of Private Land Claims, as shown on its decree…. Claims adverse to the San Felipe Indians situated within this area will be passed upon by the Board when the San Felipe Pueblo is considered.

Id. at 2.

107. In the Pueblo Land Board's letter dated July 20, 1927, transmitting its report on El Ranchito to the Board of Indian Commissioners, the Pueblo Land Board noted the "conflict of 695 acres with the San Felipe Grant," and stated, "In this case the Board is of the opinion that the San Felipes hold a prior right to this area." Letter from H.G. Hagerman to Malcom McDowell, p. 2 (Jul. 20, 1927).

108. On November 25, 1927, the United States as Guardian of Pueblo of Santa Ana filed an action in the District Court of New Mexico to quiet title to Santa Ana land as determined by the Pueblo Lands Board, incorporating the Board's July 19, 1927 report by reference and attachment. *United States v. Brown*, D.N.M. No. 1814 in Equity (Compl. filed Nov. 25, 1927)

109. On May 31, 1929, the District Court of New Mexico issued the Final Decree in *United States v. Brown*. *United States v. Brown*, No. 1814 in Equity (D.N.M. May 31, 1931). In the *Brown* Final Decree, the Court affirmatively recognized the 1916 Joy Survey as establishing the relevant boundaries of the El Ranchito Patent. *Id.* at ¶ 1, 2. The Court's Final Decree in *Brown* dismissed certain defendants and, as to the other tracts at issue, "decreed that the title of the Pueblo of Santa Ana is quieted" as against the defendants who had claimed those tracts. *Id*. The Court further "decreed that as against all the defendants [listed], the title of the Pueblo of Santa Ana is quieted to the entire El Ranchito Purchase hereinabove referred to," i.e., as described in the Complaint by reference to the July 19, 1927 Pueblo Lands Board report, which

expressly excluded the Conflict Area. *Id.* at ¶ 3. None of the titles quieted in the *Brown* Final Decree covered parcels within the Conflict Area.

C. San Felipe Proceedings under the Pueblo Lands Act.

110. On May 14, 1928, the Pueblo Lands Board issued its section 2 report for the San Felipe Patent. The Board described the land as "confirmed to the Pueblo of San Felipe … being a Spanish Grant as confirmed by Act of Congress approved December 22, 1858, and patented November 1, 1864." Pueblo Lands Board, San Felipe Pueblo, Report of Title to Lands Granted or Confirmed to Pueblo Indians Not Extinguished, at 1 (May 14, 1928). The Board identified 163 tracts as to which San Felipe's title had been extinguished. These included at least four tracts within or partly within the Conflict Area, designated Private Claims 4, 5, 6 and 101. *See* **Exhibit B**, Map of Dispute Area Resurveyed by BLM (Sept. 20, 2013) (depicting Private Claims 4, 5 and 6).

111. The Board's May 14, 1928 report stated:

> There is a conflict of 695.02 acres of land lying within the San Felipe Pueblo Grant, at its southwest corner, claimed at one time by the Santa Ana Indians, being a part of what is known as "El Ranchito Grant," but was excluded from the Santa Ana purchase by the Court of Private Land Claims as shown by its decree of May 31, 1897….

Id. at 3.

112. The Board's May 14, 1928 report recited the boundary lines of the San Felipe Patent as stated in the 1916 Joy Survey, including a straight-line south boundary of approximately six and one-half miles. *Id.* at 5-11.

113. On July 17, 1928, the United States as Guardian of San Felipe, filed an action in the District Court of New Mexico to quiet title in San Felipe to the land described in the May 14,

1928 Pueblo Lands Board report, incorporating the 1928 report by reference and attachment, and identifying the boundaries of the San Felipe Patent as those identified by the 1916 Joy Survey. *United States v. Algodones Land Co.*, D.N.M. No. 1870 in Equity (Compl. filed Jul. 17, 1928).

114. On April 22, 1930, the District Court of New Mexico issued the Final Decree in *United States v. Algodones Land Co*. *United States v. Algodones Land Co.*, No. 1870 in Equity (D.N.M. Apr. 22, 1930). In the Final Decree, the Court adopted the survey by the General Land Office in 1916, "commonly called the Joy Survey," as establishing the boundaries of the San Felipe Patent. *Id.* at 1-2.

115. The *Algodones* Final Decree ruled that "as against all defendants herein [except three defendants that had been dismissed] the title of the Pueblo of San Felipe to the entire San Felipe Grant lying in Sandoval County, New Mexico and described in the complaint herein, be and it is hereby quieted in said Pueblo of San Felipe except as to the parcels specifically mentioned…." *Id.* at 1.

116. The *Algodones* Final Decree continued:

> And for greater certainty it is specifically ORDERED, ADJUDGED AND DECREED that the title of said Pueblo of San Felipe be and it is hereby quieted as to the tracts of land hereinafter and in this paragraph 1 described and as against the defendants whose names are prefixed to the descriptions of said tracts respectively, all of said tracts lying within said Pueblo of San Felipe Grant….

Id.; *see also id.* at 3-10 (listing 19 tracts and a right-of-way to which San Felipe was found to hold title).

117. The *Algodones* Final Decree also ruled in favor of the claimants and against the United States and San Felipe with respect to approximately fifty parcels, all of which the Court

declared to be "situate within the San Felipe Pueblo Grant" as described by the Joy Survey. *Id.* at 11-31.

118. Among the parcels listed in this section of the *Algodones* Final Decree, quieting title to the claimants, are Private Claims 6 and 101, both of which are located in part within the Conflict Area. *See* **Exhibit B**, Map of Dispute Area Resurveyed by BLM (Sept. 20, 2013) (depicting Private Claim 6).

119. The *Algodones* Final Decree also separately quieted title to the "Santa Rosa de Cubero Grant" in favor of the claimants and against the United States and San Felipe. *Id.* at 33-39.

120. On June 30, 1931, the Board transmitted a Supplemental Report to the Secretary of the Interior. Supplemental Report of Pueblo Lands Board Upon a Conflict between the San Felipe Pueblo and Ranchitos Purchase of the Santa Ana Pueblo (Jun. 30, 1931). The Supplemental Report addressed the Conflict Area at greater length than the Board's initial reports for Santa Ana and San Felipe. The Board reported that it was "in accord" with the view of Santa Ana that the "controversy should be settled once and for all," and recommended that it be "done in a friendly suit in which the Santa Ana Pueblo is plaintiff and the Pueblo of San Felipe the defendant," and sought instructions from the Secretary of the Interior and the Attorney General. *Id*. at 3-4. In the transmittal letter from the Board to the Secretary dated June 30, 1931, it is further explained that a divided Board concluded it could not "consider conflicts between pueblos" consistent with the Pueblo Lands Act, and that this prompted the recommendation to have a court determine the matter. The letter states that the recommended suit should "be taken up through the Special Attorney for the Pueblo Indians." Letter from H.G. Hagerman to Ray

Lyman Wilbur, Secretary of the Interior (Jun. 30, 1931) at 1-2. No such suit was commenced by Santa Ana or by the United States on Santa Ana's behalf.

121. The United States appealed the *Algodones* Final Decree to the Tenth Circuit Court of Appeals. *United States v. Algodones Land Co.*, 52 F.2d 359 (10th Cir. 1931). On September 11, 1931, the Court of Appeals affirmed the Final Decree with respect to some tracts and reversed with respect to others.

122. No later than September 27, 1933, the Secretary of the Interior filed the field notes and plats showing the lands to which San Felipe's title had been extinguished as reported by the Board, in accordance with section 13 of the Pueblo Lands Act.

123. Based on, inter alia, the Court of Private Land Claims proceedings and the Pueblo Lands Board's July 19, 1927 report, Santa Ana was aware that its claim to the Conflict Area conflicted with the San Felipe Patent.

124. However, Santa Ana did not attempt to intervene in the *Algodones* proceedings or otherwise be made a party defendant thereto, in order to assert a claimed interest in the premises involved, under section 12 of the Pueblo Lands Act.

125. Santa Ana also did not at any time assert any title or right to the Conflict Area in a court of competent jurisdiction by original proceedings under section 4 of the Pueblo Lands Act.

126. Beginning in approximately 1934, pursuant to the Pueblo Lands Act, San Felipe reacquired several parcels within the San Felipe Patent boundaries to which it had lost title as a result of the Pueblo Lands Act proceedings. Among other lands, these "compensation purchases" included the parcels designated Private Claims 4, 5, and 6, a total of 92.36 acres, which the United States acquired in restricted fee status for San Felipe from Louis Ilfeld on

December 30, 1936. Private Claims 4, 5 and 6 were paid for with compensation funds pursuant to the Pueblo Lands Act, and appropriated by Congress by the Act of March 4, 1929, 45 Stat. 1569. Private Claims 4, 5, and 6 are located within the Conflict Area. *See* **Exhibit B**, Map of Dispute Area Resurveyed by BLM (Sept. 20, 2013).

VI. Subsequent Administrative and Judicial Proceedings Concerning the San Felipe Patent.

127. Pursuant to the foregoing congressional acts and judicial decisions, San Felipe's title was quieted to the lands within the San Felipe Patent boundaries, except those parcels to which San Felipe's title was determined to have been extinguished through proceedings under the Pueblo Lands Act. *See United States v. Algodones Land Co.*, 52 F.2d 359 (10th Cir. 1931). San Felipe's title was quieted against all potential adverse claimants, under the provisions of section 4 of the Pueblo Lands Act upon the filing of the fields notes and plats as provided in section 13 of the Pueblo Lands Act, and on June 1, 1934, under the provisions of section 6 of the Act of May 31, 1933. *See United States v. Thompson*, 708 F.Supp. 1206, 1210-17 (D.N.M. 1989), *aff'd* 941 F.2d 1074, 1079 (10th Cir. 1991).

128. In the years following the enactment of the Pueblo Lands Act and the proceedings held thereunder, the Interior Department consistently dealt with land title matters, specifically including grants of rights-of-way across the Conflict Area, consistent with the Conflict Area being within the San Felipe Patent boundaries, with title and ownership in San Felipe.

129. The Secretary of the Interior granted numerous rights-of-way, including the right-of-way for what became the I-25 highway corridor, upon the approval of San Felipe only, and paid to San Felipe all compensation due as a result of such grants.

130. However, in 1979 the Interior Department changed its longstanding course of dealing with respect to rights-of-way across San Felipe patented lands, including the Conflict Area, and accepted for consideration Santa Ana's stale claim to the Conflict Area and its claim to compensation for a right-of-way across the Conflict Area.

A. Grant of Right-of-Way to New Mexico Highway Department.

131. On February 3, 1927, San Felipe and the State of New Mexico entered into an Agreement for an eighty-foot-wide right-of-way for construction of State Highway 85. That 1927 Agreement was approved by the Secretary of the Interior on April 28, 1927 pursuant to Section 17 of Pueblo Lands Act. On November 21, 1929, the New Mexico Highway Department relinquished 74.28 acres of this right-of-way. On December 17, 1929, without the consent of San Felipe, under the authority of the Act of April 21, 1928, 45 Stat. 442, the Secretary of Interior approved an amended right-of-way to the New Mexico State Highway department and accepted the payment already made for the relinquished 74.28 acres as full settlement for the right-of-way granted over 136.9 acres. The right-of-way included a 150-foot wide right-of-way over 4.276 miles within the San Felipe Patent boundaries, including the Conflict Area. *See* BIA Document No. 86-0017-2999; Letter from W.C. Davidson, New Mexico State Highway Engineer, to Lem A. Towers, BIA Southern Pueblos Agency Superintendent (Oct. 2, 1929).

132. On October 18, 1954, the New Mexico State Highway Commission made application for a right-of-way for Project FI-001-4(5) across San Felipe lands located within the San Felipe Patent boundaries for construction of State Road 422. *See* BIA Document 86-0019-5499. San Felipe approved the right-of-way application by Resolution on October 29, 1954. That application was approved by BIA Superintendent Guy C. Williams on December 27, 1954.

The Department of Interior Bureau of Land Management produced a Case Abstract on June 8, 1984, describing this right-of-way as located within the "El Ranchito Grant, San Felipe Pueblo." Bureau of Land Management, Case Abstract, Form 1274018 (June 8, 1984); BIA Document 86-0019-5499.

133. On March 22, 1955, San Felipe approved by resolution a right-of-way for Project NMP S-1339(1), the Angostura Spur from State Road 422 to U.S. Highway 85, and for drainage, across San Felipe lands within the San Felipe Patent boundaries, including the Conflict Area. On March 29, 1955, the New Mexico State Highway Commission applied to the Superintendent of the BIA Southern Pueblos Agency for approval of a right-of-way for Project NMP S-1339(1). Letter from New Mexico State Highway Commission Chief Engineer to Guy Williams, Superintendent, BIA United Pueblos Agency (Mar. 28, 1955). Guy C. Williams, BIA Southern Pueblos Agency General Superintendent, approved the application on April 12, 1955. Letter from Guy C. Williams, Superintendent, BIA United Pueblos Agency, to L.D. Wilson, Chief Highway Engineer (Apr. 12, 1955).

134. On July 24, 1979, San Felipe approved an Agreement with the New Mexico Highway Department which included approval of a grant of a right-of-way for improvements to Interstate Highway 25 through the San Felipe patented lands, including the Conflict Area. *See* BIA Document 86-0039-8099 (Approved March 3, 1980).

135. On December 19, 1979, Commissioner of Indian Affairs Hallet issued a directive to the BIA Albuquerque Area Director, authorizing granting the right-of-way to the New Mexico Highway Department pursuant to 25 U.S.C. § 323, but imposing an additional condition on the grant of right-of-way. *See* Memorandum from William E. Hallett, BIA Commissioner, to BIA

Albuquerque Area Director (Dec. 19, 1979). The directive required the BIA to "verify the value of the right-of-way traversing the disputed area." *Id.* at 2. The approval was given "on the condition that San Felipe agree to the placement of the funds attributable to the right-of-way over the disputed area in in a Bureau of Indian Affairs' interest-bearing account until such time as an agreement can be reached with the Pueblo of Santa Ana." *Id.*

136. On March 24, 1980, the Superintendent of the BIA Southern Pueblos Agency, Samuel Montoya, approved the I-25 right-of-way across the San Felipe patented lands, for a perpetual term starting on March 24, 1980. *See* BIA Document 86-0039-8099. The New Mexico Highway Department made payment of $653,805.00, of which the BIA paid $464,605.00 to San Felipe, and withheld $189,200.00 "to Escrow pending settlement of dispute re Santa Ana/San Felipe Overlap." *Id.* at 1.

137. San Felipe did not consent to the placement of $189,200.00 of funds for the right-of-way into an "escrow account" in the Agreement it approved on July 24, 1979, nor did it at any time thereafter consent to this condition.

138. On March 31, 1980, BIA Southern Pueblos Agency Superintendent Montoya notified the Governor of San Felipe that BIA had issued a grant of easement for right-of-way for New Mexico Project No. I-025-4(56)238 "across San Felipe lands to the New Mexico State Highway Department." *See* Letter from Southern Pueblos Superintendent to Joe Sanchez, Governor of San Felipe (Mar. 31, 1980). The Superintendent informed the Governor of San Felipe that the Agency "has requested that the amount of $464,605 be credited to your Pueblo's Proceeds of Labor Account." *Id.* The letter further stated, "This Agency has also requested, per directive Commissioner of Indian Affairs, that a special interest-bearing account be established

in the names of San Felipe Pueblo and Santa Ana Pueblo and that the amount of $189,200 be deposited in it to be invested at the highest interest rate possible. This amount is to be held in this account until the dispute concerning the overlap is settled." *Id.*

139. On April 1, 1980, the BIA Southern Pueblos Agency Realty Officer issued Public Voucher for Disbursement, Voucher No. M20-80-R-19 to the BIA on the deposit received from the New Mexico State Highway Department for "damages for highway right-of-way across San Felipe Reservation for Project I-025-4(56)238," and under the Remarks Section noted that $189,200.00 was deposited into "IIM Account No. S-20093" titled "Santa Ana and San Felipe Pueblos – Right-of-Way." BIA Voucher No. M20-80-R-19, Public Voucher for Disbursement (April 1, 1980).

140. On April 21, 1980, the Superintendent of the BIA Southern Pueblos Agency issued an Amended Grant of Easement to the New Mexico State Highway Department for Project I-025-4(56)238 for the purpose of including thirty-seven construction maintenance easements omitted from the March 24, 1980 easement. BIA Document 6800398099 (approved March 24, 1980).

141. San Felipe objected to the segregation of the funds by letter dated May 9, 1980. *See* Letter from Donald Salazar, Sutin, Thayer & Brown, to Samuel R. Montoya, BIA Southern Pueblos Agency Superintendent (May 9, 1980). San Felipe filed a Notice of Appeal appealing the placement of funds into an IIM account on June 24, 1980. On September 4, 1980, the BIA Southern Pueblos Acting Area Director notified San Felipe's legal counsel that the Acting Area Director denied the appeal.

142. On September 12, 1980, the Interior Board of Indian Appeals held it lacked jurisdiction to review the matter under 43 C.F.R. § 4.343(b) because the Secretary of the Interior had approved the decision to place funds in a trust account. *San Felipe Pueblo v. Commissioner of Indian Affairs*, IBIA 80-5-A, 8 IBIA 155 (Sept. 12, 1980).

143. On December 24, 1980, San Felipe filed suit against the Secretary of the Interior in the United States District Court for the District of New Mexico alleging the Secretary's actions in depositing $189,200.00 into a trust account for the benefit of San Felipe and Santa Ana was arbitrary, capricious and exceeded the Secretary's authority under law. *Pueblo de San Felipe v. Andrus*, No. 80-1005 HB (D.N.M., complaint filed Dec. 24, 1980). Santa Ana intervened as a defendant in the action.

144. On November 23, 1982, the District Court issued its opinion upholding the Secretary's authority to segregate the $189,200.00 in a trust account without San Felipe's consent, pursuant to the Secretary's authority to waive regulatory requirements under 25 C.F.R. § 1.2. *Pueblo de San Felipe v. Andrus*, No. 80-1005 HB (D.N.M. Nov. 23, 1982).

145. The Court of Appeals affirmed the District Court's decision. *Pueblo of San Felipe v. Hodel*, 770 F.2d 915 (10th Cir. 1985). The Court of Appeals held, "we agree with the trial court that the Secretary's fiduciary duty to each of the Pueblos made imposition of the escrow condition clearly within the Secretary's discretion." *Id.* at 917.

B. Other Easements and Rights-of-Way within the San Felipe Patent Boundaries Approved or Granted by the United States.

146. The Atchison, Topeka & Santa Fe Railway Company, now Burlington Northern and Santa Fe Railway Company, recorded an easement on September 29, 1928, across portions of the San Felipe patent lands, including the Conflict Area. BIA Document 86-0012-2899 (Sept.

29, 1928). Renumeration was paid in the amount of $75.00 to San Felipe. *Id.* The Pueblo Lands Board recognized this easement as Claim Nos. 38, 41 and 54. The easement was approved by the Secretary of the Interior pursuant to the authority granted under Section 17 of the Pueblo Lands Act. *Id.*

147. On June 13, 1989, the BIA granted an easement to the Public Service Company of New Mexico upon the San Felipe patent lands, including the Conflict Area. BIA Document 86-0142-8898 (June 13, 1989). Renumeration was paid in the amount of $26,261.15 to San Felipe, and $2,061.92 to the trust account for Santa Ana and San Felipe. *Id.*

148. On November 3, 1998, the BIA granted a 20-year renewal of the easement to the Public Service Company of New Mexico within the San Felipe Patent. BIA Document No. M20 715 47 006 0219 (Nov. 3, 1998). Renumeration was paid in the amount of $625,000.00 to San Felipe. *Id.*

C. Santa Ana's Judicial Claim to a Portion of the Lands for which San Felipe's Title was Extinguished under the Pueblo Lands Act.

149. In 1981, the year following the grant of the highway right-of-way and segregation of funds in a trust account, Santa Ana filed an action in the United States District Court for the District of New Mexico seeking to eject Alfredo and Mary Lou Baca from approximately 131 acres of land. *Pueblo of Santa Ana v. Baca*, No. CIV-81-303, at 6, ¶ 27 (D.N.M. Apr. 30, 1985).

150. Neither the United States nor San Felipe were parties to the lawsuit.

151. The land at issue in *Pueblo of Santa Ana v. Baca* was located within the rejected portion of the El Ranchito claim and was formerly within the San Felipe Patent boundaries, but San Felipe's title to the land had been determined to have been extinguished under the Pueblo Lands Act in *United States v. Algodones*, 52 F.2d 359 (10th Cir. 1931).

152. The land at issue in *Pueblo of Santa Ana v. Baca* was a portion of Private Claim 101, to which the Algodones Community acquired title from the United States in 1938. *Pueblo of Santa Ana v. Baca*, No. CIV-81-303 at 5-6, ¶¶ 26-27.

153. The *Algodones* Court in 1931 affirmed that the Algodones Community acquired ownership of the Private Claim 101 land by adverse possession under color of title, under the criteria established in section 4(a) of the Pueblo Lands Act. *United States v. Algodones*, 52 F.2d 359, 362 (10th Cir. 1931). The Algodones claimants had expressly disclaimed that an 1826 deed from San Felipe to the Algodones Community was effective as fee title, and therefore such deed was only relevant as evidence of color of title. *Id.*

154. The *Baca* defendants were the Algodones Community's successors in interest, having acquired a deed not from San Felipe, but instead from the Algodones Community, which had been granted a patent from the United States as a result of the *Algodones* decision. *Pueblo of Santa Ana v. Baca*, No. CIV-81-303, at 6 ¶ 32.

155. Despite the Algodones Community's acknowledgement that they did not possess fee title based on a deed from San Felipe, the District Court in *Baca* erroneously concluded that "Mary Lou Baca's title to the lands in dispute is entirely dependent on the strength of San Felipe's previous title thereto." *Id.* at 9 ¶ 14. The District Court ruled that "her title is inferior to the title of Santa Ana," relying on an 1813 Spanish adjudication. *Id.* at 8 ¶ 5, p. 9 ¶ 14. The Court alternatively held that "[e]ven if Santa Ana had not had good title to the lands in dispute, it acquired such title by … adverse possession of said lands under color of title … beginning in the early 1930s." *Id*. at 9 ¶ 15.

156. On appeal, the Tenth Circuit Court of Appeals affirmed the District Court's decision on both alternative grounds. *Pueblo of Santa Ana v. Baca*, 844 F.2d 708 (10th Cir. 1988).

157. The decisions in *Pueblo of Santa Ana v. Baca* are distinguishable from the circumstances here because, among other things, *Baca* involved a dispute between private parties, rather than the federal government's obligation to recognize the validity of a federal patent for federal purposes. *See id.* at 710-11. Further, *Baca* was based on several factual misapprehensions, including the source of the Bacas' interest, as described *supra*. The Court of Appeals' conclusion that "Santa Ana had no notice that its rights to the dispute parcel were jeopardized by non-Indian claimants" in Pueblo Lands Act proceedings stems from the same misunderstanding of *Algodones* and reflects an incomplete understanding of the Pueblo Lands Act. *See id.* at 709 n.1. The *Baca* case dealt with Private Claim 101 lands not held by San Felipe since the Algodones decision in 1931, and with neither the United States nor San Felipe having been a party to *Baca*, the determinations in *Baca* cannot bind San Felipe.

158. In *United States v. Thompson*, 941 F.2d 1074, (10th Cir. 1991), the Court of Appeals distinguished *Baca* on the issue of notice, holding that the Pueblo Lands Board's § 2 report and the resulting quiet title action were sufficient to provide notice. *Id.* at 1080 n.3. In contrast to *Baca*, *Thompson* emphasized the significance of the statute of limitations contained in the Pueblo Lands Act and the Act's 1933 amendment, and the important congressional purpose of reaching a final resolution on all existing claims to Pueblo lands. *Id.* at 1078-79.

VII. The Resurvey Actions.

A. Santa Ana's Petition to "Correct" the Boundaries of the San Felipe Patent.

159. On December 22, 1989, Santa Ana filed an administrative petition with the Department of the Interior seeking to "correct the 1909 General Land Office (GLO) resurvey of the south boundary of the Pueblo of San Felipe . . . to the extent the boundary overlaps with a tract of land owned by Santa Ana." *Boundary Dispute: Pueblo of Santa Ana Petition for Correction of the Survey of the South Boundary of the San Felipe Grant*, Opinion M-37027, at 1 (June 7, 2013).

160. Santa Ana's petition alleged that the Conflict Area was the result of errors in "both the 1860 original survey of the San Felipe Grant by Reuben E. Clements and the 1909 GLO resurvey performed by Wendell V. Hall" in that each had allegedly "incorrectly included an area that is part of the El Ranchito Tract purchased by the Pueblo in 1763." Opinion M-37037 at 3. "Specifically, Santa Ana argues that the patent issued on the basis of the Clements survey is incorrect in that it described the southern boundary of the San Felipe Grant in a way that creates a one-half mile overlap with the EI Ranchito Tract." *Id.* at 3-4.

B. Solicitor's Opinion M-37000.

161. The Interior Department first addressed Santa Ana's petition in an opinion by the Solicitor in 2000, *Boundary Dispute Between Santa Ana Pueblo and San Felipe Pueblo: The Secretary's Authority to Correct Erroneous Surveys, Revising Part IV of Solicitor's Opinion on "Pueblo of Sandia Boundary," 96 I.D. 331 (1988)*, Opinion M-37000 (Dec. 5, 2000).

162. Opinion M-37000 "address[ed] whether the Department retains the authority to survey the boundary of Indian lands and therefore whether we may address the merits of the Santa Ana petition." Opn. M-37000 at p. 3.

163. Opinion M-37000 primarily addressed a previous opinion by the Solicitor in 1988 that ruled that the Department "did not have the authority to consider an Indian boundary claim which pre-dates 1946 [the date of enactment of the Indian Claim Commission Act]." Opn. M-37000 at p. 2.

164. In Opinion M-37000, the Solicitor "determined to overturn [the prior opinion's] anomalous conclusion." Opn. M-37000 at p. 13. The Solicitor concluded that the Department had authority to correct erroneous surveys of Indian lands under certain (but not all) circumstances, as explained in his opinion, and that therefore, "[f]or the reasons set out above, I hereby vacate and withdraw part IV of [the prior opinion]. Another Opinion on the merits of the Santa Ana petition will follow in due course." Opn. M-37000 at 14.

165. Among the examples cited of limitations on the Department's survey authority, the Solicitor noted that the relevant statutes establishing the survey authority of the Secretary "recognize a continuing power to address errors made in earlier surveys or patents, a power which may not be exercised against the rights of patentees or good faith purchasers of public lands." Opn. M-37000 at p. 9 (citing *Cragin v. Powell*, 128 U.S. 691 (1988)). In addition, the Solicitor noted that "Congress has from time to time put express limitations on the exercise of this authority, such as the proviso in 43 U.S.C. § 772, which states that 'no such resurvey or retracement [of public lands] shall be so executed as the impair the bona fide rights or claims of any claimant, entryman, or owner of lands affected by such resurvey or retracement.'" *Id.*

C. 2009 Olver Resurvey and 2012 Hickey Field Investigation.

166. In 2008-2009, William F. Olver resurveyed portions of the east and south boundaries of the San Felipe Grant. Olver found and accepted Hall's stone monument for the southeast corner and replaced it with a stainless steel post with a brass cap, and buried Hall's stone monument and Joy's 1916 iron post alongside the stainless steel post.

167. On July 3, 2012, BLM Indian Lands Surveyor Paul J. Hickey conducted a field investigation in search of evidence of the 1859 southeast corner of the San Felipe Grant. Hickey reported that his investigation did not reveal "any conclusive evidence that can be accepted as sufficient proof to overturn Hall's 1907 reestablished position of the southeast corner of the [San Felipe Grant], which has been continually recognized by adjoining landowners as the true corner of the Grant for over 100 years." Paul J. Hickey, Report on the Search for Evidence of the 1859 Southeast Corner of the San Felipe Pueblo Grant at 5 (Jul. 3, 2012).

D. Solicitor's Opinion M-37027.

168. In 2013, the Solicitor again addressed Santa Ana's petition. *Boundary Dispute: Pueblo of Santa Ana Petition for Correction of the Survey of the South Boundary of the San Felipe Grant*, Opinion M-37027 (June 7, 2013).

169. In the 2013 Opinion M-37027, the Solicitor explained that "Because the Solicitor's Office has already confirmed the Secretary's authority to correct erroneous surveys in circumstances such as these, this Opinion addresses whether there is a need to resurvey the disputed boundary." Opn. M-37027 at p. 2.

170. The Solicitor relied on the analysis of the courts in *Pueblo of Santa Ana v. Baca*. Opn. M-37027 at 10-13.

171. Opinion M-37027 summarized the Solicitor's conclusion,

> Our research and analysis has led us to conclude that the boundaries of the lands patented to the respective Pueblos conflict, that a resurvey of the disputed boundary is necessary, and that *the boundary between Santa Ana's El Ranchito Tract and the Pueblo of San Felipe lies north of the southern boundary line of the San Felipe patent*. Therefore, the Bureau of Land Management (BLM), in coordination with the Bureau of Indian Affairs (BIA), needs to address this overlap and undertake a resurvey of the disputed boundary based on this Opinion.

Opn. M-37027 at p. 2 (emphasis added).

172. The Solicitor also stated, "we conclude that the boundaries of the lands patented to the respective Pueblos conflict, that resolution of the resulting overlap would favor Santa Ana, and that a resurvey of the disputed boundary is necessary." Opn. M-37027 at p. 11.

173. The Solicitor concluded that "The time has come to bring resolution to this longstanding boundary dispute" and again directed "the BLM, in coordination with the BIA, . . . to address this overlap and undertake a resurvey of the disputed boundary based on this Opinion." Opn. M-37027 at p. 15.

E. 2013 BLM Resurvey of Southern Boundary of the San Felipe Patent.

174. Based on Opinion M-37027, the BIA Regional Director for the Southwest Region requested on July 12, 2013 that the BLM conduct a survey to "identify[] portions of the north and east boundaries of the El Ranchito Grant" as follows:

> Resurvey that portion of the north boundary of the El Ranchito Grant, running from the northeast corner of the El Ranchito Grant, westerly to the intersection with the west boundary of the San Felipe Pueblo Grant.
>
> Resurvey that portion of the east boundary of the El Ranchito Grant, from the northeast corner of the El Ranchito Grant, southwesterly to the intersection with the south boundary of the San Felipe Pueblo Grant.

Request for Cadastral Survey from BIA Southwest Regional Director to Robert Casias, Deputy State Director, Cadastral Survey, BLM (Jul. 12, 2013).

175. The survey instructions also directed BLM to "remove all monuments marking the south and west boundaries of the San Felipe Pueblo Grant that fall within the exterior boundaries of the El Ranchito Grant." *Id.*

176. The "El Ranchito Grant" boundaries referenced in these survey instructions are the boundaries of the portion of the El Ranchito claim that the Court of Private Land Claims rejected in 1897.

177. In accordance with the direction of the Solicitor in Opinion M-37027, the BLM conducted a "corrective resurvey" in October 2013 relocating a portion of the southern boundary of the San Felipe Patent to the northern boundary of the Conflict Area.

178. The BLM published notice of its intent to officially file the resurvey in February 2014. Notice of Filing of Plat of Survey, New Mexico, 79 Fed. Reg. 8205 (Feb. 11, 2014).

F. IBLA Decision Denying San Felipe's Protest of Intent to File BLM Resurvey.

179. San Felipe timely protested the filing of the survey on April 9, 2014.

180. The BLM New Mexico State Director denied San Felipe's protest on August 1, 2014.

181. San Felipe then timely appealed the denial of its protest to the Interior Board of Land Appeals (IBLA) on August 29, 2014.

182. The IBLA affirmed the BLM State Director's action, finding that the BLM's resurvey had "reestablished the common boundary between the San Felipe Pueblo Grant and the

El Ranchito Tract" in accordance with the Solicitor's directions. *Pueblo of San Felipe*, No. IBLA 2014-256, 190 IBLA 17 (Apr. 5, 2017).

183. The IBLA decision stated that because "the Solicitor's 2013 Opinion, which confirmed BLM's authority to perform a corrective resurvey and directed BLM to perform one, is binding on the Board and final for the Department, we lack authority to adjudicate BLM's authority to undertake the corrective resurvey at issue." *Id.* at 30.

184. The IBLA decision also stated, "We also are barred from adjudicating [San Felipe's] claim of title to the disputed lands since, in undertaking and approving the corrective resurvey, BLM did not purport to adjudicate the competing claims of title to such lands, nor did the State Director purport to determine title in adjudicating [San Felipe's] protest to the proposed official filing of the survey plat." *Id.* at 30.

185. The IBLA decision was a final agency action and was effective on the date it was issued. 43 C.F.R. § 4.403(a). San Felipe exhausted its administrative remedies. *See* 43 C.F.R. § 4.21(d).

G. Filing of 2013 BLM Resurvey.

186. The resurvey was officially filed on April 20, 2017. The filing of the resurvey was a final agency action.

H. Disbursement of Right-of-Way Trust Funds.

187. On April 18, 2018, John Halliday, BIA Acting Regional Director for the Southwest Region, and Margaret Williams, Office of Special Trustee ("OST") Regional Trust Administrator for the Southwest Region, notified San Felipe after the fact that on August 2017, Santa Ana had submitted to the BIA Southwest Regional Director a formal request that the funds

held in the trust account be disbursed to Santa Ana "pursuant to, and in conformance with, regulations governing the withdrawal from a tribal trust account." Letter from OST Regional Administrator for Southwest Region and BIA Regional Director for Southwest Region to the Governor of San Felipe, p. 2 (Apr. 18, 2018).

188. According to the April 18, 2018 letter, on November 14, 2017, the Superintendent for the BIA Southern Pueblos Agency issued a memorandum to the Fiduciary Trust Office in the Southwest Regional Office of the OST, informing "OST that BIA had updated its Trust Asset and Accounting Management System ("TAAMS") as a result of BLM's April 20, 2017 official filing of the corrective resurvey. The BIA's TAAMS update also was a necessary administrative step given the conclusions of the Solicitor's Opinion M-37027 and the IBLA's decision upholding the BLM's resurvey." *Id.*

189. The letter stated, "the disputed area has been established to be under Santa Ana's ownership and consequently, Santa Ana was entitled to disbursement of funds held in the escrow account." *Id*.

190. On January 11, 2018, without notice to San Felipe, the Southwest Regional Office of the OST disbursed to Santa Ana the entire balance of funds held in the tribal trust account, which amounted to approximately $1.6 million. The disbursement of the trust funds was a final agency action. *Id.*

191. The Department of the Interior did not notify San Felipe of its receipt of a request from Santa Ana to disburse the trust account funds, or its actions disbursing the trust account funds to Santa Ana until the letter of April 18, 2018, after the trust account funds were disbursed. *Id.*

192. On May 15, 2018, legal counsel to San Felipe responded to the April 18, 2018 Letter from the OST and BIA, notifying both agencies that their actions in disbursing the tribal trust funds held for San Felipe and Santa Ana were in violation of the trust responsibilities to San Felipe. Letter from Stetson Law Offices to BIA Acting Regional Director for the Southwest Region and OST Regional Trust Administrator for the Southwest Region (May 15, 2018).

193. On November 8, 2018, BIA Acting Regional Director for the Southwest Region responded that "we carefully considered your views and regret that San Felipe disagrees strongly with the steps taken by the Department in this matter. We acknowledge that the Pueblo may avail itself of any legal options that may be available to it; however, the determinations made in Solicitor's Opinion M-37027 and the IBLA's April 5, 2017 decision are final and have not been set aside by agency official or judicial body. The BIA SWRO is therefore bound by these final Departmental actions." *Id.* The letter did not address the BIA and OST's failure to notify San Felipe as one of the named beneficiaries of the tribal trust account before disbursement of the funds from the account as a breach of its trust responsibilities, or BIA and OST's actions disbursing the corpus of the tribal trust account based solely on a resurvey the IBLA had determined did not determine title to the lands resurveyed to either Pueblo, as an ultra vires action.

VIII. The Department's Actions Harmed San Felipe.

194. The foregoing actions by Defendants Interior Department and its officials have caused substantial injury and damage to San Felipe in contravention of law.

195. San Felipe has objected to every action taken by the Department and its officials in relation to the contested area subsequent to and including the withholding and deposit into a

tribal trust account held by the Defendants of a portion of the compensation paid by the New Mexico Highway Department for the grant of a right-of-way, and paid by the Public Service Corporation of New Mexico for the grant of an easement, across the San Felipe Patent lands.

196. San Felipe has exhausted all administrative remedies with respect to the agency actions complained of herein.

FIRST CLAIM FOR RELIEF

Violation Of Administrative Procedure Act, 5 U.S.C. § 706:

Agency Actions Authorizing, Affirming, Filing and Relying Upon the BLM Resurvey

197. San Felipe incorporates by reference and realleges as if fully set forth herein each of the allegations contained in the foregoing paragraphs of this Complaint.

198. The January 11, 2018 disbursement to Santa Ana of the tribal trust account funds, the change to the record ownership of the Conflict Area in the BIA TAAMS in 2017, the April 20, 2017 filing of the resurvey, the April 5, 2017 IBLA decision which affirmed that the resurvey was conducted as directed by the Solicitor, and Solicitor's Opinion M-37027, which directed the BLM to conduct the resurvey (collectively the "Resurvey Actions"), unlawfully interfered with San Felipe's valid and inviolate title and right to sole possession of the lands within the boundaries of the San Felipe Patent, and the Resurvey Actions are arbitrary and capricious because they contain or rely upon fundamental errors of law.

199. Although M-37027 is formally concerned with "correcting" the southern boundary of the San Felipe Patent, the basis for that concern is not primarily a question of correcting an erroneous survey of the Patent's boundaries, but rather of adjusting those

boundaries to exclude land which Santa Ana claimed to own, and to which the Solicitor concluded Santa Ana had a better claim of ownership.

200. Contrary to the erroneous premise of Opinion M-37027, the Department of the Interior's survey authority does not include the authority to alter (or "correct") the boundaries of the San Felipe Patent based on Santa Ana's claim to the Conflict Area. The final action of Congress to confirm San Felipe's title to the San Felipe Grant, with the boundaries thereafter surveyed and patented to San Felipe, is conclusive against the United States and not subject to review in any forum.

201. Santa Ana's claim to ownership of the Conflict Area prior to Congress' confirmation of the San Felipe Grant in 1858 – even if the claim were valid – is not and cannot be a lawful basis for the Solicitor's conclusion that the survey of the San Felipe Patent's boundaries must be corrected. Such "correction" effectively overrules the findings and recommendation of the Surveyor General and the acceptance and confirmation by Congress of those findings and recommendation. Opinion M-37027 did not sanction the correction of an erroneous survey, but corrected what the Solicitor believed to be an erroneous Congressional confirmation.

202. The Department of the Interior is not authorized to adjudicate Santa Ana's claim to ownership of the Conflict Area. The claim is barred because Santa Ana did not timely assert it in accordance with the Pueblo Lands Act. Even if it were not barred, such claim could only be adjudicated, if at all, in the courts.

203. Opinion M-37027 also erred in concluding "that the boundaries of the lands patented to the respective Pueblos conflict…." Opn. M-37027 at p. 11. To the contrary, Santa Ana's later patent respected and deferred to San Felipe's earlier patent to avoid any such conflict.

204. The 1909 patent of the El Ranchito Purchase to Santa Ana cannot have altered the boundaries of the San Felipe Grant because the patent, the 1897 decree which confirmed Santa Ana's title to the El Ranchito Purchase and authorized the patent, and the Private Land Claims Act under which the decree was entered, all expressly disclaimed any such effect on lands that had previously been disposed of or granted by the United States, including the San Felipe Patent. The 1909 patent of the El Ranchito Tract did not create dual ownership of the Conflict Area or even create a disputed claim to the Conflict Area.

205. Opinion M-37027 also erred in the Solicitor's failure to consider applicable precedent, including M-37002, issued by Solicitor John D. Leshy with Secretary Babbitt's concurrence on January 19, 2001, which concerned the eastern boundary of the Sandia Pueblo Grant. In particular, Solicitor Leshy's discussion under the heading "The Significance of Congressional Confirmation of the Grant in 1858" cites numerous authorities holding that Congress' confirmation of unambiguous Spanish land grants pursuant to the Treaty of Guadalupe Hidalgo are conclusive and unreviewable. Opn. M-37027 at pp. 21-23 (citing, among others, *Tameling v. United States Freehold & Emigration Co.*, 93 U.S. 644 (1876); *United States v. Conway*, 175 U.S. 60 (1899); *Sanchez v. Taylor*, 377 F.2d 733 (10th Cir. 1967); and *Mondragon v. Tenorio*, 554 F.2d 423 (10th Cir. 1977)).

206. Opinion M-37027, the April 5, 2017 IBLA decision, the April 20, 2017 filing of the resurvey, the 2017 change to the record ownership of the Conflict Area in BIA TAAMS, and

the January 11, 2018 disbursement of the tribal trust funds (the Resurvey Actions) were arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, in violation of the APA. 5 U.S.C. § 706(2)(A).

207. The Resurvey Actions were also contrary to constitutional right, power, privilege or immunity, in violation of the APA. 5 U.S.C. § 706(2)(B).

208. The Resurvey Actions were also in excess of statutory jurisdiction, authority, or limitations, or short of statutory right, in violation of the APA. 5 U.S.C. § 706(2)(C).

209. San Felipe therefore requests that the Resurvey Actions be declared unlawful and set aside.

210. San Felipe further requests the Defendants be ordered to restore the boundaries and title of the San Felipe Patent, and related matters, to the status that existed before the Resurvey Actions, including restoring the record ownership in the BIA TAAMS to San Felipe, replenishing the tribal trust account, refiling previous surveys and plats or resurveying, as appropriate, and restoring the survey boundary monuments that were removed.

SECOND CLAIM FOR RELIEF

Violation Of Administrative Procedure Act, 5 U.S.C. § 706:

Monies Unlawfully Withheld: Compensation for Rights-of-Way in Violation of 25 U.S.C. 323 and 325.

211. San Felipe incorporates by reference and realleges as if fully set forth herein each of the allegations contained in the foregoing paragraphs of this Complaint.

212. The legal obligation of the Department of the Interior and its officials to recognize San Felipe's title and right to sole possession of the San Felipe Patent, including the Conflict Area, carries with it the duty to ensure the payment to San Felipe of just compensation for all

rights-of-way granted by the Secretary through the San Felipe Patent lands. 25 U.S.C. §§ 323, 325.

213. The Secretary previously determined the amount of compensation that is just for the right-of-way granted to the New Mexico Highway Department with respect to the Conflict Area as $189,200.00, bearing interest at the highest interest rate available, and deposited that amount into a tribal trust account, Account IIM Account No. S-200093, on April 1, 1980. BIA Voucher No. M20-80-R-19, Public Voucher for Disbursement (April 1, 1980).

214. The Secretary also deposited into such tribal trust account compensation in the amount of $2,061.92, for the grant of an easement to the Public Service Company of New Mexico on June 13, 1989, expiring on November 5, 1998. BIA Document No. 86-0142-8898 (June 13, 1989).

215. Rather than paying such compensation to San Felipe, the Defendants caused such compensation to be disbursed to Santa Ana on January 11, 2018.

216. The Department and its officials have unlawfully withheld or unreasonably delayed the payment to San Felipe of such compensation, in violation of the APA. 5 U.S.C. § 706(1).

217. San Felipe therefore requests that the Court compel the Defendants to take such actions as are necessary to promptly make full payment to San Felipe of the right-of-way and easement compensation mandated by law, with interest.

THIRD CLAIM FOR RELIEF

Declaratory Relief, 28 U.S.C. § 2201:

Rights and Obligations of the United States and San Felipe in Respect of the San Felipe Patent

218. San Felipe incorporates by reference and realleges as if fully set forth herein each of the allegations contained in the foregoing paragraphs of this Complaint.

219. The United States Congress' confirmation of San Felipe's title to the lands granted by Spain to San Felipe and the United States' patent to San Felipe as recommended by the Surveyor General is conclusive evidence of San Felipe's title to the lands so confirmed and patented, and of San Felipe's right to sole possession of such lands, as between the United States and San Felipe. The propriety of such grant cannot be challenged judicially or administratively.

220. The patent issued to Santa Ana pursuant to the Private Land Claims Act for a portion of the El Ranchito claim did not interfere with San Felipe's title or right to the San Felipe Patent.

221. The final decision in *United States v. Algodones Land Co.* and the expiration of the statutory periods during which adverse claimants had a right to assert their claims to title, definitively, finally, and conclusively quieted San Felipe's unextinguished title to the San Felipe Patent as against all adverse claimants, including Santa Ana.

222. Congress has not authorized the Department of the Interior to adjudicate a third party's claim to superior title to any lands within a confirmed and patented Grant.

223. Except as authorized pursuant to the Pueblo Lands Act of 1924, as amended, Congress has not authorized the Department of the Interior to adjust or correct the surveyed

boundaries of a confirmed and patented grant for the purpose of carving out lands to which a third-party claims to have superior title.

224. San Felipe therefore requests under 28 U.S.C. § 2201 a judicial declaration that San Felipe's title and right to sole possession of the lands within the boundaries of the San Felipe Patent has been previously and conclusively determined; that no claims adverse to San Felipe's title and right may be validly asserted, including Santa Ana's claim to the Conflict Area; and that the Department of the Interior and its officials have no authority to interfere with, and are obligated to recognize, San Felipe's title and right to sole possession and quiet enjoyment of the lands within the boundaries of the San Felipe Patent, including the Conflict Area.

FOURTH CLAIM FOR RELIEF

Declaratory Relief, 28 U.S.C. § 2201:

San Felipe Has Satisfied the Conditions of the Tribal Trust Account and Is Entitled to Receive the Proceeds of the Tribal Trust Account.

225. San Felipe incorporates by reference and realleges as if fully set forth herein each of the allegations contained in the foregoing paragraphs of this Complaint.

226. Acting Regional Director for the BIA Southwest Region Patricia L. Mattingly stated in a letter to Anthony Ortiz, Governor of San Felipe, dated November 8, 2018, that the funds in the tribal trust account were required to be held by the OST "until ownership of the disputed area known as the 'overlap' could be resolved." The letter explained that OST disbursed the funds in the Trust because it was bound by the determinations made in Solicitor's Opinion M-37027 and the IBLA's April 5, 2017 decision, which the BIA Acting Regional Director asserted had resolved the question of ownership of the Conflict Area.

227. San Felipe requests a judicial declaration that its title and right to sole possession of the lands within the boundaries of the San Felipe Patent, including the Conflict Area, satisfies the sole condition for disbursement of the entire tribal trust account to San Felipe.

FIFTH CLAIM FOR RELIEF

Breach of Trust Responsibility:

Accounting, Replenishment and Disbursement of Tribal Trust Fund to San Felipe; Restoration of San Felipe Grant within the BIA TAAMS, and Equitable Relief.

228. San Felipe incorporates by reference and realleges as if fully set forth herein each of the allegations contained in the foregoing paragraphs of this Complaint.

229. 25 U.S.C. § 162a(d) provides:

> The Secretary's proper discharge of the trust responsibilities of the United States shall include (but are not limited to) the following:
>
> (1) Providing adequate systems for accounting for and reporting trust fund balances.
>
> (2) Providing adequate controls over receipts and disbursements.
>
> (3) Providing periodic, timely reconciliations to assure the accuracy of accounts.
>
> (4) Determining accurate cash balances.
>
> (5) Preparing and supplying account holders with periodic statements of their account performance and with balances of their account which shall be available on a daily basis.
>
> (6) Establishing consistent, written policies and procedures for trust fund management and accounting.
>
> (7) Providing adequate staffing, supervision, and training for trust fund management and accounting.
>
> (8) Appropriately managing the natural resources located within the boundaries of Indian reservations and trust lands.

230. The Defendants owe, and continuously since the inception of the IIM tribal trust account have owed, certain duties and responsibilities to San Felipe as trust beneficiary, including but not limited to the duty:

a. To maintain adequate books and records of the account, including but not limited to records on the easements, rights-of-way and other contractual arrangements giving rise to income in the tribal trust account, and as to investments of moneys held in trust in the tribal trust account;

b. To maintain adequate books and records of the tribal trust account, including but not limited to, records of the devolution of rights in and to such account, by assignment, bequest, or otherwise;

c. To maintain adequate systems and controls to guard against error and dishonesty;

d. To invest such funds as permitted by law, and to deposit them in such depository institutions as are permitted by law; to exercise prudence in selection of such investments and depository institutions as are authorized by law, and within the constraints of law and prudence, to maximize the return on such investments and deposits;

e. To account regularly and accurately to San Felipe as a beneficiary, to give San Felipe upon request accurate information as to the state of the tribal trust account, and to pay San Felipe upon demand such account as it may be entitled to; and

f. To refrain from self-dealing and benefitting from the management of the tribal trust fund.

231. The action of the BIA Southern Pueblos Agency to change the ownership status of the portion of the San Felipe Patent subjected to the BLM's resurvey plat filed on April 20, 2017 in the BIA TAAMS without notice to San Felipe sometime between April 20, 2017 and November 14, 2017 violated the trust responsibilities and fiduciary duties of the Department of the Interior and its officials to San Felipe to properly record and maintain records of the ownership of lands of San Felipe within the San Felipe Patent boundaries as restricted fee lands held by San Felipe, including the trust responsibilities set forth in 25 U.S.C. §§ 162a(d)(8) and 4043(2)(C).

232. The Defendants owe a trust duty to San Felipe as a named beneficiary of the tribal trust account to account for the amounts in the tribal trust account and the interest paid into the account from the first deposit on April 1, 1980 through the present date, including the duties set forth in 25 U.S.C. § 4011(a), (b) and (c), which includes duties to account for the daily and annual balance of all funds held in trust by the United States; issuing a periodic statement of performance within twenty business days after the close of a calendar quarter which includes the source, type and status of funds, the beginning balance, the gains and losses, receipts and disbursements, and the ending balance, and annual audit of the tribal trust account.

233. The Defendants breached this duty of trust by not accounting for the funds in the tribal trust account and reporting on the beginning and ending balance of funds in the tribal trust account quarterly to San Felipe at any time prior to January 11, 2018, and by not reporting to San Felipe the disbursement and dissipation of funds on January 11, 2018.

234. The actions of the Department and its officials to dissipate and disburse the tribal trust account on January 11, 2018, without notice to San Felipe, who was a named beneficiary of the tribal trust account, violated the requirements of 25 U.S.C. §§ 162a(d), 4011, and 4043(b)(2)(A), and breached the Defendants' trust responsibilities to San Felipe.

235. The Defendants owe a trust responsibility to replenish the tribal trust account to the appropriate balance as of the present date, and to replenish the corpus of the trust unlawfully withdrawn and dissipated by the Defendants on January 11, 2018.

236. The Defendants owe a trust responsibility to San Felipe as the sole and rightful owner of a Patent to the San Felipe Grant confirmed by Congress not to withdraw, dissipate or disburse the funds in that tribal trust account without any action of Congress or any Court to alter the boundaries of the San Felipe Patent.

237. The actions of the Defendants in dissipating and disbursing the tribal trust account breached Defendants' trust responsibilities to San Felipe.

238. The Defendants as trustee responsible for safeguarding the corpus of the tribal trust account, undertook such inequitable and egregious action in dissipating and disbursing the corpus of the trust without notice to San Felipe, and without legal right under any law to alter or amend the boundaries of the San Felipe Patent, that the Court can and should invoke its equitable jurisdiction to compel the Defendants to restore the corpus of the trust, provide an accounting for the proper balance of the corpus of the trust to San Felipe, and to compel the Defendants to disburse to San Felipe the properly restored trust corpus, and in the alternative, compel the Defendants to pay equitable restitution to San Felipe for the illegal disbursement of the corpus of the trust with interest to the present date as of the date of the Court's order in this matter.

239. The actions of the Defendants as the trustee responsible for safeguarding the property of San Felipe as recorded within the BIA TAAMS, to alter the record ownership of the San Felipe Patent sometime between April 20, 2017 and November 14, 2017, without any notice to San Felipe and without any legal right to do so are egregious, and San Felipe requests that the Court order the Defendants to restore the record ownership status of the San Felipe Patent to San Felipe in the BIA TAAMS.

PRAYER FOR RELIEF

WHEREFORE, the Pueblo of San Felipe prays that the Court grant the following relief:

a. A judgment declaring that the final decision in *United States v. Algodones Land Co.* conclusively and finally quieted San Felipe's unextinguished title to the lands within the boundaries of the San Felipe Patent.

b. A judgment declaring that all claims adverse to San Felipe's title are now barred by the expiration of the limitations periods provided in the Pueblo Lands Act.

c. A judgment declaring the Defendants' legal obligation to recognize and to not interfere with San Felipe's title and its right to sole possession and quiet enjoyment of the lands within the boundaries of the San Felipe Patent and enjoining the Defendants from interfering with such title, right, and quiet enjoyment.

d. A judgment declaring unlawful and setting aside Solicitor's Opinion M-37027, the April 5, 2017 IBLA decision, the April 20, 2017 filing of the 2013 resurvey, the alteration of title to the San Felipe Patent in the BIA TAAMS between April 20, 2017 and November 17, 2017, and the January 11, 2018 disbursement of the tribal trust account funds.

e. A judgment ordering the Defendants to restore to their previous status San Felipe's title and right to lands within the San Felipe Patent boundaries, and to make all necessary and appropriate restoration to the BIA TAAMS, surveys and plats on file, and the monuments marking the boundaries of the San Felipe Patent.

f. A judgment declaring that San Felipe's title and right to sole possession of the lands within the boundaries of the San Felipe Patent, including the Conflict Area, satisfies the sole condition for disbursement of the entire tribal trust account to San Felipe.

g. A judgment compelling the Secretary of the Interior to provide a full accounting of the tribal trust account, to replenish the tribal trust account to the appropriate balance, with interest, as of the date of the Court's order, and to then release and pay the entire tribal trust account balance to San Felipe.

h. In the alternative to restoration of and disbursement of the tribal trust account to San Felipe, a judgment in equity compelling the Defendants to pay equitable restitution to San Felipe in the amount that should be in the tribal trust account as of the date of the Court's order.

i. An award of San Felipe's attorney fees, costs, and such other relief as may be just and equitable.

Respectfully submitted this 5th day of April 2023.

/s/ Rebecca L. Kidder

Rebecca L. Kidder (D.N.M. Bar No. 23-93)
PEEBLES KIDDER BERGIN & ROBINSON LLP
1818 West Fulton Street, Suite 201
Rapid City, South Dakota 57702
Telephone: (605) 791-1515
Email: rkidder@ndnlaw.com

Tim Hennessy (D.N.M. Bar No. 23-84)
Steven J. Bloxham (D.N.M. Bar No. 23-87)
PEEBLES KIDDER BERGIN & ROBINSON LLP
2020 L Street, Suite 250
Sacramento, California 95811
Telephone: (916) 441-2700
Email: thennessy@ndnlaw.com
sbloxham@ndnlaw.com

Timothy J. Humphrey, Sr. (D.N.M Bar No. 23-108)
Annette T. Brown (D.N.M. Bar No. 23-106)
STETSON LAW OFFICES, P.C.
1305 Rio Grande Blvd., N.W.
Albuquerque, New Mexico 87104
Telephone: (505) 256-4911
Email: tjh@stetsonlaw.com
atb@stetsonlaw.com

Attorneys for Plaintiff Pueblo of San Felipe