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, et al., *Defendants.*	**Case No. 1:23-cv-296 (JB)(LF)**

OPPOSITION TO SANTA ANA PUEBLO'S MOTION FOR LIMITED INTERVENTION AS OF RIGHT IN ORDER TO FILE MOTION TO DISMISS

I. Introduction and Background

This action involves Pueblo of San Felipe's ("San Felipe") challenge to certain actions of the Federal Defendants and the consequences that have flowed from those actions. In particular, San Felipe's Complaint challenges the Federal Defendants' authority to conduct a resurvey in order to change the location of the southern boundary of the federal land patent issued to San Felipe in 1864.

In addition, this action challenges the Federal Defendants' reliance on the unlawful resurvey of the boundaries of lands patented to San Felipe in 1864, the title to which was quieted by this Court in *United States v. Algodones Land Co.*, to switch the record ownership of those lands from San Felipe to Santa Ana Pueblo ("Santa Ana") in the BIA TAAMS[1] system. *See* 52

[1] "TAAMS" means the Trust Asset and Accounting Management System, which the Department of the Interior uses for land management.

F.2d 359 (10th Cir. 1931), *see* Compl. at ¶ 114-117, Doc. 1 at 33, 35. Finally, San Felipe challenges a third action by Defendants to release IIM[2] account funds held in escrow to Santa Ana.

Santa Ana seeks to intervene in this action as a matter of right under Federal Rule of Civil Procedure 24(a)(2). Despite Santa Ana's arguments attempting to establish that it holds a superior substantive claim to the property impacted by the Federal Defendants' unlawful actions, these arguments are largely, if not entirely, irrelevant to whether Santa Ana qualifies for intervention as a matter of right. For the reasons explained below, San Felipe respectfully requests that the Court deny Santa Ana's motion to intervene as a matter of right under Rule 24(a)(2) – the only basis for intervention asserted.

II. Intervention Under Rule 24(a).

"Rule 24(a)(2) provides for intervention as of right by anyone who in a timely motion 'claims an interest relating to the property or transaction that is the subject of the action and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.'" *WildEarth Guardians v. U.S. Forest Service*, 573 F.3d 992, 995 (10th Cir. 2009) (quoting Fed.R.Civ.P. 24(a)(2)). An applicant may intervene as of right if: (1) the application is "timely"; (2) "the applicant claims an interest relating to the property or transaction which is the subject of the action"; (3) the applicant's interest "may as a practical matter" be "impair[ed] or impede[d]"; and (4) "the applicant's interest is [not] adequately represented by existing parties." *Coal. of Arizona/New Mexico Ctys. for Stable Econ. Growth v. Dep't of Interior*, 100 F.3d 837, 840 (10th Cir. 1996). Courts generally take a liberal approach to intervention. *Utah Ass'n of Counties v.*

[2] "IIM" means an Individual Indian Money account, a type of trust account managed by the Department of the Interior.

Clinton, 255 F.3d 1246, 1249 (10th Cir.2001); *WildEarth Guardians* at 995. However, intervention is not automatic upon application, and if an applicant fails to meet any of the four articulated requirements, intervention under Rule 24(a) must be denied. *See San Juan County, Utah v. United States*, 503 F.3d 1163, 1203 (10th Cir. 2007) (noting that if an applicant for intervention fails to satisfy a single requirement, it is not entitled to intervene as a matter of right and denying intervention because the applicant's interests were adequately represented), *abrogated on other grounds by Hollingsworth v. Perry*, 570 U.S. 693 (2013).

A. Timeliness of Santa Ana's Application

Courts assess timeliness "in light of all of the circumstances, including the length of time since the applicant knew of his interest in the case, prejudice to the existing parties, prejudice to the applicant, and the existence of unusual circumstances." *Utah Ass'n of Counties v. Clinton*, 255 F.3d 1246, 1250 (10th Cir. 2001) (quoting *Sanguine, Ltd. v. United States Department of Interior*, 736 F.2d 1416, 1418 (10th Cir. 1984)). While Santa Ana has known of its interest for months and appears to have timed its motion to intervene strategically to coincide with San Felipe's briefing obligations in relation to the Federal Defendants' motion to dismiss, there is an inconvenience, but no extreme prejudice to San Felipe arising from the timing of Santa Ana's application for limited intervention.

B. Santa Ana's Interest in the Subject of the Action.

There is no question that Santa Ana claims "an interest" in this litigation. Denying that Santa Ana has an interest would be disingenuous as no single entity could benefit more from the Federal Defendants' improper and void actions than Santa Ana Pueblo. However, being an interested party, standing alone, is not sufficient grounds for intervention of right.

Notwithstanding the foregoing, Santa Ana does not have an interest in the Second, Fourth and Fifth Claims challenging the Federal Defendants' distribution of the IIM account. San

Felipe does not ask Defendants to recoup the distributed funds from Santa Ana. Certainly, if Plaintiff prevails in this case, and the Defendants take a subsequent action to recoup funds from Santa Ana, Santa Ana would be able to defend against any action the United States brought against it, or could pursue a separate cause of action against the Defendants. *See generally United States v. Mitchell*, 463 U.S. 206, 228 (1983).

Further, and notwithstanding that Santa Ana asserts "an interest," as described above, Santa Ana has no legally cognizable interest in claiming title to lands in the Conflict Area. Santa Ana asserts that its interest is an interest in "title" to lands within the Conflict Area patented to San Felipe. Mtn. to Intervene, Doc. 32 at 2-3. Santa Ana concedes that it must establish Article III standing to establish a right to intervene in this action. Doc. 32 at 6. Santa Ana's asserted interests do not establish Article III standing, because its asserted interest is not legally cognizable. Any right of Santa Ana to assert a claim to the Conflict Area was foreclosed long ago. *See* Compl. ¶¶ 92-97, 105-109, 120-125, 127; *United States v. Brown*, No. 1814 (D.N.M. May 31, 1931); *United States v. Algodones Land Co.*, No. 1870 (D.N.M Apr. 22, 1930). Santa Ana's right to assert "title" to San Felipe patented lands within the Conflict Area based on allegations of fact predating the Tenth Circuit's decisions in *Algodones* and *Brown* was extinguished under the Pueblo Lands Act when Santa Ana did not bring any action before the statute of limitations expired on May 31, 1934. *United States v. Thompson*, 941 F.2d 1074, 1081 (10th Cir. 1991). Santa Ana's own failure to join and challenge the quiet title action in *Algodones*, and subsequent failure to bring an independent action under the Pueblo Lands Act challenging the United States decision in *Brown*, quieting title in Santa Ana only in the portion of the El Ranchito tract that did not conflict with the San Felipe patent, before the statute of limitations to do so had run in 1934, should not now be used to permit Santa Ana to claim an

actual legal interest in the subject lands that requires this Court to permit Santa Ana to intervene as a matter of right.

When a person "is not himself the object of the government action or inaction he challenges, standing is not precluded, but it is ordinarily 'substantially more difficult' to establish." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 562 (1992) (citations omitted). "In the context of Article III standing, the injury at play is that which 'it takes to make a justiciable case.'" *Id.* at 102 (citation omitted). *Kane Cnty., Utah (2), (3), & (4) v. United States*, 333 F.R.D. 225, 234 (D. Utah 2019), *citing Steel Co. v. Citizens for a Better Env't,* 523 U.S. 83, 103, 118 (1998) (internal citations omitted). Santa Ana's claim to "title" to property does not meet the requirement of redressability because its claims to title asserted in the Motion to Intervene were extinguished under the Pueblo Lands Act when the statute of limitations ran on May 31, 1934. Santa Ana had a right under Section 4 of the Pueblo Lands Act to prosecute an independent suit asserting a claim to title to San Felipe's patented lands "prior to the filing of the field notes and plats as provided in Section 13… ." Compl. at ¶¶ 92, 94, Doc. 1 at 26-27. The statute of limitations to bring such claims was extended by Congress to May 31, 1934 in the Act of May 31, 1933, c. 45, § 6. Compl. at ¶ 103, Doc. 1 at 30. In addition, Santa Ana had a right to intervene in the *Algodones* case under Section 12 of the Pueblo Lands Act when *Algodones* was pending before this Court. Compl. at ¶ 93, Doc. 1 at 27. Its failure to do either precludes assertion of a claim to title now.

Santa Ana's interest in the Defendants' actions that are the subject of this suit – the resurvey and subsequent action of the Defendants to alter its TAAMS records – is no broader than the Defendants' interests in defending their actions. Just as in *Kane*, Santa Ana Pueblo "certainly wants the United States to prevail so it can continue its land use objectives without

Plaintiffs' involvement, but land use issues are for another day and in another arena." *Kane Cnty.* at 234. That day has passed.

C. Impairment or Impediment to Santa Ana's Interest.

Whether, as a practical matter, resolution of this action without allowing intervention threatens Santa Ana's ability to protect its legally cognizable interest is a difficult issue for Santa Ana. The Tenth Circuit has held that, if a party would not be bound by a judgment in a way that would preclude it from bringing its claims in a separate action, there is not an impairment of the proposed intervenors' ability to protect its interest. *Babcock & Wilcox Co. v. Parsons Corp.*, 430 F.2d 531 (10th Cir. 1970.)

San Felipe's Complaint, as discussed, challenges the Federal Defendants' authority under federal law to conduct the resurvey that led to the boundary change and the action purporting to transfer title to San Felipe's patented lands within the Conflict Area in the BIA TAAMS system. Under longstanding law, the authority to alter the boundary between the pueblos lies solely with Congress. *United States v. Conway*, 175 U.S. 60, 67 (1899). That being the case, even if San Felipe were to prevail, Santa Ana could always petition Congress to seek correction of the Pueblo boundaries through proper channels.

To the extent Santa Ana Pueblo may be attempting to allege that "San Felipe does not now and never has had title to those portions of [Private Claims 4, 5 and 6]," as a result of the resurvey where the Defendants did not take an action to alter ownership of those tracts in the BIA TAAMS system, that claim is not rightly before this Court for the reasons set forth in Section D, and cannot therefore form the basis for a right to intervene. *See* Santa Ana Pueblo Mtn. to Intervene, Doc. 32 at 12.

In addition, as discussed in Section B, Santa Ana has no interest in San Felipe's challenge to the IIM escrow account distribution, which seeks only replenishment by Federal Defendants

and makes no claim against Santa Ana. Therefore, the Second, Fourth and Fifth claims for relief concerning the IIM account will not impair or impede any interest of Santa Ana.

D. Adequacy of Representation.

The biggest hurdle for Santa Ana, which it cannot overcome, is satisfying the requirement of showing that its interests are not adequately represented by one of the existing parties – in this instance, the Federal Defendants. Here, Santa Ana's ability to intervene in this action hinges on whether the United States adequately represents Santa Ana's interests. As Santa Ana indicates, the burden to satisfy the condition of inadequate representation is minimal, and the chance of divergence of interest need not be great for an applicant to satisfy its burden. *WildEarth Guardians*, 573 F.3d at 996. However, what Santa Ana does not discuss is that this Court presumes representation is adequate when "the objective of the applicant for intervention is identical to that of one of the parties[.]" *Tri-State Generation & Transmission Ass'n, Inc. v. New Mexico Pub. Regulation Comm'n*, 787 F.3d 1068, 1072 (10th Cir. 2015); *see also Tudor Ins. Co. v. 1st Nat. Title Ins. Agency, LLC*, 281 F.R.D. 513, 519 (D. Utah).

Here, San Felipe's claims rise or fall on the primary issue of whether the Federal Defendants' action altering the pueblos' common boundary was beyond their lawful authority, as well as whether subsequently transferring the record title and distributing IIM account funds, were also outside of their lawful authority under the circumstances. Santa Ana and the Federal Defendants share the identical objective of defending and upholding the Federal Defendant's actions. Indeed, the weight of Santa Ana's argument focuses almost exclusively on defending the Federal Defendants' decision. Doc. 32 at 3-5.

As Santa Ana readily acknowledges, the Federal Defendants have a significant interest in defending their actions. Doc. 32 at 3. And in fact, the Federal Defendants are actively and vigorously defending their actions. Doc 32 at 4 (noting Santa Ana's agreement with most of the

grounds for dismissal the Federal Defendants have raised). This is important because, as Santa Ana acknowledges, the injury it seeks to avoid "will be prevented, and Santa Ana will retain unfettered possession of [the] land, if the federal actions under attack in the Complaint are upheld." Doc. 32 at 7. Put differently, Santa Ana's claims rise and fall on whether the Federal Defendants' actions were lawful. The Federal Defendants are the only parties necessary to defend their actions. And, as addressed, the Federal Defendants are pursuing the defense vigorously. Doc. 29.

An applicant with an objective identical to an existing party can overcome the presumption of adequate representation under only limited circumstances. To overcome the presumption, the applicant must make a "concrete showing of circumstances" that the Federal Defendants' representation is inadequate. *Tri-State Generation*, 787 F.3d at 1073. Circumstances giving rise to inadequate representation "include a 'showing that there is collusion between the representative and an opposing party, that the representative has an interest adverse to the applicant, or that the representative failed to represent the applicant's interests.'" *Id.* (quoting *Bottoms v. Dresser Indus., Inc.*, 792 F.2d 869, 872 (10th Cir. 1986).

Here, Santa Ana cannot claim that the Federal Defendants are colluding with San Felipe—as San Felipe explains in its Complaint, quite the opposite is true. Doc. 1 at 45-51. Nor does Santa Ana claim that the Federal Defendants are not representing Santa Ana's interest by failing to defend actions that gave rise to San Felipe's Complaint. Instead, Santa Ana relies on a misplaced theory that the Federal Defendants cannot simultaneously represent the interest of the general public and the interests of a private party seeking intervention. Doc. 32 at 10. Additionally, Santa Ana asserts an unsustainable argument that the Federal Defendants have taken a position adverse to Santa Ana through statements "indicating that the United States

'recognizes' that San Felipe retains title to portions of Private Claims 4, 5, and 6 that extend into the Former Overlap." Doc. 32 at 10-11. As implied, Santa Ana's first position is misplaced, and its second is factually unsustainable.

As Santa Ana suggests, when a governmental agency seeks to represent both the interests of the general public and the interests of a private party seeking intervention, courts "have repeatedly found representation inadequate for purposes of Rule 24(a)(2)." *Tri-State Generation*, 787 F.3d at 1072. Representation is inadequate in such a case because when representing the interests of the public at large, the government is "obligated to consider a broad spectrum of views, many of which may conflict with the particular interests of the would-be intervenor." *Id.* (quoting *Utah Ass'n of Counties v. Clinton*, 255 F.3d 1246, 1256 (10th Cir. 2001)). In such a case, "the government's prospective task of protecting 'not only the interest of the public but also the private interests of the petitioners in intervention' is 'on its face impossible' and create the kind of conflict that 'satisfies the minimal burden of showing inadequacy of representation.'" *Tri-State Generation*, 787 F.3d at 1072 (quoting *Clinton*, 255 F.3d at 1256).

However, the Tenth Circuit has explained that these "public vs. private interests" considerations are inapplicable when the would-be intervenor's and the government's objectives are identical—which they are here. And, as the Tenth Circuit has further explained, the considerations do not apply in cases presenting a "binary" issue that does not require the government to strike a balance between interests. *Tri-State Generation*, 787 F.3d at 1073.

The cases Santa Ana cites in support of its claim that the Federal Defendants do not adequately represent Santa Ana's interests are inapplicable here. Each provides a classic example of the government being torn between its obligations to various components of society on policy matters affecting the public at large—something that is not present here. For example, *Western*

Energy Alliance v. Zinke involved a challenge to the Bureau of Land Management's ("BLM") decision to develop a new federal oil and gas leasing policy. 877 F.3d 1157, 1162 (10th Cir. 2017). Specifically, energy developers seeking to secure leases argued that the BLM's newly adopted policies resulted in fewer annual oil and gas lease sales than required under existing federal law. *Id*. at 1163.

On appeal, the Tenth Circuit Court of Appeals determined that the government could not adequately represent the intervenor environmental groups' interests, because the BLM was charged with managing federal lands under a "multiple use" standard, which put the BLM in the position of having to consider and balance wide-ranging and conflicting interests when it made policy decisions entrusted to it. *Id.* at 1169. In addition, the Court noted that the government's position concerning its leasing policy was subject to swift changes that could result from a change in administration. *Id*. Accordingly, because the government was caught between parties in terms of the various interests it was statutorily obligated to represent, and because its position on policy issues was subject to change, even during the pending litigation, the government could not adequately represent the intervenors' interests. *Id*. at 1169-70.

However, in *Western Energy Alliance*, the Tenth Circuit explained that when a case presents only a single issue on which the government's position is quite clear, and no evidence suggests that position might be subject to change in the future, then representation may be adequate." *Id*. at 1168, citing *Kane Cty., Utah v. United States*, 597 F.3d 1129, 1134-35 (10th Cir. 2010).[3]

[3] Santa Ana cites a number of cases for the presumed proposition that in any action where the government is a defendant, the government can never adequately represent the interests of proposed intervenors due to the government's wide-ranging responsibilities to competing interests. Doc. 32 at 11. These cases, which include *SWEPI, LP v. Mora County, N.M.*, No. CIV 14-0035 JB/SCY, 2014 WL 6983288 at *23-24 (D.N.M. Dec. 5, 2014), *Utah Assoc. of Cities v.*

Here, the general public has no interest in the outcome of San Felipe's challenge to the Federal Defendant's actions. No public interests come into this dispute, and the federal government has no obligation to consider a broad spectrum of views. To the contrary, this case challenges the Federal Defendants' authority to resurvey the Conflict Area and to take actions concerning San Felipe's patented land within the Conflict Area based upon a resurvey that San Felipe contends was unlawful in the first instance. Accordingly, at most, San Felipe's Complaint raises a "binary" issue that does not require the government to strike a balance between outside interests. Consequently, under recent Tenth Circuit precedent, even if Santa Ana is interested in the subject matter of this action, the Federal Defendants completely and adequately represent that interest. *Tri-State Generation*, 787 F.3d at 1073.

While there is no question that the Federal Defendants had a trust responsibility to Santa Ana and San Felipe when they initiated the actions at the core of this dispute, the Federal Defendants have openly disavowed any duty they owe San Felipe in favor of Santa Ana with respect to the boundary between the pueblos, the action to switch the title of the San Felipe patented lands to Santa Ana in the BIA TAAMS system, and the action to disburse IIM escrow account funds to Santa Ana. The primary issue in this case is whether the Federal Defendants had the authority – under federal law – to take the actions they did. With respect to those actions, there are no colorable arguments that the Defendants are not adequately representing Santa Ana's interests.

Clinton, 255 F.3d 1246, 1255-56 (10th Cir. 2001), and *WildEarth Guardians*, 573 F.3d at 994-97, do not stand for this proposition. They do not declare the bright line rule Santa Ana suggests. Even if they did, each of these cases predates the 10th Circuit's decisions in *Western Energy Alliance* and *Tri-State Generation* both of which, as discussed, express a very clear rule that the government adequately represents all interests in actions raising singular or binary issues that do not implicate the government's obligations to a multitude of parties holding varied interests. *Western Energy Alliance*, 877 F.3d at 1198; *Tri-State Generation*, 787 F.3d at 1073.

To force its way into this case, Santa Ana insinuates that in this litigation, the Federal Defendants have already taken a position contrary to Santa Ana's regarding title to Private Claims 4, 5, and 6. Santa Ana Pueblo Mtn. to Intervene, Doc. 32 at 11. Specifically, Santa Ana takes issue with the Federal Defendants' statement that "the United States 'recognizes' that San Felipe retains title to the portions of Private Claims 4, 5 and 6 that extend into the [Conflict Area.]" *Id*. (*citing* Def. Mtn. to Dismiss, Doc. 29 at 2). Santa Ana takes issue with this statement because, as Santa Ana indicates, it erroneously believes that San Felipe has never held legal title to Private Claims 4, 5, and 6. *Id*. at 12. Title to Private Claims 4, 5 and 6 cannot be at issue here because the action San Felipe challenges – the unlawful resurvey and arbitrary relocation of geographic *boundaries* of the Pueblos – did not purport to determine ownership of Private Claims 4, 5 and 6. The Federal Defendants have taken no action to determine such ownership.

On January 31, 2014, the Chief Cadastral Surveyor for New Mexico issued a plat map of the dependent resurvey of the boundary between the Pueblos. A complete and correct copy of the plat map is attached as **Exhibit 1**. Sheet one of the plat map clearly identifies the boundaries of Private Claims 4, 5, and 6. Notably, sheet two of the plat map is dedicated to showing these Private Claims in fuller detail.

The IBLA has confirmed that the resurvey did not adjudicate or otherwise determine title to the Conflict Area, including Private Claims 4, 5, and 6. As the IBLA stated:

> We are also barred from adjudicating claims of title to the disputed lands since, in its undertaking, and approving the corrective resurvey, BLM did not purport to adjudicate competing claims to title of such lands, nor did the State Director purport to determine title in adjudicating [Pueblo of San Felipe's] protest to the proposed official filing of the survey.

Pueblo of San Felipe, 190 IBLA 17, 30.

The Federal Defendants confirmed that as part of the resurveying process, the Federal Defendants took no action to determine title to the Conflict Area, including Private Claims 4, 5,

and 6, which the Federal Defendants have consistently recognized as being titled to Pueblo of San Felipe. Def. Motion to Dismiss, Doc. 29 at 2. The Federal Defendants confirmed that the "Federal Defendants' challenged actions did not transfer [Private Claims 4, 5, and 6] to Santa Ana Pueblo." Again, on page 9 of the Motion to Dismiss, the Federal Defendants confirm that Private Claims 4, 5, and 6 "were not transferred to the Pueblo of Santa Ana Pueblo." Doc. 29 at 9 (*citing* U.S. Dept. of Interior, Mem. Re: Request by the Pueblo of Santa Ana Pueblo for Release of Right-of-Way Comp. Funds Held in Escrow). And finally, the Federal Defendants again make clear that as part of the resurvey and boundary relocation, Private Claims 4, 5, and 6 "were not transferred to the Pueblo of Santa Ana Pueblo." Doc. 29 at 28. Title to Private Claims 4, 5 and 6 was vested in Pueblo of San Felipe when these lands were repurchased under Section 19 of the Pueblo Lands Act, with funds appropriated under the Act of March 4, 1929 (45 Stat. 636) and the Act of June 7, 1924 (43 Stat. 636). A warranty deed was issued by Louis Ilfeld to San Felipe on Private Claims 4, 5 and 6 on December 30, 1936. Compl. at ¶ 126, Doc. 1 at 9.

Put plainly, even though the Federal Defendants' position concerning Private Claims 4, 5, and 6 may cause Santa Ana Pueblo displeasure, it does not support their claim that the Federal Defendants do not adequately represent Santa Ana's interest in this action. This case challenges the actions the Federal Defendants *did take*. It does not challenge the actions Santa Ana *wishes* the Federal Defendants would have taken. Despite Santa Ana's wishes, the Federal Defendants did not transfer title to Private Claims 4, 5, and 6 to Santa Ana. Accordingly, because the Federal Defendants took no action regarding the ownership of those parcels, the issue of title or ownership of those parcels is not part of this lawsuit. Therefore, the Federal Defendants' failure to represent Santa Ana Pueblo on an issue *that is not at issue in this case* cannot form the basis

for claiming inadequacy of representation that would support intervention under Federal Rule 24(a)(2).

In reality, what Santa Ana appears to be doing is attempting to bring the dispute over ownership of Private Claims 4, 5, and 6 into this action through the back door. A motion to intervene is not the proper key to that door. And a claim that the Federal Defendants do not adequately represent Santa Ana on that issue is immaterial because that issue is not part of this action.

E. Allowing Intervention would work an Extreme Prejudice to Pueblo of San Felipe

In its application to intervene, Santa Ana Pueblo proposes to join this case for one reason—to seek dismissal based on Santa Ana's sovereign immunity from suit. Santa Ana's position is troubling. The presumptive reason Santa Ana pursued its claim through an administrative process infected with illegality was because Santa Ana knew that the statute of limitations to bring its own suit expired on May 31, 1934, and it could not otherwise bring an action directly against Pueblo of San Felipe due to Pueblo of San Felipe's immunity from suit. Now that Santa Ana believes it has achieved its goal through Defendants void illegal actions, it seeks to prevent, through its planned invocation of immunity, San Felipe from unraveling the wrongs San Felipe has suffered from Defendants' actions. Allowing Santa Ana to proceed in such a fashion would leave San Felipe without meaningful recourse.

III. CONCLUSION

For the reasons set forth above, San Felipe respectfully requests that the Court deny Santa Ana's application to intervene as a matter of right. Santa Ana has no legally cognizable interests in this action that the Federal Defendants do not fully and adequately represent. Consequently,

Santa Ana Pueblo does not, and cannot, satisfy the requirements for intervention as a matter of right.

Respectfully submitted this 22nd day of September, 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