IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

PUEBLO OF SAN FELIPE, a federally recognized Indian tribe, Plaintiff, v. **DEBRA HAALAND,** Secretary of the United States Department of the Interior, *et al.*, Defendant,	)	Case No. 1:23-cv-296 (JB)(LF)

FEDERAL DEFENDANTS' MOTION TO DISMISS AND MEMORANDUM IN SUPPORT

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MOTION

Consistent with Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), Federal Defendants hereby move to dismiss Plaintiff's April 5, 2023 "Complaint," ECF No. 1, in its entirety. The grounds for this Motion are set forth below. Plaintiff Pueblo of San Felipe opposes this Motion.

INTRODUCTION

San Felipe challenges Federal Defendants' resolution of a centuries-long dispute regarding the location of the common boundary between the Pueblos of Santa Ana and San Felipe. Conflicting government surveys created an overlapping boundary between lands claimed by the two Pueblos since Spain ruled what is now New Mexico. San Felipe challenges a series of actions, including a corrective dependent resurvey by the Bureau of Land Management and an Interior Board of Land Appeals decision, that eliminated the overlap and reestablished the Pueblos' common boundary in Santa Ana's favor. As a result, Interior now recognizes that Santa Ana holds title in restricted fee to most of the approximately 695 acres of land where the two boundaries formerly overlapped (the "Former Overlap Area"). The United States, as trustee, claims an interest in the Former Overlap Area. San Felipe has sued the Federal officials and agencies, and seeks a declaration that the resurvey was unlawful, a "judgment declaring that all claims adverse to San Felipe's title are now barred," and a judgment imposing on Federal Defendants a "legal obligation to recognize and to not interfere with San Felipe's title." Compl. at 64-65. San Felipe's claims should be dismissed for several reasons.

First, the Quiet Title Act ("QTA"), 28 U.S.C. § 2409a, applies to and bars such claims. Congress, in the QTA, preserved the United States' sovereign immunity from claims, like San Felipe's, that seek title to "restricted Indian lands." 28 U.S.C. § 2409a(a). Perhaps recognizing

this, San Felipe cites several statutes other than the QTA as the basis for its claims. But because all of San Felipe's claims challenge the United States' interests in real property, San Felipe's suit is an action to quiet title. Supreme Court precedent holds that the QTA provides the *exclusive* means by which San Felipe can challenge Federal Defendants' actions. And the QTA prohibits claims seeking title to Indian lands because the United States has maintained its sovereign immunity from such suits. San Felipe cannot evade through creative pleading Congress's carefully constructed and limited waiver of immunity by seeking to quiet title to what Interior now recognizes as Santa Ana's restricted fee lands. All of San Felipe's claims should thus be dismissed under Federal Rule of Civil Procedure 12(b)(1).

Second, for a portion of San Felipe's claims, the Complaint does not satisfy any of the three necessary standing elements and there is no justiciable case or controversy. Federal Defendants do not currently dispute that San Felipe owns three small parcels located partially within the Former Overlap Area, which are known as Private Claims 4, 5, and 6. This Court thus lacks jurisdiction over San Felipe's claims to the extent that they encompass Private Claims 4, 5, and 6 because Federal Defendants' challenged actions did not transfer the parcels to Santa Ana. San Felipe was not harmed by any federal action and thus lacks standing for those portions of its case encompassing Private Claims 4, 5, and 6.

Third, San Felipe's third and fourth claims, which seek declaratory judgments that San Felipe has title to the Former Overlap Area, are also barred for an additional reason. The Declaratory Judgment Act does not waive Federal Defendants' sovereign immunity and does not support such standalone claims. San Felipe's failure to cite a single additional statute, much less a statute providing the necessary waiver of sovereign immunity, is thus independently fatal to its third and fourth claims.

Finally, San Felipe fails to state a claim for an accounting. While Federal Defendants deny that they would owe San Felipe any trust duty relating to Santa Ana's lands or funds, San Felipe alleges that the Bureau of Indian Affairs ("BIA") provided it with the information regarding receipts and disbursements necessary to meet any accounting duty that is potentially applicable under Tenth Circuit precedent. San Felipe's accounting claim must therefore be dismissed under Federal Rule of Civil Procedure 12(b)(6).

Federal Defendants therefore respectfully request the Court dismiss Plaintiff's Complaint in its entirety.

BACKGROUND

I. The Quiet Title Act

"It is 'axiomatic that the United States may not be sued without its consent and that the existence of consent is a prerequisite for jurisdiction.'" *N. New Mexicans Protecting Land Water & Rights v. United States*, 161 F. Supp. 3d 1020, 1036 (D.N.M. 2016) (quoting *United States v. Mitchell*, 463 U.S. 206, 212 (1983) and collecting cases), *aff'd*, 704 F. App'x 723 (10th Cir. 2017). Prior to the QTA's passage, the United States' sovereign immunity barred all suits challenging the United States' interest in real property. *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak*, 567 U.S. 209, 219 (2012). The QTA provided a limited waiver of sovereign immunity for actions to quiet title against the United States. Under the QTA, "[t]he United States may be named as a party defendant in a civil action under this section to adjudicate a disputed title to real property in which the United States claims an interest, other than a security interest or water rights." 28 U.S.C. § 2409a(a). The QTA thus generally permits "a quiet title suit: a suit by a plaintiff asserting a 'right, title, or interest' in real property that conflicts with a 'right, title, or interest' the United States claims." *Patchak*, 567 U.S. at 215 (quoting 28 U.S.C. §

2409a(d)). The QTA is the "'exclusive means by which adverse claimants' . . . meaning plaintiffs who themselves assert a claim to property antagonistic to the Federal Government's" can challenge the United States' claim to real property. *Id*. at 219-20 (quoting *Block v. North Dakota*, 461 U.S. 273, 286 (1983)); *Wilkins v. United States*, 143 S. Ct. 870, 878 (2023) (QTA is the "'the exclusive procedure' for challenging 'the title of the United States to real property.'").

But Congress provided that the QTA "does not apply to trust or restricted Indian lands." 28 U.S.C. § 2409a(a). The QTA preserves the United States' sovereign immunity from quiet title suits "**when** they involve Indian lands." *Patchak*, 567 U.S. at 216 (emphasis in original). Plaintiffs cannot use other statutes such as the Administrative Procedure Act ("APA") "to end-run the QTA's limitations." *Id*. at 216.

II. The Former Overlap Area

San Felipe and Santa Ana's dispute regarding "the proper placement of the northern boundary" of the El Ranchito Tract and the San Felipe Pueblo Grant's southern boundary stretches back hundreds of years. *Pueblo of Santa Ana v. Baca*, 844 F.2d 708, 710 (10th Cir. 1988); Compl. ¶¶ 50-51, 149-58 (citing *Baca*, 844 F.2d 708). "In 1763, Santa Ana purchased . . . a large tract of land later confirmed as the El Ranchito" Tract. *Baca*, 844 F.2d at 709; Compl. ¶¶ 155-57. Shortly thereafter, "The Spanish government interceded in this dispute. A local official rode on horseback along Santa Ana's northern boundary, heard testimony, and inspected documents produced by the Indians." *Baca*, 844 F.2d at 710. The Tenth Circuit stated that the official "resolved the dispute in favor of Santa Ana, finding that the northern boundary of Santa Ana's property and the southern boundary of San Felipe's lands was a straight line through the middle of the Angostura settlement." *Id*. The Tenth Circuit further stated that "San Felipe appealed this adjudication several times" with the appellate process concluding with "the opinion

of the Real Audiencia of Guadalajara, which essentially sat as the Supreme Court of the territory, affirming the earlier decision" and resolving the boundary dispute in favor of Santa Ana. *Id*. at 710-12. The Tenth Circuit found that Spain's resolution of the boundary dispute in 1819 should be given "substantial weight" because its "multi-tiered judicial system served as a full-scale boundary adjudication with a trial, appeal de novo, and further appeal." *Id*. at 711-12.[1]

The boundary dispute persisted through multiple efforts to settle title after the United States acquired what is now New Mexico. Congress created a Court of Private Land claims, which confirmed in 1897 that the El Ranchito Tract's northern boundary is located approximately a half-mile south of Angostura. *Id*. at 710. "Subsequent surveys were confused and offered conflicting placements of the boundary. Without resolving this conflict, the General Land Office simply issued overlapping patents to San Felipe and Santa Ana." *Id.*

Next, Congress "enacted the [Pueblo Lands Act of 1924] 'to provide for the final adjudication and settlement of a very complicated and difficult series of conflicting titles affecting lands claimed by the Pueblo Indians.'" *Mountain States Tel. & Tel. Co. v. Pueblo of Santa Ana*, 472 U.S. 237, 240 (1985) (citation omitted). The Pueblo Lands Act created a Pueblo Lands Board to address non-Indian claims to Pueblo lands. *United States v. Smith*, 482 F. Supp. 3d 1164, 1168 (D.N.M. 2020). But the Pueblo Lands Board "did not provide a device for deciding land disputes between Indians." *Baca*, 844 F.2d at 709 n.1. The Board thus "recommended a 'friendly suit' between" Santa Ana and San Felipe to resolve the conflict. Off. of the Solicitor, M-37027, Mem. re: Boundary Dispute: Pueblo of Santa Ana Petition for Corr. of the Survey of the S. Boundary of the Pueblo of San Felipe Grant ("M-37027") at 9 (June 7,

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[1] The Former Overlap Area lands in question are located approximately four miles north of Bernalillo and straddle Interstate 25. *See* Compl. Ex. 1 and 2.

2013) (Ex. 1). However, "[t]his suggested judicial resolution has never been pursued because neither [Pueblo] has been willing to [waive] their sovereign immunity." *Id*.

In 1980, BIA approved a right-of-way through the Former Overlap Area. BIA addressed the now-centuries-old land dispute by placing the portion of the right-of-way payment related to the Former Overlap Area in escrow pending resolution of the dispute. Compl. ¶¶ 136-37. San Felipe challenged Interior's decision to escrow the funds and the Tenth Circuit rejected San Felipe's request to "dissolve the escrow agreement and obtain possession of the proceeds." *Pueblo de San Felipe v. Hodel*, 770 F.2d 915, 917 (10th Cir. 1985).

In 1989, Santa Ana petitioned Interior for a corrective resurvey of the San Felipe Pueblo Grant's south boundary to the extent the boundary overlaps with the El Ranchito Tract. Compl. ¶ 161 (citing M-37000 at 1). Santa Ana requested that Interior reconsider a 1988 M-Opinion by then-Solicitor Ralph Tarr that Interior lacked the "authority to consider an Indian boundary claim which pre-dates 1946." *Id*. ¶ 163 (quoting M-37000 at 2).[2] In 2000, Solicitor John Leshy's Opinion M-37000 reconsidered and reversed the Tarr Opinion. *Id*. ¶¶ 163-64 (citing M-37000 at 13-14).

Interior then unsuccessfully attempted to assist Santa Ana and San Felipe in negotiating a settlement of their competing claims. M-37027 at 2, 3 n9. In 2013, Solicitor Hilary Tompkins determined that "[t]he time has come to bring resolution to this longstanding boundary dispute." Compl. ¶ 173 (quoting M-37027 at 15). The Tompkins Opinion analyzed the evidence presented and concluded that "the boundaries of the lands patented to the respective Pueblos conflict, that a

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[2] The Tarr Opinion denied the Pueblo of Sandia's request to resurvey Sandia's eastern boundary to correct surveyor Reuben Clements' alleged exclusion of land granted by the Spanish. The D.C. Circuit remanded, holding that Interior must "reconsider its position [in the Tarr Opinion] that it lacks the legal authority to issue a corrected survey." *Pueblo of Sandia v. Babbitt*, 231 F.3d 878, 881 (D.C. Cir. 2000).

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." *Id.* ¶ 171 (quoting M-37027 at 2).

BLM resurveyed the El Ranchito Tract's northern boundary and the San Felipe Pueblo Grant's southern and western boundaries in 2013. *Id.* ¶¶ 174-78. This corrective dependent resurvey determined that the San Felipe patent's southern boundary coincides with the El Ranchito Tract's northern boundary, thus eliminating the overlapping boundary and resolving the boundary dispute favor of Santa Ana. *Id.* ¶ 177. In other words, the survey affirmed that the Former Overlap Area is located within Santa Ana's El Ranchito Tract. *See id.*; M-37027 at 15.[3]

San Felipe protested BLM's proposed official filing of the plat of corrective dependent resurvey. Compl. ¶ 179. BLM denied the protest, and San Felipe appealed that denial to the Interior Board of Land Appeals ("IBLA"). *Id.* ¶¶ 180-81. On April 5, 2017, IBLA affirmed BLM's decision to deny San Felipe's protest, finding that it "'reestablished the common boundary between the San Felipe Pueblo Grant and the El Ranchito Tract'" *Id.* ¶¶ 182-83 (quoting *San Felipe*, 190 IBLA at 39). The IBLA further recognized that the resurvey "eliminate[d] the perceived overlap between [the two] Pueblo['s] landholdings, thus resulting in a common boundary." *San Felipe*, 190 IBLA at 39.

Interior officially filed the resurvey in 2017, and subsequently updated its Trust Asset Accounting Management System ("TAAMS") database consistent with the Tompkins Opinion

[3] "[A] dependent resurvey is designed to retrace and reestablish the lines of the original survey, marking the legal boundaries of the affected lands, in their 'true original positions,' according to the best available evidence of the positions of the original corners. Generally speaking, a dependent resurvey places the lines in the same position on the earth's surface that they have occupied since the date of the original survey." *Pueblo of San Felipe*, No. IBLA 2014-256, 190 IBLA 17, 34 (2017).

and the subsequent corrective resurvey. Compl. ¶ 188. And because the corrective survey's reestablishment of the Pueblos' common boundary resolved the question of which Pueblo was entitled to the escrowed right-of-way payment, Interior complied with Santa Ana's request for its funds and "disbursed to Santa Ana the entire balance of funds held in the [escrow] account, which amounted to approximately $1.6 million." *Id.* ¶ 190.

Interior's actions between 2013 and 2017 eliminated the overlapping boundary created by prior conflicting government surveys of the San Felipe Pueblo Grant and Santa Ana's El Ranchito Tract. Most of the approximately 695 acres of land within the Former Overlap Area thus belongs to Santa Ana. *Id.* ¶ 17. San Felipe's challenges target Federal Defendants' resolution of this conflict to the bulk of the Former Overlap Area. *Id.* ¶ 51. Interior has not recognized any change in title to those portions of three parcels that straddle the Pueblos' reestablished common boundary and extend into the El Ranchito Tract. *See Id.* ¶ 126.

III. Private Claims 4, 5, and 6

In 1934, San Felipe purchased several parcels, which are known as Private Claims 4, 5, and 6, situated entirely within the Former Overlap Area. *Id.* ¶ 126. The corrective resurvey's reestablishment of the Pueblos' common boundary demonstrated that the boundary bisects Private Claims 4, 5, and 6. *Id.* (alleging that the entirety of the three claims encompasses 92.36 acres); Compl. Ex. B, ECF No. 1-2 (depicting the claims straddling the El Ranchito Grant boundary). Private Claims 4, 5, and 6's history is somewhat different than that of the remainder of the Former Overlap Area. San Felipe alleges that, unlike the remainder of the Former Overlap Area, the titles to Private Claims 4, 5, and 6 were adjudicated during the Pueblo Lands Act proceedings. San Felipe's title claims to Private Claims 4, 5, and 6 were extinguished during those proceedings, but San Felipe later reacquired Private Claims 4, 5, and 6 with funds that

Congress appropriated to compensate Pueblos for rights lost during Pueblo Lands Board proceedings. *Id.* ¶¶ 110, 118, 126 (citing Act of March 4, 1929, 45 Stat. 1562, 1569).

As noted above, page 7-8, BIA updated its TAAMS database consistent with the Tompkins Opinion and BLM's corrective dependent resurvey. *Id.* ¶ 188. But the Tompkins Opinion neither mentioned nor considered the distinct legal issues presented by the Pueblos' competing title claims to Private Claims 4, 5, and 6. M-37027. And BIA's associated "update of TAAMS noted ownership of the majority of the former overlap area to the Pueblo of Santa Ana, with the exception of three parcels of land identified as Private Claims (PC) 4, 5, and 6" which "were not transferred to the Pueblo of Santa Ana." U.S. Dep't of Interior, Mem. re: Request by the Pueblo of Santa Ana for Release of Right-of-Way Comp. Funds Held in Escrow ("November 2017, Mem.") at 2 (Ex. 2). Plaintiffs do not allege that BIA subsequently transferred Private Claims 4, 5, and 6 to Santa Ana.

IV. San Felipe's claims

San Felipe's Complaint challenges the 2013 Tompkins Opinion M-37027; the April 2017 IBLA decision; BLM's April 2017 filing of the corrective dependent resurvey; BIA's updating of its TAAMS database to reflect the resurvey's affirmation that Santa Ana's lands include the bulk of the Former Overlap Area; and BIA's payment of the escrowed right-of-way funds to Santa Ana.[4] Compl. at 64. As a form of relief, each of San Felipe's five claims seek to overturn Federal Defendants' recognition of Santa Ana's restricted fee title to most of the Former Overlap Area, dispossess Santa Ana of that restricted fee title by seeking a "judgment declaring that all

[4] As explained below, the APA's waiver of sovereign immunity is not available for San Felipe's claims. Even if it were, Federal Defendants do not concede that all the identified actions would constitute "final agency actions" reviewable under the APA. *See* 5 U.S.C. §§ 704, 706.

claims adverse to San Felipe's title are now barred," and recognize "San Felipe's title and right to sole possession of the lands within the boundaries of the San Felipe Patent, including the Conflict Area." *Id*. at 64-65.[5]

STANDARD OF REVIEW

Subject matter jurisdiction is a threshold issue, which should be addressed prior to any consideration of the merits. *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 88-89 (1998). Federal courts presumptively lack jurisdiction "unless the contrary appears affirmatively from the record." *Renne v. Geary*, 501 U.S. 312, 316 (1991) (quotations omitted). Furthermore, because "[f]ederal courts are courts of limited jurisdiction . . . [i]t is to be presumed that a cause lies outside this limited jurisdiction, . . . and the burden of establishing the contrary rests upon the party asserting jurisdiction." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994) (citations omitted). Relatedly, "federal courts may not assume they have subject matter jurisdiction for the purpose of deciding claims on the merits." *Valenzuela v. Silversmith*, 699 F.3d 1199, 1204-05 (10th Cir. 2012). Therefore, to survive a motion to dismiss pursuant to Rule 12(b)(1), "plaintiffs bear the burden to establish subject-matter jurisdiction." *Oviatt v. Reynolds*, 733 F. App'x 929, 931 (10th Cir. 2018).

Motions to dismiss pursuant to Rule 12(b)(1) may take two forms. First, if the movant asserts that the complaint's allegations facially fail to establish subject matter jurisdiction, "the court must consider the complaint's allegations to be true." *Alto Eldorado Ptnrs v. Santa Fe*,

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[5] Prior to filing this motion, Federal Defendants' counsel explored with San Felipe's counsel the potential for a mediated settlement. While it does not appear, at present, that a negotiated resolution to the dispute is possible, Federal Defendants remain open to discussing a potential negotiated resolution jointly with both Pueblos, whether as part of, or separate from, any litigation. But Federal Defendants' openness does not change the fact that the Court lacks jurisdiction over San Felipe's Complaint.

2009 U.S. Dist. LEXIS 47158, *25-26 (D.N.M. Apr. 20, 2009) (Browning, J.). Alternatively, the movant may present evidence challenging the Complaint's factual allegations. *Id*. When an attack is factual, the "court may not presume the truthfulness of the complaint's factual allegations . . . [but has] wide discretion to allow affidavits, other documents, and a limited evidentiary hearing to resolve disputed jurisdictional facts under Rule 12(b)(1)." *Id.* (citation omitted). The Court may thus consider evidence to resolve jurisdictional issues such as lack of standing. *Swepi, LP v. Mora Cnty.*, 81 F. Supp. 3d 1075, 1148 (D.N.M. 2015) (Browning, J.).

Rule 12(b)(6) allows parties to move to dismiss claims for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). It authorizes courts "to dismiss a claim on the basis of a dispositive issue of law." *Neitzke v. Williams*, 490 U.S. 319, 326 (1989) (citations omitted). "[A] plaintiff's obligation to provide the grounds of h[er] entitlement to relief requires more than labels and conclusions." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quotation omitted). To pass muster, a plaintiff must include "[f]actual allegations [specific] enough to raise a right to relief above the speculative level." *Id*. These allegations must be sufficient to "nudge[] [her] claims across the line from conceivable to plausible." *Id.* at 570.[6]

[6] At least two of the Plaintiff's claims invoke the judicial review provisions of the APA, 5 U.S.C. §§ 701-706. Compl. ¶¶ 197-217. "Reviews of agency action in the district courts must be processed as appeals," and governed by "the Federal Rules of Appellate Procedure." *Olenhouse v. Commodity Credit Corp.*, 42 F.3d 1560, 1580 (10th Cir. 1994). As explained in this motion, Plaintiff's claims are not truly APA claims. Nonetheless, the procedural devices for dismissing APA claims consistent with the Federal Rules of Civil Procedure are appropriate. *See, e.g.*, *Kane Cnty. v. Salazar*, 562 F.3d 1077, 1086 (10th Cir. 2009) ("[N]othing in *Olenhouse* . . . precludes an APA-based complaint from being summarily dismissed pursuant to Federal Rule of Civil Procedure 12(b)."). San Felipe's supposed APA and non-APA claims are thus subject to dismissal, consistent with the principles for deciding motions under Rule 12(b).

ARGUMENT

The Complaint should be dismissed for lack of jurisdiction and for failure to state a plausible claim for relief. For one, the Court lacks jurisdiction. The QTA bars San Felipe's effort to quiet title to lands within the Former Overlap Area because: 1) the QTA is the exclusive means to contest title to land in which the United States holds an interest; and 2) the QTA's Indian lands exception maintained the United States sovereign immunity from San Felipe's effort to quiet title to Santa Ana's restricted fee lands in which the United States holds an interest. San Felipe also lacks standing to the extent its claims relate to the portion of Private Claims 4, 5, and 6 located within the Former Overlap Area. San Felipe has suffered no injury relating to land that the United States recognizes is held by San Felipe. And San Felipe's accounting claims are doubly barred because the Complaint alleges that Federal Defendants have provided San Felipe with more than enough information to comply with any accounting duty. San Felipe thus fails to state a claim for an accounting.

I. This Court Lacks Jurisdiction Over Plaintiff's Claims.

The United States is immune from suit unless it consents to be sued. *United States v. Sherwood*, 312 U.S. 584, 586 (1941). Congress alone may grant consent to suit, and its consent must be "unequivocally expressed." *United States v. Idaho, ex rel. Dir., Idaho Dep't of Water Res.*, 508 U.S. 1, 6 (1993); *Dep't of the Army v. Blue Fox, Inc.*, 525 U.S. 255, 261 (1999). "[T]he Government's consent to be sued must be construed strictly in favor of the sovereign, and not enlarge[d] . . . beyond what the language requires." *United States v. Nordic Vill., Inc.*, 503 U.S. 30, 34 (1992) (internal citations and quotations omitted). *See also, United Tribe of Shawnee Indians v. United States*, 253 F.3d 543, 547 (10th Cir. 2001). "Since federal courts are courts of limited jurisdiction, there is a presumption against [their] jurisdiction, and the party invoking federal jurisdiction bears the burden of proof." *Penteco Corp. P'ship-1985A v. Union Gas Sys.,*

Inc., 929 F.2d 1519, 1521 (10th Cir. 1991); *McGuire v. Nielsen*, 448 F. Supp. 3d 1213, 1250 (D.N.M. 2020) (Browning, J.) ("The Court, as a federal district court, is a court of limited jurisdiction and cannot accept jurisdiction where it has none."). The Quiet Title Act provides the exclusive waiver of sovereign immunity available for title challenges to the United States' real property interests. The Quiet Title Act, however, explicitly excludes Indian lands from its waiver of sovereign immunity. This Court thus lacks jurisdiction over all of Plaintiffs' claims.

A. Plaintiff's asserted bases of jurisdiction do not waive the United States' sovereign immunity.

The United States is immune from suit except when Congress explicitly waives sovereign immunity. *Block*, 461 U.S. at 280.

> The basic rule of federal sovereign immunity is that the United States cannot be sued at all without the consent of Congress. A necessary corollary of this rule is that when Congress attaches conditions to legislation waiving the sovereign immunity of the United States, those conditions must be strictly observed[.]

Id. at 287.

San Felipe claims that this Court has jurisdiction over this case pursuant to 28 U.S.C. §§ 1331 (federal question jurisdiction), 1361 (mandamus against federal officials), and 1362 (jurisdiction over suit by Indian tribes). Compl. ¶ 4. However, "sovereign immunity is not waived by general jurisdictional statutes" such as 28 U.S.C.§ 1331. *Fostvedt v. United States*, 978 F.2d 1201, 1203 (10th Cir. 1992); *See also*, *Cheyenne & Arapaho Tribes v. First Bank & Trust Co.*, 560 F. App'x 699, 708 (10th Cir. 2014) ("[N]either [28 U.S.C. §§ 1331 nor 1362] provides substantive rights or a cause of action for Plaintiffs' claims."); *La Casa de Buena Salud v. United States*, 2008 U.S. Dist. LEXIS 42352, *17-20 (D.N.M. Mar. 21, 2008) (Browning, J.) (collecting cases regarding §§ 1331 and 1361); *Scholder v. United States*, 428 F.2d 1123, 1125 (9th Cir. 1970) (Section 1362 does not waive sovereign immunity).

San Felipe cites only one statute that might provide a waiver of sovereign immunity in certain circumstances—the Administrative Procedure Act ("APA"). But the APA does not waive the United States' immunity from suits: 1) "if any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought;" or 2) seeking "money damages." 5 U.S.C. § 702. As explained below, the QTA forbids the relief San Felipe seeks here, thus making the APA's waiver inapplicable.

B. The Quiet Title Act is the exclusive means by which San Felipe can bring its claims because each claim challenges title to the Former Overlap Area.

Though San Felipe avoids invoking the QTA, the singular purpose of this action is to quiet title to restricted fee lands in which the United States holds an interest. But when a plaintiff's claims seek to quiet title against the United States, the QTA provides the exclusive source of the Court's jurisdiction. Each of San Felipe's claims seeks to quiet title to the Former Overlap Area. And to the extent that portions of San Felipe's claims also address issues such as funds derived from the Former Overlap Area, those issues are so dependent upon San Felipe's effort to quiet title that they cannot be decided absent resolution of the title dispute. San Felipe's failure to plead its quiet title claims under the QTA is thus fatal to all of San Felipe's claims.

In *Block*, North Dakota sought to resolve a "dispute as to ownership of [a] riverbed" by bringing suit against federal officials. 461 U.S. at 277-78. "As the jurisdictional basis for its suit, North Dakota invoked" a number of statutes, including the APA. *Id.* at 278. And the State amended its Complaint to add a QTA claim. *Id.* The Supreme Court rejected North Dakota's reliance on statutory provisions beyond the QTA, holding that North Dakota could not evade the QTA by invoking the APA: "Congress intended the QTA to provide the **exclusive means** by which adverse claimants could challenge the United States' title to real property." *Id.* at 286 (emphasis added); *see also id.* at 286 n.22 (stating that the QTA "expressly 'forbids the relief'"

sought pursuant to the APA (citation omitted)). It noted that "[i]f North Dakota's position were correct, all of the carefully-crafted provisions of the QTA deemed necessary for the protection of the national public interest could be averted." *Id.* at 284-85. Thus, the Supreme Court concluded, "North Dakota's action may proceed, if at all, only under the QTA." *Id.* at 292-93.

Similarly, in *United States v. Mottaz*, 476 U.S. 834 (1986), a plaintiff sought to avoid the QTA's limitations by attempting to establish her interests in Indian allotments pursuant to other federal statutes. *Id.* at 838. As in *Block*, the Supreme Court noted that the plaintiff "seeks to avoid the carefully crafted limitations of the Quiet Title Act by characterizing her suit as a claim for an allotment under the General Allotment Act of 1887." *Id.* at 844. The Supreme Court rejected the effort, emphasizing that Congress crafted the QTA to be the exclusive means of resolving a dispute with the United States over a property interest. *Id.* at 847-48.

The Supreme Court recently affirmed that the QTA is the "'exclusive means by which adverse claimants' . . . meaning plaintiffs who themselves assert a claim to property antagonistic to the Federal Government's" can challenge the United States' real property interests. *Patchak*, 567 U.S. at 219-20 (quoting *Block*, 461 U.S. at 286). *Patchak* permitted an APA challenge to Interior's acquisition of title for a Tribe. But the Court's reasoning confirmed that such APA suits may proceed **only** "because although it contests the Secretary's title, it does not claim any competing interest" in the property at issue. *Id.* at 217. The Court illustrated its reasoning with two hypotheticals. In the first, the Court examined a case where the Plaintiff sued under

> APA claiming that **he** owned the . . . Property and that the Secretary therefore could not take it into trust. The QTA would bar that suit . . .. True, it fits within the APA's general waiver, but the QTA specifically authorizes quiet title actions (which this hypothetical suit is) **except when** they involve Indian lands (which this hypothetical suit does). In such a circumstance, a plaintiff cannot use the APA to end-run the QTA's limitations. "[W]hen Congress has dealt in particularity with a claim and [has] intended a specified remedy" – including its exceptions – to be exclusive, that is the end of the matter; the APA does not undo the judgment.

Id. at 216 (quoting *Block*, 461 U.S. at 286, n.22). The Court focused on Congress's use of the term "quiet title," which is "universally understood to refer to suits in which a plaintiff not only challenges someone else's claim, but also asserts his own right to disputed property." *Id.* at 217-18 (citations omitted). The QTA is thus "the relevant statute" in cases where a plaintiff "assert[s] title to the property" at issue. *Id.* at 220 (citing *Mottaz*, 476 U.S. at 842).[7]

San Felipe's action can only be understood as one to quiet title. First, San Felipe's factual allegations focus almost exclusively on: 1) the nature of San Felipe's alleged right, title, and interest to the Former Overlap Area, Compl. ¶¶ 20-35; 2) the strength of San Felipe's title claims relative to Santa Ana's; *id.* ¶¶ 36-126; and 3) a Tenth Circuit decision holding that Santa Ana has superior title to the Former Overlap Area. *Id.* ¶¶ 149-158.

Second, all of San Felipe's claims seek to quiet title to the Former Overlap Area. Its first claim contends that Federal Defendants violated the APA by "unlawfully interfere[ing] with San Felipe's valid and inviolate title and right to sole possession of the" Former Overlap Area and seeks an order "to restore the boundaries and title . . . to the status that existed before" Federal Defendants' actions. *Id.* ¶¶ 198, 210. Its second claim contends that Federal Defendants violated the APA by unlawfully withholding payment of funds escrowed for the Former Overlap Area's beneficial owner because Federal Defendants have an alleged "legal obligation . . . to recognize San Felipe's title." *Id.* ¶ 212. San Felipe's third claim seeks a declaration that "no

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[7] *See also, Rosette, Inc. v. United States*, 141 F.3d 1394, 1397 (10th Cir. 1998) (The QTA is the "only recourse for haling the United States into court on the issue of *ownership* of [geothermal rights]" and provides the "exclusive remedy" for claims that are "linked to the question of title") (emphasis in original); *McMaster v. United States*, 731 F.3d 881, 899 (9th Cir. 2013) ("QTA provides the exclusive remedy for claims involving adverse title disputes with the government."); *Rauterkus v. United States*, No. 1:19-CV-240, 2021 U.S. Dist. LEXIS 38451, at *12 (W.D. Pa. Mar. 2, 2021) (Quiet Title Act "provides the exclusive source of the court's jurisdiction when other legal claims, such as APA claims, are intertwined with title claims.").

claims adverse to San Felipe's title and right may be validly asserted" and that Federal Defendants "have no authority to interfere with, and are obligated to recognize, San Felipe's title and right to sole possession" of land allegedly patented to San Felipe. *Id.* ¶ 224. San Felipe's fourth and fifth claims allege breaches of duties predicated on San Felipe obtaining "a judicial declaration [of] its title and right to sole possession of the lands within the boundaries of the San Felipe Patent, including the Conflict Area." *Id.* ¶ 227, *id.* at ¶ 236, 238-39. San Felipe attempts to add alleged duties—such as an alleged duty to transfer to San Felipe payments for a right-of-way through the Former Overlap Area—that are based on title being quieted in San Felipe. But this only highlights that these claims wholly derive from San Felipe's alleged title to the Former Overlap Area and thus fall under the QTA's exclusive means to adjudicate such claims. In sum, every claim explicitly seeks to quiet title to the Former Overlap Area in San Felipe.

Moreover, the core of San Felipe's Complaint targets Interior's resurvey of the El Ranchito Tract's northern boundary and the San Felipe Pueblo Grant's southern boundary. Compl. ¶¶ 159-96. Disputes regarding surveys challenge title to land and are thus actions to quiet title. *See, e.g., Fadem v. United States*, 1995 U.S. App. LEXIS 6449, at *2 (9th Cir. 1995) (Challenge to allegedly negligent survey may not proceed under the Federal Tort Claims Act because the negligence "is subsumed in the title question and not an independent claim for relief."); *United States v. Atanasoff*, 1987 U.S. App. LEXIS 16040, at *5 (6th Cir. 1987); ("[T]he Quiet Title Act is the sole means for challenging the survey."); *White Mountain Apache Tribe v. Hodel*, 784 F.2d 921, 925-26 & n.5 (9th Cir. 1986) (challenge to survey barred by, among other things, QTA's statute of limitations); *Fadem v. United States*, 791 F.2d 1381, 1383 (9th Cir. 1986) (Challenges to a survey under the Declaratory Judgment Act must be dismissed because

"the Quiet Title Act and the Supreme Court's decision in *Block* apply to all boundary disputes with the government.").

To the extent that there is any doubt that San Felipe's suit is one to quiet title as to the United States, the dispute is resolved by San Felipe's Prayer for Relief. Indeed, the Tenth Circuit recently affirmed that, in determining whether a claim is one to quiet title, "we 'focus on the relief . . . request[ed], rather than on the party's characterization of the claim.'" *High Lonesome Ranch, LLC v. Bd. of Cnty. Comm'rs for the Cnty. of Garfield*, 61 F.4th 1225, 1238 (10th Cir. 2023) (citation omitted). And where the party seeks relief "which can be accomplished only under the QTA" the claims must be construed as QTA claims. *Id*. San Felipe seeks a **"judgment declaring that all claims adverse to San Felipe's title are now barred"** and recognizing **"San Felipe's title and right to sole possession of the lands within the boundaries of the San Felipe Patent, including the Conflict Area."** Compl. at 64-65 (emphasis added). That relief cannot be granted without impairing Santa Ana's and the United States' adverse claims to the Former Overlap Area. San Felipe's entire case thus falls under the QTA's waiver of sovereign immunity because it "not only challenges someone else's claim, but also asserts [San Felipe's] own right to disputed property." *Patchak*, 567 U.S. at 217-18.[8]

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[8] At times, San Felipe appears to seek to quiet title to the entire San Felipe patent. Compl. ¶ 212. But San Felipe's allegations only identify a dispute regarding a portion of the approximately 695-acre Former Overlap Area that excludes Private Claims 4, 5, and 6. *See id*. ¶ 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."). San Felipe does not identify, much less plead with specificity, any other title conflict or allegedly arbitrary action. Any claim beyond the Former Overlap Area thus has not been pled with sufficient specificity to proceed. 28 U.S.C. § 2409a(d); *N. New Mexicans*, 161 F. Supp. 3d at 1049-1050.

Because all of San Felipe's claims dispute title to the Former Overlap Area, they must proceed, if at all, under the QTA. Alleged APA claims, like San Felipe's first two claims, Compl. ¶¶ 197-217, must be dismissed when they claim a real property interest antagonistic to the United States' interest. *Patchak*, 567 U.S. at 217-20; *Block,* 461 U.S. at 286. Declaratory judgment suits, like San Felipe's third and fourth claims, Compl. ¶¶ 218-27, must also be dismissed when they seek a declaration of title without invoking the QTA. *Catron Cnty. v. United States*, 934 F. Supp. 2d 1298, 1308-09 (D.N.M. 2013) (dismissing declaratory judgment claim because the QTA "provides the exclusive remedy" for claims linked to title questions) (quoting *Rosette*, 141 F.3d at 1397); *Friends of Panamint Valley v. Kempthorne*, 499 F. Supp. 2d 1165, 1177-79 (E.D. Cal. 2007) (dismissing declaratory judgment claim because such claims "can only be brought pursuant to the [QTA's] narrow waiver of sovereign immunity"); *Alaska Dep't of Nat. Res. v. United States*, 816 F.3d 580, 586 (9th Cir. 2016) ("Declaratory Judgment Act may not be used as an end run around the QTA's limited waiver of sovereign immunity."). And "disputes over title" to land subject to alleged trust duties, like San Felipe's fourth and fifth claims, Compl. ¶¶ 218-39, similarly fall within the QTA's sovereign immunity waiver. *Mesa Grande Band of Mission Indians v. Salazar*, 657 F. Supp. 2d 1169, 1174-75 (S.D. Cal. 2009).

As the Tenth Circuit stated in *Rosette*, "[a]llowing [the plaintiff] to maintain a declaratory judgment action under these circumstances [a non-QTA claim linked to the question of title] would undermine the policies set forth in *Block*." 141 F.3d at 1397. *See also Brown v. Perdue*, 2005 U.S. Dist. LEXIS 15995, at *42-43 (S.D.N.Y. Aug. 4, 2005) (where an "underlying . . . claim is unsupportable, no money is owed and no accounting is necessary."), *aff'd*, 177 F. App'x 121 (2d Cir. 2006). San Felipe's failure to plead its claims to quiet title under the QTA is thus fatal to all its claims. *See N. New Mexicans*, 161 F. Supp. 3d at 1054 (dismissing claims because

"[w]hen plaintiffs cannot proceed via the Quiet Title Act, they do not have a freewheeling right to sue under a different statute."). The Court's analysis need proceed no further.

C. San Felipe's claims are barred because the QTA's Indian lands exception maintains the United States' immunity from San Felipe's effort to quiet title in Santa Ana's restricted fee lands.

But even if San Felipe had pled its suit (as it must) under the QTA, the Court would lack jurisdiction. The QTA explicitly limits its waiver of sovereign immunity by providing that "[t]his section does not apply to trust or restricted Indian lands." 28 U.S.C. § 2409a(a). Congress, in the QTA, **maintained** the United States sovereign immunity from San Felipe's claims challenging title to Indian lands.

i. The Former Overlap Area is restricted Indian land.

There is no dispute that the Former Overlap Area is restricted Indian land. Pueblos typically hold their historic lands in fee, subject to the restriction that those lands cannot be alienated without the United States' consent. *See United States v. Candelaria*, 271 U.S. 432, 442 (1926). The United States, as trustee, has a real estate interest in that restriction. *Id*. at 442-44. Santa Ana's lands are no exception. *United States on behalf of Santa Ana Indian Pueblo v. Univ. of N. M.*, 731 F.2d 703, 704 (10th Cir. 1984).

Indeed, San Felipe acknowledges that the lands at issue are restricted fee lands. Compl. ¶ 231 (alleging that the restriction should be held for San Felipe). And San Felipe admits that Interior updated its TAAMS database to reflect the survey results. *Id*. ¶ 188.[9] Interior's recording of Santa Ana's interest in BIA's Land Titles and Records Office "is enough to establish that the United States has a colorable claim that it holds" an interest in Indian lands.

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[9] TAAMS is BIA's system of records for its Land Titles and Records Offices. Division of Land Titles and Records, U.S. DEP'T OF INTERIOR, INDIAN AFFAIRS, https://www.bia.gov/bia/ots/dltr. (last visited Aug. 17, 2023).

Schilling v. Wis. Dep't of Nat. Res., 298 F. Supp. 2d 800, 803 (W.D. Wis. 2003). Finally, San Felipe admitted in 2001 that the Former Overlap Area is Indian land. Letter from San Felipe Gov. Troncosa to T. Vollman, Interior at 1-2, 24-27 (Jan. 7, 2001) (arguing that "the Indian lands exception to the Quiet Title Act . . . foreclosed title challenges to 'restricted Indian lands,'" including the Former Overlap Area.). (Ex. 3); M-37027 at 14.[10]

ii. In the QTA, Congress maintained the United States sovereign immunity from claims relating to restricted fee lands.

Because the Former Overlap Area is Indian land, title challenges are barred by the QTA's Indian lands exception. The Supreme Court explained that Congress "limited the [QTA's] waiver of sovereign immunity" by "exclud[ing] Indian lands from the scope of the waiver." *Block*, 461 U.S. at 283.[11] The QTA permits a single reading of the Indian lands exception, that "when the United States claims an interest in real property based on that property's status as . . . restricted Indian lands, the Quiet Title Act does not waive the government's immunity." *Mottaz*, 476 U.S. at 843; *see also Wildman v. United States*, 827 F.2d 1306, 1309 (9th Cir. 1987) ("The ordinary reason[s] for enforcing sovereign immunity . . . are reinforced when Indian lands are in question.") *Jenkins v. Haaland*, No. 21-cv-385, 2022 U.S. Dist. LEXIS 99861, at *6-7 (D. Utah Apr. 28, 2022) (Claims that "relate to . . . 'restricted Indian lands' . . . are expressly excepted from the statutory waiver of immunity."), *report and recommendation adopted,* No. 21-cv-385,

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[10] In reviewing a motion to dismiss, "[a] court may consider documents to which the complaint refers if the documents are central to the plaintiff's claim and the parties do not dispute the documents' authenticity." *Peña v. Greffet*, 110 F. Supp. 3d 1103, 1114 (D.N.M. 2015) (Browning, J.) (citing *Jacobsen v. Deseret Book Co.,* 287 F.3d 936, 941-42 (10th Cir. 2002)).

[11] Nor can San Felipe evade the Indian lands exception by suing Interior's officers rather than the United States. *Id.* at 285 ("If we were to allow claimants to try the Federal Government's title to land under an officer's-suit theory, the Indian lands exception . . . would be rendered nugatory.").

2022 U.S. Dist. LEXIS 99862 (D. Utah June 3, 2022).[12] The Indian lands exception thus bars San Felipe's claims seeking to quiet title in the Former Overlap Area at Santa Ana's expense.

Several cases make clear that the QTA's Indian lands exception bars claims, such as San Felipe's, that seek to quiet title to restricted fee lands, such as Santa Ana's, in which the United States holds an interest. In *Patchak*, the Supreme Court explicitly considered whether the QTA's Indian lands exception barred APA claims, like San Felipe's, challenging title to Indian lands. It provided the example of a plaintiff who claimed "that the Secretary . . . could not take" land into trust for a Tribe because the plaintiff owned that land. 567 U.S. at 216. The QTA, rather than the APA, would govern such a suit because it is the exclusive means of attempting to vindicate such an adverse real property interest. *Id*. But the Supreme Court determined that "[t]he QTA would bar that suit," because it "involve[s] Indian lands." *Id*. In contrast, an APA suit alleging environmental harm would escape the QTA's Indian lands exception because it "rais[es] no objection at all to the Secretary's title." *Id*. In sum, "a plaintiff cannot use the APA to end-run the QTA's limitation[]" to challenge title to Indian lands in which the United States has an interest. *Id*. at 216, 219-20. San Felipe attempts just that end run here, as it seeks to quiet title to Santa Ana's restricted fee lands in which the United States holds an interest. Compl. at 64-65. And as the Supreme Court indicated, that end run is barred by the QTA. *Patchak*, 567 U.S. at 216, 219-20.

And the Tenth Circuit held that tribes could not use the APA to challenge Interior's acquisition of trust title on behalf of another tribe. *Iowa Tribe of Kan. & Neb. v. Salazar*, 607

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[12] "A unilateral waiver of the Federal Government's immunity would subject [trust] lands to suit without the Indians' consent." *Mottaz*, 476 U.S. at 843 n.6; *accord Imperial Granite Co. v. Pala Band of Mission Indians*, 940 F.2d 1269, 1272 n.4 (9th Cir. 1991) (United States is an indispensable party to any suit brought to establish an interest in Indian lands).

F.3d 1225, 1237 (10th Cir. 2010). It explained the Indian lands exception by highlighting that "[s]uits challenging the United States' title to land held in trust on behalf of an Indian tribe inherently implicate not only the interest of the United States but also the interests of beneficiary tribes." *Id*. And because Congress excluded Indian trust and restricted fee lands to prevent interference with the United States' obligations relating to those lands, allowing suit "'would subject those lands to suit without the Indians' consent'– an outcome that Congress sought to avoid." *Id.* (citation omitted). The Circuit affirmed that "Congress did not intend its waiver of sovereign immunity under the APA to swallow other statutory regimes" and that a "challenge to the United States' interest in land held in trust for an Indian tribe is such a suit: relief is forbidden by the QTA." *Id*.[13]

This Court applied the Indian lands exception in a manner that would bar San Felipe's claims. This Court held that the Indian lands exception barred a quiet title action that claimed an interest in the Pueblo of San Ildefonso's restricted fee land. *N. New Mexicans*, 161 F. Supp. 3d at 1052. It held that the Indian lands exception bars claims against the United States because, "[a]lthough [the QTA] contains a sovereign immunity waiver, it is limited to title claims that do not involve 'trust or restricted Indian lands.'" *Id*. at 1039 (quoting 28 U.S.C. § 2409a(a)). The Court applied the Indian lands exception to dismiss claims where "each cause of action and every form of relief asks the Court to determine who owns the disputed [real property on] Pueblo

[13] *Iowa Tribe* applied the QTA to bar a suit "[s]eeking to remove land currently held in trust by the United States or to encumber that land . . . despite the fact that plaintiffs do not themselves seek title to the land." 607 F.3d at 1230-1231. That holding was abrogated by *Patchak's* holding that a suit that "contests the Secretary's title" but "does not claim any competing interest" is not a quiet title claim. *Patchak*, 567 U.S. at 217. But as set forth above, San Felipe's suit falls under the QTA because it seeks to quiet title in San Felipe. *Iowa Tribe's* discussion of the principles underlying the QTA, particularly the United States' interests in Indian lands, therefore remains applicable here.

lands." *Id*. at 1054. It held that such "claims fall within the scope of suits that the Indian trust land exemption in the Quiet Title Act seeks to prevent." *Id*. The Indian lands exception similarly applies here, and the Former Overlap Area's status as restricted Indian lands bars San Felipe's suit seeking to determine ownership of Santa Ana's restricted fee lands.

This Court likewise held in *Pueblo of Jemez v. United States* that the QTA's "sovereign immunity waiver . . . is limited to title claims that do not involve 'trust or restricted Indian lands.'" 430 F. Supp. 3d 943, 1152 (D.N.M. 2018) (Browning, J.) (quoting 28 U.S.C. § 2409a(a)). *Jemez* sought aboriginal title to the 89,716-acre Valles Caldera National Preserve. *See id.* at 1031. A portion of the Preserve's northeast corner was burdened by an easement held by the Pueblo of Santa Clara. *See id* at 1040. The United States did not seek dismissal under the QTA's Indian lands exception, but instead argued that the easement made Santa Clara a necessary party under Federal Rule of Civil Procedure 19. *Id.* at 1198. In denying the United States' Rule 19 motion, the Court noted that "for suits challenging title to lands . . .: 'when the United States claims an interest in real property based on that property's status as . . . restricted Indian lands, the Quiet Title Act does not waive the Government's immunity.'" *Id*. at 1052-53 (quoting *Governor of Kan. v. Kempthorne*, 516 F.3d 833, 841 (10th Cir. 2008)), *abrogated on other grounds*, *Kan. ex rel. Kobach v. U.S. Dep't of Interior*, 72 F.4th 1107 (10th Cir. 2023)). The Court held that Santa Clara's absence did not prevent the Court from according complete relief "given that Jemez Pueblo has sued the Valles Caldera's present fee holder, the United States, and . . . **the Indian lands exception to the QTA precludes the Court from entering judgment that would affect Santa Clara Pueblo's conservation and access easement**." *Id.* at 1198 (emphasis added). The Court found significant Jemez's representation that it "'does not make any claim to the . . . easement." *Id.* at 1193. Taken together, it appears that the Court

concluded that the Indian lands exception would bar Jemez's suit to the extent that it sought to dispossess Santa Clara of its easement.

San Felipe, in contrast, seeks the very relief that would have barred Jemez's suit—a judgment that would quiet title in San Felipe against all other parties, including the United States and Santa Ana. It seeks a declaration "that all claims adverse to San Felipe's title are now barred." Compl. at 64. San Felipe seeks nothing less than to divest Santa Ana of Santa Ana's presently recognized Indian title through a judgment declaring "San Felipe's title and right to sole possession" of the Former Overlap Area. *Id*. at 65. San Felipe further explicitly seeks to obtain title "against all adverse claimants, including Santa Ana." *Id*. ¶ 221, *id*. at ¶ 17, 224. In short, San Felipe admits that its claimed interest in the restricted Indian land wholly conflicts with Santa Ana's and that it seeks to divest Santa Ana of that competing title claim. A clearer challenge to Indian title is difficult to imagine. The QTA thus mandates dismissal*Jemez*, 430 F. Supp. 3d at 1198.

San Felipe's claims are likewise akin to a Southern District of California case involving the Mesa Grande and Santa Ysabel Bands of Diegueno Mission Indians. The Mesa Grande Band sought "to have . . . patents – under which the United States is trustee and Santa Ysabel the beneficiary – canceled and reissued to name the United States as trustee and Plaintiff as beneficiary." *Mesa Grande Band*, 657 F. Supp. 2d at 1175. The Court held that it lacked jurisdiction because the QTA's "unambiguous retention of sovereign immunity against quiet-title actions affecting trust and restricted Indian lands applies." *Id*. (citation omitted). As the *Mesa Grande Band* court noted, "allowing Plaintiff or any other litigant to sue the United States to cancel a land patent issued in favor of an Indian tribe would interfere with the United States' trust commitment to that tribe, which is the very reason the United States has retained its

immunity in such matters." *Id*. The QTA's active retention of sovereign immunity thus means that a tribe that disputes title to land held by the United States on behalf of another tribe has a single recourse—Congress. *Id*. (citing *Block,* 461 U.S. at 280).

Because San Felipe seeks to adjudicate the merits of competing title claims, the Indian lands exception prohibits such an inquiry. "Whether the government's claim to the disputed property has merit is irrelevant." *Graham v. United States*, 2022 U.S. Dist. LEXIS 78470, at *9-10 (D. Colo. Apr. 29, 2022). "[T]he United States' 'claim' to Indian trust lands need only be 'colorable' for the United States to invoke sovereign immunity." *N. New Mexicans*, 161 F. Supp. 3d at 1047-1048 (quoting *Iowa Tribe*, 607 F.3d at 1231). Indeed, "the Secretary need only make a colorable claim that the land is held in trust on behalf of an Indian tribe" because the purpose of sovereign immunity "is to prevent a judicial examination of the merits of the government's position." *Iowa Tribe*, 607 F.3d at 1232 (quoting *Wildman*, 827 F.2d at 1309).

San Felipe seeks to do exactly what Congress sought to prevent—judicially divest Santa Ana of its current beneficial title to the Former Overlap Area. But the QTA preserves the United States' sovereign immunity from quiet title suits "**when** they involve Indian lands." *Patchak*, 567 U.S. at 216. San Felipe cannot use other statutes, such as the APA, to "end-run the QTA's limitations." *Id*. at 216. San Felipe's Complaint must thus be dismissed.

D. San Felipe's claims regarding the remainder of the Former Overlap Area are jurisdictionally barred because there is no current dispute that San Felipe owns the portions of Private Claims 4, 5, and 6 that are located within the Former Overlap Area.

In addition to the QTA's Indian lands exception, this Court lacks jurisdiction over San Felipe's claims to the extent that they encompass Private Claims 4, 5, and 6 because there is no current case or controversy regarding that portion of the Former Overlap Area. "The Constitution limits the 'judicial Power of the United States' to 'Cases' or 'Controversies,' U.S.

Const. art. III, §§ 1-2, and the requirements of standing are 'rooted in the traditional understanding of a case or controversy,' . . . 'To state a case or controversy under Article III, a plaintiff must establish standing.'" *Producers of Renewables United for Integrity Truth & Transparency v. EPA*, 2022 U.S. App. LEXIS 4872, *9 (10th Cir. Feb. 23, 2022) (citations omitted). Article III of the Constitution vests this Court with jurisdiction only over a live case or controversy, and thus requires plaintiffs to have "such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination." *N. New Mexicans*, 161 F. Supp. 3d at 1034 (citation omitted). Whether a party has standing under Article III of the U.S. Constitution is a "threshold jurisdictional question" that a court must decide before it may consider the merits. *Steel Co.*, 523 U.S. at 102. A party's standing to sue "constitutes the core of Article III's case-or-controversy requirement, and the party invoking federal jurisdiction bears the burden of establishing its existence." *Id.* at 103-04.

To establish the standing necessary to present a case or controversy, "a plaintiff must show three things: '(1) an injury in fact that is both concrete and particularized as well as actual or imminent; (2) a causal relationship between the injury and the challenged conduct; and (3) a likelihood that the injury would be redressed by a favorable decision.'" *N. New Mexicans*, 161 F. Supp. 3d at 1034 (quoting *Protocols, LLC v. Leavitt*, 549 F.3d 1294, 1298 (10th Cir. 2008)). San Felipe's Complaint highlights that all three standing elements are lacking with respect to Private Claims 4, 5, and 6.

Unlike the majority of the Former Overlap Area, there is no current dispute between San Felipe and the United States that San Felipe owns Private Claims 4, 5, and 6. San Felipe distinguishes its interest in Private Claims 4, 5, and 6 from the remainder of the Former Overlap

Area by alleging that San Felipe's title was acquired through a different process—that San Felipe acquired the land in 1936 "pursuant to the Pueblo Lands Act, and [with funds] appropriated by Congress by the Act of March 4, 1929." Compl. ¶ 126. San Felipe notably does not allege that Federal Defendants recognize Private Claims 4, 5, and 6 as Santa Ana's restricted fee lands. To the contrary, San Felipe attaches a map identifying Private Claims 4, 5, and 6 as part of the "San Felipe Reservation," following BIA's 2013 resurvey. Compl. Ex. B.

San Felipe nonetheless broadly challenges BIA's update of its TAAMS database consistent with the Tompkins Opinion and subsequent resurvey and seeks to quiet title by "restoring the record ownership in the BIA TAAMS to San Felipe." Compl. ¶ 210. But BIA's update excepted the "parcels of land identified as Private Claims (PC) 4, 5, and 6" which "were not transferred to the Pueblo of Santa Ana." November 2017, Mem. (Ex. 2); Compl. ¶ 188.

San Felipe thus fails to allege any injury relating to the Private Claims. And even if the Complaint could be read to allege such an injury, San Felipe cannot carry its burden to prove that injury under Rule 12(b)(1). *Swepi, LP*, 81 F. Supp. 3d at 1148. San Felipe likewise has failed to allege, much less establish, that Federal Defendants' actions caused any injury regarding the Private Claims or that San Felipe's challenge would redress any such injury. In short, this Court cannot "restore" San Felipe as the recorded owner of Private Claims 4, 5, and 6 in TAAMS because TAAMS lists San Felipe as the owner of those portions of the Former Overlap Area.[14]

[14] The QTA and APA impose additional, overlapping jurisdictional bars to claims relating to the Private Claims. *Williams v. Denmar LLC*, 2022 U.S. Dist. LEXIS 48890, at *8 (D. Colo. Mar. 18, 2022) (A QTA plaintiff "must show that the United States has either expressly disputed title or taken action that implicitly disputes it") (citation omitted); *Alaska v. United States*, 201 F.3d 1154, 1164-1165 (9th Cir. 2000) (The QTA's requirement of a title dispute means that the absence of a title dispute presents "an insuperable barrier to jurisdiction" where "the United States reserves the right to start a dispute"); *N. New Mexicans*, 704 F. App'x at 726 ("A party may bring a claim under the APA only if the agency's decision is final.").

E. San Felipe's third and fourth claims must be dismissed because the Declaratory Judgment Act does not waive the United States' sovereign immunity.

San Felipe's third and fourth claims must be dismissed because San Felipe does not allege a waiver of the United States' sovereign immunity. San Felipe's third claim seeks "a judicial declaration that San Felipe's title and right to sole possession of the [Former Overlap Area] . . . [and] that no claims adverse to San Felipe's title and right may be validly asserted." Compl. ¶ 224. San Felipe's fourth claim seeks a judicial declaration that San Felipe breached an alleged "condition for disbursement of [a] tribal trust account" containing escrowed right-of-way funds. *Id*. ¶¶ 225-27.[15] Both claims cite a single statute—the Declaratory Judgment Act, 28 U.S.C. § 2201. *Id*. ¶¶ 218-27. But Section 2201 "is procedural in nature and does not enlarge the jurisdiction of the district courts or waive the sovereign immunity of the United States." *La Casa de Buena Salud*, 2008 U.S. Dist. LEXIS 42352 at *17-20 (collecting cases). San Felipe may not proceed with such a standalone Declaratory Judgment Act claim. *Id*. at *49-50; *Mocek v. Albuquerque*, 2013 U.S. Dist. LEXIS 10676, at *207-08 (D.N.M. Jan. 14, 2013) (Browning, J.); *Ali v. Rumsfeld*, 649 F.3d 762, 778 (D.C. Cir. 2011). San Felipe's third and fourth claims are thus triply barred—in addition to failing to identify the QTA and seeking to quiet title to Indian lands, they do not identify any other waiver of Federal Defendants sovereign immunity.[16]

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[15] The claim appears to seek funds that New Mexico and the Public Service Company of New Mexico ("PSCNM") paid for rights-of-way through the Former Overlap Area. Compl. ¶¶ 131-48. Interior held those funds in an escrow account until it determined that Santa Ana was the owner of the Former Overlap Area, and then disbursed the funds to Santa Ana following Santa Ana's request for disbursement of its funds. *Id*. ¶ 190.

[16] The QTA bars all of San Felipe's claims. But if it did not, the claims could proceed only under the APA, as San Felipe's first two claims identify the APA as a waiver of Defendants' sovereign immunity. *See La Casa de Buena Salud,* 2008 U.S. Dist. LEXIS 42352 at *49.

San Felipe's effort to obtain a declaratory judgment that Federal Defendants owe San Felipe a trust duty relating to the right-of-way payments without invoking a single statute other than the Declaratory Judgment Act is particularly misplaced. "To maintain [a breach of trust] claim here, the Tribe must establish, among other things, that the text of a treaty, statute, or regulation imposed certain duties on the United States." *Arizona v. Navajo Nation*, 143 S. Ct. 1804, 1813 (2023). And "unless Congress has created a conventional trust relationship with a tribe as to a particular trust asset" by imposing specific statutory duties, courts will not infer any additional common law trust duties. *Id*. at 1814. This Court lacks jurisdiction because San Felipe's fourth claim identifies no statute, much less any statute that imposed a relevant trust duty on behalf of San Felipe.

II. San Felipe fails to state a claim for a trust accounting because San Felipe alleges that it has more than enough information to satisfy any potential accounting duty.

San Felipe cites no statute imposing on Federal Defendants any accounting duty to San Felipe relating to Santa Ana's funds, including a duty to notify San Felipe prior to granting Santa Ana's request to disburse the funds. Thus, no such duty exists. *See Navajo Nation*, 143 S. Ct. at 1813. In any event, San Felipe's fifth claim should also be dismissed under Rule 12(b)(6) because it seeks an accounting despite San Felipe alleging that it knows exactly what happened to the funds at issue.

San Felipe invokes 25 U.S.C. § 4011 as the basis for its accounting claims. Compl. ¶ 232. The Tenth Circuit directly addressed the accounting owed under Section 4011 to individuals holding Osage Nation mineral headrights. *Fletcher v. United States ("Fletcher II")*, 730 F.3d 1206, 1213 (10th Cir. 2013). Unlike here, the plaintiffs in *Fletcher* had a then-current beneficial interest in the trust corpus, and the accounts at issue in *Fletcher* generated thousands of receipts

and disbursements over more than 100 years. *Fletcher v. United States ("Fletcher IV")*, 854 F.3d 1201, 1203, 1207 (10th Cir. 2017). Even so, the Tenth Circuit "cautioned that the accounting should not be a 'green eye-shade death march through every line of every account over the last one hundred years.'" *Id.* at 1204 (quoting *Fletcher II*, 730 F.3d at 1214). To the contrary, even trust beneficiaries "are not entitled to information that only loosely relates to their own personal beneficial interests, or to information that is unlikely (because it is . . . so *de minimis*, say) to have a meaningful effect on their beneficial interests." *Fletcher II*, 730 F.3d at 1215. Thus, even if Federal Defendants had a duty provide San Felipe an accounting, that accounting need only "give some sense of where money has come from and gone to." *Id*.

Put another way, an accounting is unnecessary and inappropriate where a plaintiff has all the information it needs to determine whether it suffered an alleged loss. *Wolfchild v. United States*, 731 F.3d 1280, 1291 (Fed. Cir. 2013). Even under the common law—which does not apply here, *United States v. Jicarilla Apache Nation*, 564 U.S. 162, 175-77 (2011)—"'[a] suit for an accounting will not lie where it appears from the complaint that none is necessary or that there is an adequate remedy at law.'" *Ginocchi v. Grand Home Holdings, Inc.*, No. 10cv2115-L(BGS), 2011 U.S. Dist. LEXIS 88108, at *7 (S.D. Cal. Aug. 8, 2011) (citations omitted); *Lewis v. Ben. Cal., Inc.*, No. 4:17-cv-03575-KAW, 2018 U.S. Dist. LEXIS 199771, at *15-16 (N.D. Cal. Nov. 26, 2018) ("[A]ccounting claim fails as a matter of law" where "Plaintiff did not proffer sufficient factual allegations that would give rise to an independent accounting claim.").[17]

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[17] Again, San Felipe cites no statue imposing any accounting duty to San Felipe relating to Santa Ana's funds, including a duty to notify San Felipe prior to granting Santa Ana's request to disburse the funds. Thus, no such duty exists. *Navajo Nation*, 143 S. Ct. at 1813.

San Felipe alleges that it already has more than enough information to constitute any required accounting. San Felipe alleges that in 1980, over its objection, BIA "withheld $189,200 [from a payment for a right-of-way through both San Felipe's lands and the Former Overlap Area] 'to Escrow pending settlement of dispute re Santa Ana/San Felipe Overlap.'" Compl. ¶¶ 136-37. San Felipe challenged Interior's decision to place the funds associated with the Former Overlap Area in escrow and the Tenth Circuit affirmed Interior's decision. *Id*. ¶¶ 144-45 (quoting *San Felipe*, 770 F.2d at 917).[18] San Felipe alleges that pursuant to a "June 13, 1989 . . . easement to" PSCNM that encompassed the Former Overlap Area, BIA deposited an additional $2,061.92 into the same account. *Id*. ¶ 147. San Felipe admits that Interior disbursed the account's "entire balance . . . , which amounted to approximately $1.6 million" on January 11, 2018, after resolving the ownership dispute over the Former Overlap Area. *Id*. ¶¶ 190, 226. Finally, San Felipe admits that Federal Defendants "notif[ied] San Felipe of . . . actions disbursing the trust account funds to Santa Ana [by] letter of April 18, 2018." *Id*. ¶ 191. To be clear, San Felipe alleges that it knows, based in part on documents provided by BIA on April 18 and November 8, 2018: 1) the date of the two payments into the account; 2) the amounts of those payments; 3) the basis for the payments; 4) the date of disbursement; 5) the amount of the "entire balance" that was disbursed; 6) that the funds were disbursed to Santa Ana; 7) the basis for disbursing the funds to Santa Ana. *Id*. ¶¶ 191, 226.

San Felipe thus alleges that it knows exactly how the funds derived from the Former Overlap Area were managed from the initial right-of-way payment through the escrow account's termination and received sufficient information from Federal Defendants by April 18, 2018 to

[18] The Tenth Circuit rejected San Felipe's request to "dissolve the escrow agreement and obtain possession of the proceeds." *San Felipe*, 770 F.2d at 917.

challenge the disbursement based on its claims. Under Tenth Circuit precedent, San Felipe's allegations establish that Federal Defendants met any duty to provide San Felipe an accounting by "giv[ing] some sense of where money has come from and gone to." *Fletcher IV*, 730 F.3d at 1206. Lest there be any doubt that San Felipe has received a sufficient accounting, San Felipe describes the purported accounting duty (San Felipe is not a beneficiary of Santa Ana's lands) as requiring information regarding: "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." Compl. ¶ 232. San Felipe alleges that it has all of the above, with the possible exception of an "annual audit" that is made unnecessary by San Felipe's allegations that the funds were wrongfully paid to Santa Ana. Pages 6-8, 32-33, above. San Felipe's allegations render an accounting unnecessary and require dismissal of San Felipe's accounting claims.[19]

[19] To the extent that San Felipe alleges, Compl. ¶¶ 229-34, that 25 U.S.C. § 162a(d) imposes an independent accounting duty, it is incorrect. Section 162a(d) is only relevant to any accounting duty because Section 4011 provides that "[t]he Secretary shall account for the daily and annual balance of all funds held in trust by the United States for the benefit of an Indian tribe or an individual Indian which are deposited or invested pursuant to section 162a of this title." 25 U.S.C. § 4011(a). Section 162a(d) enumerates certain "trust responsibilities," including "[p]roviding adequate systems for accounting," "preparing and supplying account holders with periodic statements of their account performance," and "establishing consistent, written policies and procedures for trust fund management and accounting." 162a(d)(1), (5), (6). The D.C. Circuit indicated Section 162a(d) likely does not create any enforceable trust duties by listing these "trust responsibilities." *See Cobell v. Norton*, 240 F.3d 1081, 1105 (D.C. Cir. 2001) ("There may not literally be a duty to have such written policies and procedures."). The Tenth Circuit declined to address whether Section 162a(d) imposed any additional enforceable duties, suggesting that Section 4011 subsumes any duties that Section 162a(d) might impose. *Fletcher II*, 730 F.3d at 1212. And the Supreme Court has indicated that Section 162a(d) does not impose far-reaching "common-law disclosure obligations" 564 U.S. at 184-85. In any event, the items listed in 162a(d) are programmatic in nature, and therefore cannot be compelled. *Norton v. S. Utah Wilderness All.*, 542 U.S. 55, 64 (2004); *Ramirez v. U.S. Immigr. & Customs Enf't*, 310 F. Supp. 3d 7, 21 (D.D.C. 2018). Most significantly for this motion to dismiss, San Felipe does not allege how Section 162a(d) imposes any independent accounting duty, much less how Federal Defendants breached that duty.

CONCLUSION

San Felipe's claims should be dismissed because they seek to quiet title to Santa Ana's restricted fee lands in which the United States claims an interest. The QTA's Indian lands exception therefore jurisdictionally bars San Felipe's claims to the Former Overlap Area. And to the extent that San Felipe seeks to quiet title to Private Claims 4, 5, and 6, this Court lacks jurisdiction because Federal Defendants do not currently dispute that San Felipe owns those portions of the Former Overlap Area, and thus no justiciable case or controversy exists. San Felipe's third and fourth claims are also barred because the Declaratory Judgment Act does not waive Federal Defendants' sovereign immunity and does not support such standalone claims. Finally, San Felipe fails to state a claim for an accounting, as it alleges that BIA provided it with the information necessary to meet the any potentially appliable accounting duty. Federal Defendants therefore respectfully request the Court dismiss Plaintiff's Complaint in its entirety.

Respectfully submitted this 18th day of August, 2023,

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CERTIFICATE OF SERVICE

I hereby certify that on August 18, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the ECF registrants in this case.

*/s/ Matthew Marinelli*__________________
Matthew Marinelli