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-00296-JB-LF

PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

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INTRODUCTION

Pueblo of San Felipe ("San Felipe") challenges the Department of the Interior ("Department") officials' decision to change the congressionally and judicially confirmed southern boundary of San Felipe's 1864 federal land patent, and actions flowing from that decision, including the officials' actions to change the record of ownership in the BIA TAAMS[1] without notice to San Felipe and, again without notice, to improperly disburse to a third party trust funds derived from lands impacted by the boundary change. The Department altered the boundary based on an unfounded belief that the third party had a stronger claim to land within San Felipe's confirmed patent. In taking these actions, the officials misrepresented or ignored records showing the third party's claim was rejected over a century ago in 1897, the claimed land was excluded from the third party's patent in 1909, title to the land was quieted in San Felipe in 1931, and the third party's claim was barred by Congress as of 1934.

The Department's actions to alter San Felipe's southern boundary are void. Department officials lacked legal authority to change confirmed patent boundaries. Lacking authority to alter the boundaries of San Felipe's patent, Department officials also lacked authority to disburse funds from the trust account to anyone other than San Felipe. Contrary to the Defendants' narrative in their motion to dismiss ("Motion," ECF No. 29), San Felipe challenges the Department officials' actions under the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 701-706, and its disbursement of the trust fund additionally under federal common law on trusts and the American Indian Trust Fund Management Reform Act ("Trust Reform Act"), Pub. L. No. 103-412, 108 Stat.

[1] TAAMS stands for "Trust Asset and Accounting Management System." It is wholly unclear what Defendants actually changed by changing record ownership in TAAMS.

4239 (Oct. 25, 1994).

This is not a quiet title action—rather, as detailed herein, San Felipe's grant is protected by treaty, confirmed by Congress, patented by the President, safeguarded again by the Private Land Claims Act ("PLC Act") and the Court of Private Land Claims ("PLC Court"), and finally, under the Pueblo Lands Act ("PLA"), quieted for all time against all then-existing claims, and placed in restricted fee status to ensure San Felipe's ownership of all the remaining lands within its patent, permanently. Every action the Defendants have taken to impair San Felipe's rights in its land, and any such action they contemplate taking, is without authority and therefore is void. For these and the reasons set forth herein, the Defendants' claim of immunity is without force.

BACKGROUND

I. No overlap has ever existed between the San Felipe Patent and the El Ranchito Patent as a matter of fact and law.

A. The San Felipe grant is confirmed, surveyed, and patented.

San Felipe, a federally recognized Indian tribe that has occupied the Conflict Area[2] since time immemorial, established its contemporary title through a 1689 Spanish land grant confirmed by the United States under the Treaty of Guadalupe Hildalgo. Complaint ("Compl.," ECF No. 1) ¶¶ 7, 20-32. In 1854, Congress created the Office of the Surveyor General of New Mexico to evaluate land claims based on Spanish and Mexican laws. *Id.* ¶ 24. The Surveyor General's duties included ascertaining the validity of these claims and reporting to Congress. Act of July 22, 1854, c. 103, § 8, 10 Stat. 308, 309.

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[2] "Conflict Area" refers to the area within the San Felipe Patent that now lies south of the resurveyed boundary. *See* Compl. ¶ 51. By using this term, plaintiff does not concede there is a legally cognizable ownership conflict.

San Felipe submitted its 1689 grant to the Surveyor General, who determined its validity in 1856. Compl. ¶¶ 28-31. Congress accepted the Surveyor General's report and confirmed San Felipe's claim in 1858, ordering a survey and directing the issuance of a patent for the surveyed land. Act of Dec. 22, 1858, c. 5, 11 Stat. 374; *see* Compl. ¶ 32, 33. The Pueblo of Santa Ana ("Santa Ana") did not submit any competing claim. Compl. ¶¶ 27, 52. The Surveyor General approved Reuben E. Clements' 1860 survey of the confirmed San Felipe grant boundaries, and President Lincoln formally issued the San Felipe Patent in 1864, incorporating these surveyed boundaries. Compl. ¶¶ 34, 35.

B. Santa Ana's claim to the El Ranchito tract was rejected and excepted from its patent to the extent it overlapped the San Felipe Patent.

In their Motion, Defendants ignore the critical legal determinations in favor of San Felipe and only obliquely address the PLC Court, which is fundamental to this action and understanding the shortcomings of *Pueblo of Santa Ana v. Baca*, 844 F.2d 708 (10th Cir. 1988), quoted by Defendants. *Cf.* Motion at 4-5.[3] Under the PLC Act, the PLC Court rejected Santa Ana's claim to the Conflict Area, and Santa Ana's 1909 patent for El Ranchito explicitly excluded lands within the San Felipe Patent, contradicting Defendants' assertion that overlapping patents were issued to San Felipe and Santa Ana. Compl. ¶¶ 38-77.

1. Santa Ana's PLC Act Claim.

In 1891, Congress established the PLC Court to address remaining title claims in territory Mexico ceded to the United States. PLC Act of March 3, 1891, c. 539, 26 Stat. 854. Several PLC Act provisions safeguarded existing federal patents like San Felipe's. *See* PLC Act §§ 8, 13, 14;

[3] Page number citations refer to the numbers at the bottom of the page.

see also Compl. ¶¶ 41-43. The Supreme Court affirmed that the PLC Act prohibited the PLC Court from interfering with land decisions made by Congress. *United States v. Baca*, 184 U.S. 653, 659 (1903) (citing PLC Act § 13). If the PLC Court attempted to confirm a claim overlapping an existing United States patent, "such confirmation would be void," as would any patent based upon it. *United States v. Conway*, 175 U.S. 60, 68 (1899); *see* Compl. ¶¶ 46-49.

The PLC Court held a trial on the El Ranchito claim on May 25, 1897, *id.* ¶ 50-53, then on May 31, 1897, issued a decision excluding San Felipe's patented lands from the area to be confirmed. Santa Ana waived any claim to lands within the San Felipe Patent, having notified the Court in November 1897 that it was satisfied with the decision and that it would take no appeal. A complete and correct copy of this filing is attached hereto as **Exhibit 1**. In December 1897, the PLC Court issued its final Decree confirming part of the El Ranchito claim, expressly excluding land already sold or granted by the United States, and addressing the possibility of an overlap without liability against the United States. Compl. ¶¶ 55-58. Paragraph 16 of the PLC Court's El Ranchito Decree stated:

> This confirmation shall not pass to the confirmees herein any right or title to any lands heretofore sold or granted by the United States to any other parties; and should a survey of the tract herein confirmed develope that a part of the same lies within the lands heretofore patented to the Indians of San Felipe pursuant to or purporting to be pursuant to the act of Congress approved December 22, 1858, then and in that event such conflict shall create no liability as against the United States, to the confirmees herein or to any other parties for damages for the land thus patented, any such claim for damages for land so patented by the United States to said Pueblo of San Felipe having been expressly waived on the hearing of this cause by the claimants herein.

Compl. ¶¶ 57, 58. The validity of the El Ranchito confirmation depended on its excluding San Felipe's patented land. *See Conway*, 175 U.S. at 68.

2. The 1898-1916 Surveys and the 1909 El Ranchito Patent.

In 1898, surveys were commenced to delineate the provisionally confirmed El Ranchito claim and any overlap with the San Felipe Patent. Compl. ¶ 63. In 1900, the Surveyor General approved Walker's El Ranchito survey, leaving the claim's overlap with the San Felipe Patent yet to be determined. *Id.* ¶¶ 63-69. In 1907, Hall conducted a resurvey, reestablishing the San Felipe Patent's southern boundary. *Id*. ¶ 70. The Surveyor General and Commissioner of the General Land Office approved Hall's resurvey in 1909. *Id*. With the extent of the overlap of the El Ranchito claim with the San Felipe Patent boundary now established, President Taft issued the El Ranchito Patent in 1909, "subject to all the limitations and terms of said [PLC Act] and all the restrictions and limitations of said decree," which expressly excluded San Felipe's patented land. *Id*. ¶ 71. Santa Ana accepted the patent without objection, acknowledging the exclusion of San Felipe's land. *Id*. ¶¶ 62, 77. In 1916, surveyors Perkins and Joy completed the survey commonly known as the Joy Survey. The Joy Survey confirmed the boundaries of the San Felipe Patent as reestablished by Hall, providing the basis for future proceedings. *Id*. ¶ 78.

C. The District Court of New Mexico quieted title in the San Felipe Patent to San Felipe pursuant to the Pueblo Lands Act.

1. The Pueblo Lands Act.

In the early 1900s, Supreme Court decisions cast doubt on the alienability of pueblo lands, creating uncertainty in land titles within pueblo land tracts. *Mountain States Tel. & Tel. Co. v. Pueblo of Santa Ana*, 472 U.S. 237, 240-44 (1985); *see United States v. Sandoval*, 231 U.S. 28 (1913); *United States v. Joseph*, 94 U.S. 614 (1877). Congress responded with the PLA, establishing the Pueblo Lands Board ("Board"). Act of June 7, 1924, c. 331, §§ 1-2, 43 Stat. 636; *see* Compl. ¶¶ 80-104. The Board was authorized to decide claims by non-Indians asserting title

by adverse possession. PLA §§ 2, 4. Sections 4 and 12 of the PLA authorized pueblos to protect their claims of title through independent suits and intervention.[4]

The Attorney General was directed to file quiet title actions on behalf of Pueblo Indians for disputed claims. PLA §§ 1, 3; *see* Compl. ¶ 86. Anyone, whether Indian or non-Indian, making a claim to the land, irrespective of whether they presented it to the Board, could intervene in any such suit. PLA § 12; *see* Compl. ¶ 93. Section 4 of the PLA also allowed pueblos to initiate independent suits during the time before the Secretary filed field notes and plats showing the parcels to which the Board determined Indian title had been extinguished. PLA §§ 4, 13; *see* Compl. ¶¶ 92, 94, 95. Once the Secretary filed field notes and plats, suits were barred, except that Section 13 allowed any person 30 days to file a claim against non-Indian claimants. PLA §§ 4, 13; *see United States v. Thompson*, 708 F.Supp. 1206, 1210-17 (D.N.M. 1989) ("*Thompson I*"), *aff'd*, 941 F.2d 1074, 1078 (10th Cir. 1991) ("*Thompson II*"); *see also* Compl. ¶ 97. Congress later extended the Pueblos' independent suit deadline to May 31, 1934. Act of May 31, 1933, c. 45, 48 Stat. 108; *see Thompson II* at 1079; *see also* Compl. ¶¶ 103, 104. Approved claims entitled the claimant to a decree akin to a deed against the United States and the Pueblo. PLA § 5.

Except as otherwise authorized by the Secretary of the Interior, Congress directed the Joy Survey be used to delineate the boundaries of Pueblo Indian lands. PLA §13; *see* Compl. ¶ 97. Section 17 of the PLA clarified that state law had no application to pueblo lands, emphasizing Congress's sole jurisdiction. PLA § 17; *see Mountain States*, 472 U.S. at 252.

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[4] Defendants' Motion relies on a misleading conclusion from *Baca*, claiming that the PLA "did not provide a device for deciding land disputes between Indians." 844 F.2d at 709 n.1; *see* Motion at 5. That conclusion was wrong. *United States v. Thompson*, 941 F.2d 1074, 1077 (10th Cir. 1991); *United States v. Thompson*, 708 F.Supp. 1206, 1215 (D.N.M. 1989); *see* Compl. ¶¶ 92-93.

2. Santa Ana proceedings under the Pueblo Lands Act.

The Board's report on Santa Ana's El Ranchito Patent identified the tracts where Santa Ana's title had been extinguished and where it had not. Compl. ¶ 105. It emphasized that Santa Ana lacked juridical possession of the Conflict Area, "which was excluded from the Santa Ana Purchase by the [PLC Court]," making any claims to such land adverse to San Felipe rather than Santa Ana. *Id.* ¶¶ 106, 107. Therefore, the report advised that any claims "situated within this area will be passed upon by the Board when the San Felipe Pueblo is considered." *Id.* The United States, acting as Guardian for Santa Ana, filed a lawsuit to quiet title to Santa Ana's land as determined by the Board, and excluding the Conflict Area. *United States v. Brown*, No. 1814 (D.N.M., compl. filed Nov. 25, 1927); *see* Compl. ¶ 108. The Final Decree in *Brown* quieted Santa Ana's title in the El Ranchito tract as described in the Board's report, and did not include any lands within the Conflict Area. *Brown*, Final Decree at ¶ 3 (May 31, 1929); *see* Compl. ¶ 109. The Decree was not appealed.

3. San Felipe proceedings under the Pueblo Lands Act.

The Board's report for the San Felipe Patent identified tracts where San Felipe's title had been extinguished, including some within the Conflict Area. Compl. ¶ 110. It recited the boundary lines of the San Felipe Patent as set forth in the 1916 Joy Survey. *Id.* ¶ 112. The United States, as San Felipe's Guardian, filed suit to quiet title to San Felipe's land as determined by the Board, including lands within the Conflict Area. *United States v. Algodones Land Co.*, No. 1870 (D.N.M., compl. filed Jul. 17, 1928), *see* Compl. ¶ 113. The United States' complaint in *Algodones* alleged that the Joy Survey identified the location of the San Felipe Patent's boundaries. *Id.* The Final Decree also adopted the Joy Survey to delineate San Felipe's boundaries, and the Court quieted

title in favor of San Felipe to all lands within the San Felipe Patent, subject to listed exceptions. *Algodones*, Final Decree at 1-2 (D.N.M. Apr. 22, 1930); *see* Compl. ¶¶ 114-119. A complete and correct copy of the *Algodones* Final Decree is attached hereto as **Exhibit 2**. The Tenth Circuit affirmed the *Algodones* Final Decree in relevant part. *United States v. Algodones Land Co.*, 52 F.2d 359 (10th Cir. 1931). The District Court retained continuing jurisdiction. *Algodones*, Final Decree at 40.

By September 27, 1933, the Secretary filed the field notes and plats indicating San Felipe's title extinguishments as reported by the Board. Compl. ¶ 122. Although Santa Ana was aware of the conflict, it did not intervene in the *Algodones* proceedings or bring an independent action to assert any claim to the Conflict Area, as provided by the PLA § 4 and § 12. *Id.* ¶¶ 123-125. Under the PLA proceedings, San Felipe's title was quieted to the land within the San Felipe Patent boundaries, including the Conflict Area, except those parcels to which its title was determined to have been extinguished. San Felipe's title was quieted against all existing adverse claimants when the statutory limitations period expired on May 31, 1934.

II. Subsequent proceedings concerning the San Felipe Patent.

For over 50 years, the Department handled land title matters, including rights-of-way across the Conflict Area, consistent with San Felipe's ownership of the Conflict Area. Compl. ¶¶ 131-133, 146-148. However, in December 1979 the Department inexplicably changed its approach and accepted for consideration Santa Ana's long-barred claim to the Conflict Area and to compensation for a right-of-way across the Conflict Area. *Id.* ¶¶ 134-139. The Department then began placing right-of-way compensation proceeds in an interest-bearing trust account listing San Felipe and Santa Ana as the account beneficiaries, and specifying the funds would be held

until the renewed dispute was resolved. *Id.* ¶¶ 134-139, 147.

III. The Resurvey Actions.

In December 1989, Santa Ana petitioned the Department seeking to "correct" the Hall survey of the San Felipe Patent's southern boundary, claiming an overlap existed with the El Ranchito tract. Compl. ¶¶ 159-160. The Department through Solicitor's Opinion M-37027 directed the BLM to conduct a resurvey intended to establish a "common boundary" that would strip the Conflict Area from San Felipe by establishing the El Ranchito tract's boundaries as those the PLC Court rejected in 1897. *Id.* ¶¶ 161-176. The BLM conducted the resurvey in October 2013. *Id.* ¶¶ 177, 178. The IBLA affirmed the BLM's survey action in 2017, but emphasized such action did not alter title to the lands. *Pueblo of San Felipe*, No. IBLA 2014-256, 190 IBLA 17 (Apr. 5, 2017); *see* Compl. ¶¶ 182-183. Subsequently, BIA officials updated TAAMS records to list Santa Ana as the owner of San Felipe Patent lands within the Conflict Area and disbursed the balance of the tribal trust account to Santa Ana. *Id.* ¶¶ 187-193.

STANDARDS FOR MOTIONS TO DISMISS

Defendants' motion to dismiss under Federal Rule of Civil Procedure 12(b)(1) presents a facial attack on the complaint's sufficiency. As such, the facts set forth in the Complaint are assumed to be true. *Baker v. USD 229 Blue Valley*, 979 F.3d 866, 872 (10th Cir. 2020). Defendants' 12(b)(6) motion to dismiss for failure to state a claim is also assessed assuming the Complaint's factual allegations are true. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

ARGUMENT

Defendants aim to avoid review of their spurious decision to alter the boundaries of San Felipe's patented land, inappropriately relying on the Quiet Title Act ("QTA"), 28 U.S.C. § 2409a.

Motion at 14-20. Under federal land patent law, the Department and its officials have no authority to revise the boundaries of patented land to the patentee's detriment. *Moore v. Robbins*, 96 U.S. 530, 533-34 (1877); *United States v. Reimann*, 504 F.2d 135, 138-39 (10th Cir. 1974); *United States v. Estate of St. Clair*, 819 F.3d 1254, 1264 (10th Cir. 2016); *see also* 43 U.S.C. § 772 (authorizing resurveys of undisposed public lands, which shall not impair rights of affected landowners).[5] Nor are they authorized to adjudicate title between third parties to lands within a patent, as they did here. *Moore* at 532. Even if they were authorized, any claim to San Felipe's land is long barred by the final decisions of the Surveyor General, Congress, the PLC Court, the Pueblo Lands Board, and this Court. If the Court were to accept Defendants' argument, it would grant the Department unprecedented authority to modify the boundaries and TAAMS title records of *any* tribe's restricted fee patented lands, arbitrarily transferring such lands to third parties, while evading any judicial review. The QTA was never meant to immunize officials from legal challenges to their confiscation of patented pueblo lands. *Cf. Lane v. Pueblo of Santa Rosa*, 249 U.S. 110, 113 (1919) (observing that "a threatened disposal by administrative officers" of Pueblo of Santa Rosa lands, as if they were public lands, "would not be an exercise of guardianship, but an act of confiscation").

I. Sovereign immunity does not bar the action.

This is not a quiet title action because San Felipe does not dispute the United States' interest in the Conflict Area. Because it is not the kind of action that would be barred by the QTA, it is properly brought under the APA and comes within the APA's waiver of sovereign immunity.

[5] Nor does any statute authorize the Department to resurvey Pueblo patented lands, the title to which was quieted by the Court under the PLA, without the Court's approval. PLA § 9.

Further, it is not clear Defendants actually changed title documents on the restricted fee patented lands. Defendants do not indicate they changed the "record of title" to Indian land, which is the official title record maintained in the BIA Land Title and Records Office. 25 C.F.R. §§ 150.2, 150.101. The record of title is not the same as TAAMS records, which hold accounting records on trust accounts and trust lands and are maintained in the Bureau of Trust Funds Administration (and before that, the Office of the Special Trustee). *See* 25 C.F.R. § 115.002 (defining a "trust asset" as "trust lands, natural resources, trust funds, or other assets held by the federal government in trust for Indian tribes and individual Indians"); Privacy Act Notice, 79 Fed. Reg. 68292 (Nov. 14, 2014) (describing TAAMS).

Even if the suit could be categorized as one to quiet title, which is disputed, the government's sovereign immunity does not bar San Felipe from seeking equitable relief to redress actions taken by rogue officials which were invalid and void *ab initio* because they were not authorized—and indeed, were prohibited—by Congress and the Constitution. San Felipe's grant is protected by treaty, confirmed by Congress, patented by the President, safeguarded again by the PLC Act and PLC Court, and finally, under the PLA, quieted for all time against all then-existing claims, and placed in restricted fee status to ensure San Felipe's ownership of all the remaining lands within its patent, permanently. The land's restricted fee status, enacted to protect San Felipe, cannot now bar San Felipe from seeking to undo the illegitimate taking, despite the fact that the QTA does not waive the government's immunity with respect to restricted fee lands. The unauthorized decisions challenged herein were not actions of the sovereign, so sovereign immunity does not bar judicial review. San Felipe's suit is categorically apart from the limits of the QTA's waiver of sovereign immunity. Thus, its claims are properly brought under the APA.

A. This is not a quiet title action.

Defendants fail to acknowledge that title to the land in question was already quieted in San Felipe more than ninety years ago in *Algodones*, the quiet title action the United States brought on behalf of San Felipe. As noted above, this Court retained continuing jurisdiction to issue any orders or writs to give effect to its decree—including jurisdiction over the United States, which, by filing the action, waived sovereign immunity with respect to the adjudication of title to the San Felipe Patent. Indeed, the United States' obligations as "guardian" of San Felipe's interests in the *Algodones* quiet title action mean the government's duty is to defend San Felipe's title against incursions perpetrated by administrative officials, rather than repudiating San Felipe's interests in favor of Santa Ana's, as it has done consistently for over a decade.

The United States does not claim an ownership interest in San Felipe Patent lands. The Conflict Area is owned in restricted fee; it is not held as Indian trust lands, legal ownership of which is held by the United States in trust for the beneficial Indian owners. *Cf.* Motion at 22. Because a patent was issued to San Felipe from the United States in 1864, and title to the Conflict Area was quieted in San Felipe in restricted fee status, the United States maintains no ownership interest in the land that would require this action to be brought under the QTA. Under PLA § 17, the only interest of the United States is the right to approve or disapprove conveyances of Pueblo lands:

> [N]o sale, grant, lease of any character, or other conveyance of lands, or any title or claim thereto, made by any pueblo as a community, or any Pueblo Indian living in a community of Pueblo Indians, in the State of New Mexico, shall be of any validity in law or in equity unless the same be first approved by the Secretary of the Interior.

The QTA does not cover cases where the United States does not claim title in its own right

or where the interest the United States claims will not be relinquished or diminished. *Block v. North Dakota*, 461 U.S. 273, 286 (1983); *see United States v. Mottaz*, 476 U.S. 834, 846 (1986) (QTA covers "cases where an Indian challenges the United States' claim of title in its own right"); *Kansas v. United States*, 249 F.3d 1213, 1224 (10th Cir. 2001) ("only disputes pertaining to the United States' ownership of real property fall within the parameters of the QTA"); *Comanche Nation v. United States*, 393 F.Supp.2d 1196, 1202 (W.D. Okla. 2005) (lawsuit to set aside trust-to-trust conveyance was properly brought under APA and was not a QTA action). The challenge to the Defendants' survey actions is likewise not precluded by the QTA.[6] *Pueblo of Sandia v. Babbitt*, No. 94-2624 (HHG), 1996 WL 808067, *4 (D.D.C. Dec. 10, 1996) (pueblo's suit to compel corrected survey of common boundary between federal land and pueblo's restricted fee land was "not one contesting the government's ownership of the land in question, and it therefore should not be judged under the Quiet Title Act"); *Pueblo of Taos v. Andrus*, 475 F.Supp. 359, 365 (D.D.C. 1979) (pueblo's suit to give effect to corrected survey of common boundary between federal land and pueblo's trust land would not affect government's ownership and was not an action to quiet title). Here the United States' claimed interest in the land arises from a statutory restriction on alienability, which is undisturbed by San Felipe's suit. Whatever the outcome of this case, "[t]he United States will not be disturbed in possession or control of any real property involved" in the action. 28 U.S.C. § 2409a(b).

That this case affects no interest of the United States is confirmed by the IBLA's insistence

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[6] None of the cases cited by Defendants involve pueblo restricted fee patented land, but rather, involve private landowners disputing surveys of public lands or involve trust lands held by the United States. Motion at 16, 17, 19.

that the resurvey did not alter title. *See Pueblo of San Felipe*, 190 IBLA at 19, 33-34. Instead, the Defendants claim they issued a corrective survey of the common boundary between two pueblos, which "is conceptually quite different from adjudicating title to the same lands." *Kansas v. United States*, 249 F.3d at 1225 (internal quotation marks omitted). This challenge is similar to *Lane v. Darlington* in form, as it seeks to restrain the Defendants from resurveying patent boundaries "on the ground that the power of the Secretary is exhausted," and it does not involve United States' claims to land title adverse to San Felipe. 249 U.S. 331, 332-33 (1919).

To the extent the Defendants assert the United States has an interest in maintaining and enforcing the restriction against alienation in favor of Santa Ana, any such interest is invalid because it is founded upon a series of actions that were void *ab initio*. The purported interest is a nullity. *See*, *e.g.*, Compl. ¶¶ 197-208. Therefore it does not trigger the limitations of the QTA's waiver of immunity. *See Kansas ex rel. Graves v. United States*, 86 F.Supp.2d 1094, 1097 (D. Kan. 2000) (QTA's Indian lands exception did not apply because the "federal defendants' Indian land determination lacks rationale and was undertaken in an arbitrary and frivolous manner"); *see also Kansas v. United States*, 249 F.3d at 1225, n.7 ("A court may proceed to the merits to determine its jurisdiction.").

Defendants assert that courts should "focus on the relief requested" to determine whether a claim is one to quiet title. Motion at 18, quoting *High Lonesome Ranch, LLC v. Bd. of Cty. Comm'rs*, 61 F.4th 1225, 1238 (10th Cir. 2023) (cleaned up). Under *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak*, 567 U.S. 209 (2012), however, the critical factor is not the relief requested, but the nature of the plaintiff's grievance. The Tenth Circuit's relief-focused approach stems from *Neighbors for Rational Development, Inc. v. Norton*, 379 F.3d 956, 961 (10th

Cir. 2004), where (just as in *Patchak*) plaintiff argued the QTA did not apply because it did not claim any ownership interest in the subject property. *Id.* Mistakenly focusing on the relief requested, the court rejected that argument. *Id.* *Patchak* later embraced the argument, expressly rejecting the *Neighbors* approach. *Patchak* at 214.

Defendants' remaining authorities are equally unhelpful. They acknowledge that *Patchak* abrogated *Iowa Tribe of Kan. & Neb. v. Salazar*, 607 F.3d 1225 (10th Cir. 2010), *see* Motion at 23 n.13. *Iowa Tribe* was another APA case challenging a trust acquisition, which the Tenth Circuit erroneously classified as a QTA case because of the relief requested. Defendants rely on this Court's decision in *Northern New Mexicans v. United States*, 161 F.Supp.3d 1020 (D.N.M 2016), but they fail to acknowledge that the Tenth Circuit expressly declined to affirm dismissal on QTA/sovereign immunity grounds. *N. New Mexicans v. United States*, 704 Fed.Appx. 723, 726 (10th Cir. 2017).

Therefore, Defendants' characterization of this case as a quiet title action is wrong. This case is an APA action to set aside the Defendants' *ultra vires*, arbitrary and capricious actions that are prohibited by law. San Felipe is not asking the Court to quiet title: it is asking the Court to determine the Defendants lacked authority to take the Resurvey Actions, including the alteration of TAAMS records and disbursement of a tribal trust account. Compl. ¶¶ 198, 206-208. This is the kind of claim the APA was enacted to address, *see* 5 U.S.C. § 706(2), and "the QTA is not addressed to the type of grievance which [San Felipe] seeks to assert." *Patchak* at 220-21.

B. The PLA and the United States bringing the *Algodones* action to quiet title on behalf of San Felipe waived sovereign immunity, and this Court retained continuing jurisdiction to enforce its quiet title judgment.

Congress enacted the PLA with the intent to finally quiet title to lands within Pueblos' land

grants. The PLA directed the Attorney General to file complaints in this Court in the name of the United States "in its sovereign capacity as guardian of [the] Pueblo Indians" "in order to quiet title" to Pueblo lands against adverse "claims of any kind whatsoever." PLA § 1. The Act provided that these suits could result in a judgment quieting title in the pueblo, or a judgment for the adverse claimant and against the United States and pueblo. *Id.* §§ 5, 13.

The United States filed such a suit on behalf of San Felipe in 1928, resulting in this Court's *Algodones* quiet title judgment. *See* Background § I(C)(3), *supra*. The PLA and the *Algodones* quiet title action brought by the United States as guardian of San Felipe waived the United States' sovereign immunity with respect to the adjudication of title to lands within the San Felipe Patent. *Cf. Rupp v. Omaha Indian Tribe*, 45 F.3d 1241, 1244-45 (8th Cir. 1995) (sovereign government waives immunity by filing quiet title action and requesting defendants to assert any claims in the disputed lands); *United States v. Phillips*, 362 F.Supp. 462, 463 (D. Neb. 1973). Moreover, this Court retained continuing jurisdiction in *Algodones* to issue any orders or writs to give effect to its decree. *See* Ex. 2, *Algodones* Final Decree at 40. The *Algodones* decree quieted San Felipe's title to the Conflict Area (except certain parcels). *Id.* at 1. The Decree specifically stated:

> [T]he title of the Pueblo of San Felipe to the entire San Felipe Grant lying in Sandoval County, New Mexico and described in the complaint herein, be, and it is hereby quieted in said Pueblo of San Felipe except as to the parcels specifically mentioned in subsequent paragraphs herein.

Id. Given the waiver of immunity and the Court's continuing jurisdiction, there is no obstacle to this Court enforcing the *Algodones* decree against the Defendants.

Defendants are bound by *Algodones* under the doctrine of collateral estoppel. Collateral estoppel bars relitigation of issues of law and fact when the government participated in prior litigation and then attempts to "litigate twice with the same party an issue arising in both cases

from virtually identical facts." *United States v. Stauffer Chemical Co.,* 464 U.S. 165, 172 (1984). In accord, the Supreme Court noted in *United States v. Candelaria* that if a prior quiet title suit had been "begun and prosecuted" by the federal government, "we think the United States is as effectually concluded as if it were a party to the suit." 271 U.S. 432, 444 (1926). In *Kremer v. Chemical Const. Corp.*, the Supreme Court explained:

> In our system of jurisprudence the usual rule is that merits of a legal claim once decided in a court of competent jurisdiction are not subject to redetermination in another forum. Such a fundamental departure from traditional rules of preclusion, enacted in federal law, can be justified only if plainly stated by Congress.

456 U.S. 461, 485 (1982). In the case of the PLA, no such congressional intent is present. *See Mountain States*, 472 U.S. at 254 (noting decisions made contemporaneous with the PLA are entitled to deference). Defendants were not at liberty to readjudicate the title quieted in *Algodones*, and this Court has jurisdiction to give effect to its judgment through this action.

The PLA, its statutory limitations period and immunity waiver, and the Court's continuing jurisdiction under *Algodones* all remain effective. Far from being an outdated, irrelevant enactment of Congress, the PLA, as amended, continues to be of importance today as evidenced in *Thompson II,* 941 F.2d 1074 (applying 1933 PLA amendment enacting statute of limitations for pueblos to bring independent suits under PLA § 4). In *Thompson II,* the Court explained, "We see nothing on the face of the act's language limiting the new statute of limitations to any particular land. The language is both broadly worded and clear…." *Id.* at 1081; *see also* PLA § 20, *added by* Pub. L. No. 109-133, 119 Stat. 2573 (2005) (amending PLA to clarify criminal jurisdiction); *United States v. Smith*, 482 F.Supp.3d 1164 (D.N.M. 2020) (affirming federal criminal jurisdiction over non-Indian within exterior boundaries of Pueblo grant). Only this Court can determine issues related to San Felipe Patent lands covered by its Final Decree in *Algodones*, and as guardian of

San Felipe and as an entity against whom title was quieted, the United States' waiver of immunity under the PLA and *Algodones* remains effective.

C. Even if any statute precluding actions against the United States were to apply, the constitutional exception to sovereign immunity would allow the relief San Felipe seeks.

Even if a statute (like the QTA) would ordinarily preclude suit against the United States, the constitutional exception to sovereign immunity would apply in this case, allowing the relief San Felipe seeks. San Felipe claims that Department officials' actions were "contrary to constitutional right, power, privilege, or immunity," 5 U.S.C. § 706(2)(B), *see* Compl. ¶ 207, because they were taken without due process of law, and constituted an unauthorized, void interference with San Felipe's rights to the land at issue in violation of the due process and takings clauses of the Fifth Amendment. In *Robbins v. U.S. Bureau of Land Management*, 438 F.3d 1074, 1081 (10th Cir. 2006), the court held that statutory limitations do not obstruct suits aimed at upholding constitutional rights. Thus, notwithstanding the limitations of the waiver of immunity for claims brought under the QTA (assuming for purposes of analysis this case should be so categorized), the QTA does not "impliedly forbid" San Felipe's constitutional claim for relief, so the government's immunity is waived under the APA.

When federal officials assume powers not granted by statute or operate under an unconstitutional grant of authority, their actions are considered individual, not sovereign. As articulated in *Larson v. Domestic & Foreign Commerce Corp.*, actions of officials outside of designated powers are not attributable to the sovereign. 337 U.S. 682, 689-90 (1949). Consequently, relief can be granted without involving the sovereign. *Id.*; *see id.* at 701-02; *see also Dugan v. Rank*, 372 U.S. 609, 621-22 (1963); *Malone v. Bowdoin*, 369 U.S. 643, 647 (1962);

Pollack v. Hogan, 703 F.3d 117, 120 (D.C. Cir. 2012).

Adopting a contrary rule would leave individuals whose property is seized by government agents without proper authority or under color of an unconstitutional statute with no recourse, so long as the government, through its agents, holds their property. *See Tindal v. Wesley*, 167 U.S. 204, 222 (1897). The courts as "guardians" of constitutional rights stand as "an impenetrable bulwark against every assumption of power in the Legislative or the Executive." *Davis v. Passman*, 442 U.S. 228, 241-42 (1979) (quoting 1 Annals of Cong. 439 (1789)). Therefore litigants "must be able to invoke the existing jurisdiction of the courts for the protection of their justiciable constitutional rights." *Id.*; *see Stark v. Wickard*, 321 U.S. 288, 309-10 (1944).

These principles form the foundation of what the Court terms "the constitutional exception to the doctrine of sovereign immunity." *Larson* at 696. While the constitutional exception to sovereign immunity has been largely incorporated into the APA waiver of immunity, permitting a broad range of suits challenging agency action, it still serves as a valid avenue for judicial review of agency actions challenged on constitutional grounds. *See Robbins*, 438 F.3d at 1081. This is crucial where the APA and other statutory avenues might appear to exclude such cases from their statutory waivers. *See Webster v. Doe*, 486 U.S. 592, 603 (1988). Congress cannot eliminate constitutional rights through legislation, and courts do not lightly infer that Congress intends to bar judicial review of constitutional claims. *Id.*; *see also Cuozzo Speed Techs. v. Lee*, 579 U.S. 261, 274-75 (2016); *Demore v. Kim*, 538 U.S. 510, 516-17 (2003); *Johnson v. Robison*, 415 U.S. 361, 366-67 (1974); *Olenhouse v. Commodity Credit Corp.*, 42 F.3d 1560, 1573 (10th Cir. 1994).

A line of cases almost squarely on all fours with the instant case exemplifies the principle that sovereign immunity is not a barrier to suits that seek to set aside the government's

unconstitutional confiscation of Indian trust or restricted fee property. Two Supreme Court decisions declared successive versions of the "escheat-to-tribe" provision of the Indian Land Consolidation Act ("ILCA") unconstitutional and invalidated them. *Babbitt v. Youpee*, 519 U.S. 234 (1997) ("*Youpee*"); *Hodel v. Irving*, 481 U.S. 704 (1987) ("*Irving*"). In these cases, the ILCA eliminated a fundamental property right of the owners (or beneficial owners, in the case of trust lands) of Indian trust or restricted fee lands, specifically the right to pass on their property by descent or devise. *Irving* at 716; *Youpee* at 244-45.[7] Importantly, the QTA did not bar either suit. Even though the United States claimed an interest in the subject lands as tribal trust or restricted fee land, the QTA did not alter the foundational rule that the courts remain available to anyone whose property has been seized without due process of law. *United States v. Lee*, 106 U.S. 196, 218 (1882).

Following *Irving* and *Youpee*, in a similar case that sought to set aside transfers of trust or restricted Indian lands pursuant to an "escheat-to-tribe" provision in another statute, the court expressly held the QTA played no role in such a suit and did not bar it. *DuMarce v. Norton*, 277 F.Supp.2d 1046 (D.S.D. 2003), *rev'd on other grounds sub nom. DuMarce v. Scarlett*, 446 F.3d 1294 (Fed. Cir. 2006). As in the case at bar, the federal defendants moved to dismiss for lack of subject matter jurisdiction, arguing that the United States was immune from suit because the QTA governed the case and that "it expressly prohibits challenges to land held in trust for Indian tribes." *Id.* at 1051. The court rejected the QTA argument, emphasizing that there was no dispute the

[7] The Supreme Court granted equitable relief in both cases, rather than insisting the plaintiff seek compensation in the Court of Federal Claims. *See Eastern Ents. v. Apfel*, 524 U.S. 498, 521 (1998). The APA itself authorizes a reviewing court to "hold unlawful and set aside" agency action found to violate the constitution and does not authorize compensation. 5 U.S.C. § 706(2)(B).

United States held title to the property. *Id*. Rather, the entire complaint focused on unconstitutional takings of property in violation of the Fifth Amendment. *Id.* Moreover, seeking title to the property as a form of relief did not transform the claim into a quiet title action. *Id.* at 1051-52. The court declared the escheat provision unconstitutional, *id.* at 1056, and later ordered the Department to reopen the probate and set aside the orders that transferred title to the tribe, 446 F.3d at 1298.[8]

Block and *Mottaz* are not to the contrary. The dispositive issue in both cases was whether the claims were subject to the QTA's 12-year statute of limitations. *Mottaz*, 476 U.S. at 841; *Block*, 461 U.S. at 276-77. Neither case involved Indian lands. *Block* involved a title dispute between the United States and North Dakota over a riverbed and the Court held the QTA was the exclusive means to challenge the Unites States' title. *Block* at 277, 286. Because North Dakota made a claim directly adverse to the United States' claim of title, the QTA's statute of limitations applied and barred the claim. *Id.* at 293.[9] In *Block,* the court highlighted that the QTA "does not purport to strip any [property owner] of any property rights," but rather limits the time for filing a quiet title action against the United States. *Id.* at 291. Constitutional claims can be time barred, just as other claims can, but constitutional claims cannot be barred outright. *Id.* at 292. There is a "critical distinction between being unilaterally deprived of title without being given any opportunity to litigate it and being foreclosed from litigating that title because of sleeping on one's

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[8] The Federal Circuit, which heard the appeal because the district court based its jurisdiction on a takings claim, reversed the judgment on the ground that the action was barred by the six-year statute of limitations under 28 U.S.C. § 2401(a). 446 F.3d at 1298, 1305.

[9] The Court recently held that the QTA's statute of limitations is a "nonjurisdictional claims-processing rule," despite *Block*'s "drive-by jurisdictional ruling." *Wilkins v. United States*, 598 U.S. 152, 155, 160 (2023).

claim." *Navajo Tribe of Indians v. New Mexico*, 809 F.2d 1455, 1469 (10th Cir. 1987). Thus, while the QTA sets a time limit on bringing quiet title claims against the United States, it does not bar timely claims.

Nevertheless, the Defendants contend that the QTA's Indian lands exception is a complete bar to San Felipe's suit. But when Congress limited the QTA's waiver of sovereign immunity to exclude actions seeking to quiet title to Indian lands, it did not *create* heretofore unknown *super* immunity for federal officials who take Indian lands from their owner without authority.

While there is no dispute that the Indian lands exception preserves the government's sovereign immunity against claims falling within the scope of the QTA, the exception does not create immunity against claims that are beyond the QTA's scope. Neither *Block* nor *Mottaz* hold otherwise. They merely hold that under the QTA, there are time limits for bringing all quiet title actions against the United States, even those that raise constitutional issues.[10]

Patchak clarifies that the nature of the plaintiff's grievance determines whether a suit falls under the QTA. 567 U.S. at 217. The relief Patchak sought, unlike San Felipe, delved fully into quiet title territory and aimed to strip the United States of title entirely, but the type of grievance he asserted as the basis for such relief defined his claim as something other than a QTA claim. *Id.* at 220-21. So too, here: even if part of the relief San Felipe seeks might potentially be characterized as QTA relief, San Felipe seeks such relief only to roll back the effects of the federal officials' starkly unauthorized violation of San Felipe's constitutionally protected property rights,

[10] The plaintiff in Mottaz alleged the BIA violated a federal statute by selling three Indian trust allotments to the Forest Service without her consent, but she delayed bringing suit for 28 years, so the QTA's statute of limitations barred her quiet title action against the United States. 476 U.S. at 836-38, 844.

and to declare for the benefit of the defendant agency and agency officials the extent of their obligations and limits of their authority under existing law to prevent any further such violations.

Cases cited by Defendants are distinguishable. Motion at 24-25. In *Pueblo of Jemez v. United States*, the tribal plaintiff brought the action expressly under the QTA, while disclaiming any relief against restricted Indian lands. 430 F.Supp.3d 943, 1082-83 (D.N.M. 2019). *Jemez* therefore did not present the issue raised here, as the Court was not asked to consider whether a non-QTA suit that might affect Indian lands could proceed, as *Patchak* did. *Mesa Grande Band of Mission Indians v. Salazar* preceded *Patchak* and was dismissed based on the QTA's statute of limitations. 657 F.Supp.2d 1169, 1177-78 (S.D. Cal. 2009). In contrast to the instant case, the Mesa Grande plaintiff was not challenging an agency action within the last six years that changed the boundaries of the plaintiff's federal patent to the plaintiff's detriment. Rather, the dispute stemmed from the United States' issuance of land patents to another Indian tribe in 1893, which plaintiff claimed were issued erroneously and should have granted land to plaintiff. The plaintiff's claim is strikingly similar to Santa Ana's 1989 administrative petition that led to the agency actions challenged in this case. In this respect, the Defendants virtually give away the game when they state that such a dispute "has a single recourse—Congress." Motion at 26. That is exactly the case here: only Congress has authority to change the boundaries or affect title to the San Felipe Patent.

Defendants' attempt to extend these holdings would introduce a chaotic, unconstitutional immunity shield allowing federal officials to confiscate the restricted fee lands of New Mexico pueblos, doling out parcels arbitrarily and without any constitutional or statutory authority, while evading any judicial review. Worse yet, agency officials could change the boundaries of *any* federal Indian land patent and deprive the patentees of their lands without any authority to do so

and in contravention of longstanding law. *See Darlington*, 249 U.S. at 333 (government may survey and resurvey boundaries of land it owns but cannot affect rights of others); *Conway*, 175 U.S. at 67 (government exhausts its power by granting title and cannot make another grant to different person); *Moore*, 96 U.S. at 533-34 (after patent is awarded, executive branch is absolutely without authority to control title); *Tameling v. U.S. Freehold and Emigration Co.*, 93 U.S. 644, 662 (1876) (Congress's confirmation of land claim is not subject to review in any forum).

II. San Felipe has standing to challenge Defendants' resurvey actions affecting Private Claims 4, 5, and 6.

Defendants argue that San Felipe lacks standing to bring a quiet title action in relation to Private Claims 4, 5, and 6, asserting "there is no current dispute between San Felipe and the United States that San Felipe owns Private Claims 4, 5, and 6." *See* Motion at 26-28. The parties agree San Felipe owns Private Claims 4, 5, and 6.[11] San Felipe's claims pertaining to these lands are therefore not ownership or title disputes, and San Felipe's Complaint does not seek to quiet title in these lands. A plaintiff satisfies the Constitution's case-or-controversy standing requirement where it alleges it has suffered, or is threatened with, an actual injury that is traceable to the defendant's allegedly unlawful conduct and is likely to be redressed by the requested relief. *California v. Texas*, 141 S.Ct. 2104, 2113 (2021); *Robert v. Austin*, 72 F.4th 1160, 1163 (10th Cir. 2023). There must be at least "a 'substantial risk that the harm will occur.'" *Baker*, 979 F.3d at 871. Defendants' argument is based on their mischaracterization of San Felipe's Complaint, but it is also flawed in relation to San Felipe's actual claims. Defendants' argument that San Felipe

[11] These lands were purchased for San Felipe by the United States with funds authorized under PLA § 19, pursuant to the Act of March 4, 1929 (45 Stat. 636) and the PLA and conveyed by warranty deed. Compl. at ¶ 126.

lacks standing to challenge their redrawing of San Felipe's southern boundary confirms Defendants' myopia in this instance.

The resurvey action shifted the location of the San Felipe Patent's southern boundary approximately one-half mile north, so that it now bisects Private Claims 4, 5, and 6. *See* Plat Map, Ex. 1 to Pl.'s Opp. to Santa Ana Pueblo's Mot. for Ltd. Intervention (ECF No. 34-1); Compl., Ex. B (ECF No. 1-2); *see also* Motion at 8. The resurvey boundary bisecting Private Claims 4-6, undisputedly owned by San Felipe, highlights the arbitrary and capricious nature of the resurvey.

This resurvey action creates uncertainty about who has governmental authority over these lands owned by San Felipe. *See*, *e.g.*, PLA § 20 (allocating pueblo, federal, and state criminal jurisdiction "within the exterior boundaries of any grant from a prior sovereign, as confirmed by Congress or the [PLC Court] to a Pueblo Indian tribe of New Mexico"); *United States v. Antonio*, 936 F.3d 1117, 1121-24 (10th Cir. 2019) (applying Pub. L. 109-133); *Smith*, 482 F.Supp.3d at 1170-71 (same). It invites the question of which sovereign, San Felipe or Santa Ana, has governmental jurisdiction over the area—a question that no one could legitimately have asked before the Defendants' unprecedented actions. This alone causes San Felipe a real, concrete and particularized injury.

Further proof of the harms caused by the resurvey is Defendants' own 2017 actions, which demonstrate a substantial risk they will take future actions to strip title to Private Claims 4, 5, and 6 from San Felipe and transfer title to Santa Ana. Motion at Ex. 2, Memo from John E. Antonio, Supt. So. Pueblos Agency (Nov. 14, 2017) (ECF No. 29-2). As they say, there is no "current" dispute as to title to Private Claims 4, 5, and 6, but they acknowledge that who holds title to these lands is "under review." *Id.* As San Felipe has demonstrated, Defendants have no authority to

review San Felipe's title to these lands. The mere fact that Defendants acknowledge they are conducting the unauthorized review causes San Felipe real and immediate harm. Their previous actions and this statement, disclosed for the first time to San Felipe in Defendants' Motion to Dismiss, demonstrate the substantial risk of further harm. Defendants' actions are capable of repetition in relation to Private Claims 4, 5 and 6, yet evading review, a circumstance that in the mootness context satisfies constitutional standing despite the end of the actual live controversy. *See Robert*, 72 F.4th at 1164-65.

A favorable decision for San Felipe will remedy these harms. It will set aside the resurvey and boundary relocation, maintaining the lands solely within San Felipe's jurisdictional territory and deterring third parties from attempting to assert jurisdiction over Private Claims 4, 5, and 6. It will also prevent the Defendants from continuing their unlawful title review and foreclose them from changing record ownership of Private Claims 4, 5, and 6 in TAAMS. San Felipe has standing to challenge the Defendants' actions to resurvey the southern boundary of the San Felipe Patent, including their impact on Private Claims 4, 5, and 6, as set forth in Claim 1, and to seek declaratory relief to deter Defendants' unauthorized action in the future, as set forth in Claim 3.

III. Plaintiff's third and fourth claims should not be dismissed based on sovereign immunity or lack of trust duty to San Felipe.

Defendants assert that the third and fourth claims for relief do not identify a waiver of sovereign immunity, and that Defendants have no trust duty to San Felipe in disbursing trust funds to a second pueblo. Motion at 29-30. Defendants are wrong on both counts.

The third claim for relief only sets forth additional relief sought in the form of a declaratory judgment based on the first and second claims. The fourth claim for relief seeks additional relief in the form of a declaratory judgment based on the second and fifth claims for relief challenging

Defendants' actions regarding a tribal trust fund. No rule of pleading requires a plaintiff to reassert the source of the waiver of sovereign immunity within each claim when it is set forth elsewhere in the Complaint and incorporated by reference, as the case is with the third and fourth claims. Compl. ¶¶ 218, 225; *cf*. Fed. R. Civ. P. 8(a)(1) (requiring "a short and plain statement of the grounds for the court's jurisdiction").

For the reasons set forth in Argument Section I, *supra*, the third and fourth claims are not barred by the QTA. Defendants concede that absent a QTA-based defense, the third and fourth claims can proceed under the APA.[12] *See* Motion at 29, n.16; *see Gilmore v. Weatherford*, 694 F.3d 1160, 1166 n.1 (10th Cir. 2012) (APA's waiver of sovereign immunity for actions seeking relief other than money damages is not limited to suits under APA); *see Cobell v. Babbitt*, 30 F.Supp.2d 24, 31 (D.D.C. 1998) (holding APA section 702 waives immunity against trust fund mismanagement claims based on federal common law on trusts and the Indian Trust Reform Act); *Pueblo of Sandia*, 1996 WL 808067, *9. San Felipe does not rely on the Declaratory Judgment Act to supply the waiver, which is found in the APA.

Defendants' trust duty argument regarding the fourth claim is also misguided. Motion at 30. The fourth claim seeks a declaration that San Felipe "satisfies the sole condition for disbursement of the entire trust account" because it owns the lands within the San Felipe Patent

[12] The cases Defendants cite are inapplicable because in those cases, plaintiffs failed to cite the APA or other source of waiver of immunity. *La Casa de Buena Salud v. United States*, 2008 U.S. Dist. LEXIS 42352 at 49 (D.N.M. Mar. 21, 2008) (failed to cite APA); *Mocek v. Albuquerque*, 2013 U.S. Dist. LEXIS 10676 at 207 (D.N.M. Jan. 14, 2013) (no statute pled to waive sovereign immunity); *Ali v. Rumsfeld*, 649 F.3d 762, 770, 776 (D.C. Cir. 2011) (rights asserted were not clearly established by law to support waiver of qualified immunity).

boundaries. Compl. ¶ 227. The account is Individual Indian Money (IIM) account No. S-20093, held in escrow by the Department for San Felipe and Santa Ana pursuant to the "Secretary's fiduciary duty to each of the Pueblos…" *Id.* at ¶¶ 138-139, 145, *Pueblo of San Felipe v. Hodel*, 770 F.2d 915 (10th Cir. 1985). Defendants purport to have ordered the disputed disbursement "pursuant to, and in conformance with, regulations governing the withdrawal from a tribal trust account." Compl. ¶¶ 138, 187, 226. Defendants' trust duties are set forth in the Trust Reform Act, the sections of which are cited in the fifth claim for relief, and 25 U.S.C. § 325, cited in the second claim. *Id.* at ¶¶ 212, 229-232; *see also* 25 U.S.C. §§ 162a(d), 4011, and 4043(b)(2)(C).

When the United States creates a tribal "trust" account to hold funds that do not belong to the United States, it receives those funds as trustee on behalf of the Indian beneficiaries, and Defendants have fiduciary obligations as a trustee with fiduciary obligations to the named tribal account holders. *Fletcher v. United States*, 730 F.3d 1206, 1210 (10th Cir. 2013) ("Congress created the Office of Special Trustee for American Indians and tasked it with providing Native American account holders with fair and accurate information about their accounts.") (citing Trust Reform Act, 25 U.S.C. §§ 4041, 4043(b)); *Shoshone Indian Tribe of Wind River Rsrv. v. United States*, 364 F.3d 1339, 1348 (Fed. Cir. 2004) ("the United States must be held to the 'most exacting fiduciary standards' in its relationship with the Indian beneficiaries").

The bases for relief include the specific statutory provisions of the Trust Reform Act, the APA, and federal common law on trusts, all cited in the Complaint. *Cobell v. Babbitt*, 30 F.Supp.2d at 30, n. 7. Defendants' actions are to be judged based on the same standards applicable to all fiduciary trustees and are governed by the law of trusts. *Id.* at 33. The court has jurisdiction to issue a declaratory judgment under all three authorities, and Defendants' effort to "pigeonhole

the plaintiff's Complaint solely in the APA" is without merit. *Id.*

IV. San Felipe's trust accounting claims set forth in the fifth claim for relief should not be dismissed.

When interpreting the scope of the obligations to tribes and pueblos under the Trust Reform Act, courts have applied the Indian canons of construction rather than the ordinarily deferential *Chevron* standard, because the statute was passed for the benefit of Indians. *Cherokee Nation v. United States Department of the Interior*, No. 19-cv-2154-TNM-ZMF, 2023 WL 2914173, *4 (D.D.C. Feb. 10, 2023); *see also Fletcher*, 730 F.3d at 1210. Under the Indian canons of construction, "'statutes are to be construed liberally in favor of the Indians, with ambiguous provisions interpreted to their benefit.'" *Cherokee Nation* at *5 (quoting *Montana v. Blackfeet Tribe of Indians*, 471 U.S. 759, 766 (1985)) (internal citations omitted). The interpretation of the Trust Reform Act advanced by the Defendants can only govern "if 'the Secretary's proposed interpretation does not run against **any** Indian tribe…[and] actually advances the trust relationship between the United States and the Native American people.'" *Id.* at *6 (quoting *Koi Nation of N. Cal. v. U.S. Dep't. of Interior*, 361 F.Supp.3d 14, 49-50 (D.D.C. 2019)) (emphasis added).

Defendants assert that no trust duty to San Felipe exists because "San Felipe cites no statute imposing on Defendants any accounting duty to San Felipe relating to Santa Ana's funds…." Motion at 30. The error in Defendants' argument is apparent in the repeated assertion that the funds in the IIM account were "Santa Ana's funds." *Id.* at 30, 31, n.17. Defendants' argument seems to be that it had (and continues to have) no trust duty to San Felipe because the account was always held in trust only for Santa Ana – they were "Santa Ana's funds" and San Felipe had no "then-current beneficial interest." *Id.*

Pueblo of San Felipe v. Hodel made clear that the IIM account was held under the

Secretary's asserted "fiduciary duty to *both* Pueblos." 770 F.2d at 917 (emphasis added); *see* Compl. ¶¶ 135-36, 138-139. San Felipe's trust beneficiary status was not disputed until BIA officials determined Santa Ana, not San Felipe, was entitled to the IIM trust funds. Compl. ¶¶ 188-189; *see also* Motion, Ex. 2.[13] Defendants gave San Felipe no notice of the request for disbursement of funds, the determination to disburse funds, or the disbursal of funds on January 11, 2018, until April 18, 2018, three months after the disbursement. Compl. ¶¶ 187-191; *see also* Letter from BIA to Governor of San Felipe at 1 (Apr. 18, 2018), a complete and correct copy of which is attached hereto as **Exhibit 3**. The letter confirms the disbursement from a "tribal trust account" was done pursuant to 25 C.F.R. § 115.815. While an Indian tribe may voluntarily withdraw funds from a trust fund managed by the United States under 25 U.S.C. § 4022 and 25 C.F.R. § 115.815, that withdrawal does not insulate the Defendants from liability from suit by another tribe that was the trust beneficiary of that same IIM account. *See*, *e.g.*, 25 U.S.C. § 4027.

Defendants' position appears to be that they have no obligation to notify a pueblo when Defendants 1) have changed the BIA TAAMS record of ownership of a pueblo's restricted fee-patented lands 2) removed that pueblo as a trust beneficiary from a trust account, and 3) disbursed IIM account funds to another pueblo, nor to cite any statutory authority to do so. If upheld, such position would obliterate the Defendants' fiduciary obligations to pueblos and tribal nations.[14] "A

[13] As noted above, Defendants never provided San Felipe with a copy of the November 14, 2017 Memorandum until they filed it with their Motion.

[14] The Supreme Court affirmed federal common law and statutory trust obligations where there is a discrete trust corpus for specified trust beneficiaries. *Cobell v. Norton*, 240 F.3d 1081, 1086, 1098-99 (D.C. Cir. 2001) (citing, *inter alia*, *United States v. Mitchell*, 463 U.S. 206, 225 (1983)). That trust duty is not undermined by *Arizona v. Navajo Nation,* which did not deal with a specific trust corpus. 143 S. Ct. 1804, 1817 (2023).

cause of action for breach of trust traditionally accrues when the trustee 'repudiates' the trust and the beneficiary has knowledge of that repudiation...."[15] *Pelt v. Utah*, 611 F.Supp.2d 1267, 1283 (D. Utah 2009), (citing *Shoshone Indian Tribe*, 364 F.3d at 1348 (Fed. Cir. 2004)) (internal citations omitted). As San Felipe's trustee, Defendants could not lawfully disregard their duties to San Felipe simply because they intended to (and ultimately did) take action to alter BIA TAAMS records of lands patented to San Felipe—indeed, this was a moment when they should have been most keenly aware of their duties to San Felipe.[16] Defendants' conduct and their defense of it now reflects the precise type of secretive dealings by the trustee against the interests of the beneficiary that caused Congress to pass the Trust Reform Act in the first place.

Defendants assert they "need only 'give some sense of where money has come from and gone to.'" Motion at 31 (quoting *Fletcher*, 730 F.3d at 1215). They falsely contend San Felipe already knows everything any required accounting would tell it. *Id. Fletcher* does not support Defendants' position, it undermines it. There, the Tenth Circuit ruled that 25 U.S.C. § 4011(a) "guarantees an accounting" of deposits and disbursements, the "nature and scope" of which must be molded "'to the necessities of the particular case.'" *Fletcher* at 1214, 1215 (quoting *Cobell v. Salazar*, 573 F.3d 808, 813 (D.C. Cir. 2009)).[17] Indeed, the court "must do everything it can to

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[15] Two cases cited by Defendants are not applicable to tribal trust account claims. *See* Motion at 31 (citing *Ginocchi v. Grand Home Holdings, Inc.,* No. 10cv2115-L(BGS), 2011 U.S. Dist. LEXIS 88108, *6 (S.D. Cal. Aug, 8, 2011) (employment contract created no trust); *Lewis v. Ben. Cal., Inc*., No. 4:17-cv-03575-KAW, 2018 U.S. Dist. LEXIS 199771, *14 (N.D. Cal. Nov. 26, 2018) (loan agreement created no trust)).

[16] Defendants' trust duties included accurately accounting for the funds held in trust and providing detailed quarterly statements. 25 U.S.C. §§ 4011, 4043(b)(2)(A); 25 C.F.R. § 115.803. Defendants are also required to give interested parties written notice of their decisions. 25 C.F.R. § 2.104(a). Final BIA decisions are subject to review under the APA. 25 C.F.R. § 2.100(a).

[17] The accounting duty under § 4011(a) encompasses any accounting duty separately set forth in

ensure that Interior provides … an equitable accounting," meaning "the best accounting" the Department can realistically provide. *Cobell v. Salazar* at 813.[18] Unlike *Fletcher*, which involved over one hundred years of deposits and disbursements into thousands of accounts, the instant case involves one IIM account established in 1980. Compl. ¶ 139. Defendants cannot claim that accounting for 43 years of limited activity in a single IIM account would be unduly costly, onerous, burdensome or unjust. *Cf. Fletcher* at 1214.

San Felipe does not know the actual amount disbursed from the IIM account. *See* Compl. ¶ 190 (alleging the approximate amount). It does not know what funds were actually deposited into the account or from what sources, other than the two payments alleged in the Complaint. *See id.* ¶¶ 213, 214. (Defendants do not assert that these were the only payments deposited.) Thus, San Felipe does not know whether any funds derive from Private Claims 4, 5, or 6, or any other lands Defendants concede are San Felipe's lands. San Felipe does not know the interest that accrued on the account, and that should have continued to accrue on the account through the present day, because it has not received an accounting. *Id.* ¶ 232. This information is no more than what "is reasonably necessary to enable [San Felipe] to enforce [its] rights under the trust," including an accounting and the restoration of *all* the funds that are rightfully San Felipe's.

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25 U.S.C. § 162a(d). *Fletcher* at 1212 n.4. Contrary to Defendants' assertion (Motion at 33, n. 19), § 162a(d) creates fiduciary duties that are enforceable by tribal beneficiaries. *Cobell v. Norton*, 240 F.3d at 1081; *Cherokee Nation*, 2023 WL 2914173, *11.

[18] The common law trust principles applied in *Fletcher* and the *Cobell* opinions disprove Defendants' assertion that common law does not apply. *See* Motion at 31 (citing *United States v. Jicarilla Apache Nation*, 564 U.S. 162, 175-77 (2011)). *Jicarilla* held no statute or regulation confers a right to obtain attorney-client privileged information from the U.S. in a breach of trust case, and with no right to disclosure, there was no interpretive role for common law. *Jicarilla* at 184-185. Common law still informs the scope of statutory and regulatory duties. *Id.* at 177; *Fletcher* at 1210.

Fletcher at 2015 (internal quotation marks omitted).[19]

If, as San Felipe alleges, Defendants unlawfully moved San Felipe's boundary, then used that as a springboard to switch its TAAMS records and distribute its trust funds, unlawfully and with no notice, San Felipe is entitled to an accounting and equitable relief. Defendants cannot avoid their fiduciary duties by keeping their actions behind closed doors. What Defendants seek would gut the trust duties the Defendants owe to all pueblos and other tribal nations. If the Defendants' actions taken without notice cannot be challenged in this Court, then they can avoid their fiduciary duties to tribes by simply failing to notify tribes when they alter TAAMS records and disburse trust accounts held in that tribe's name, then claim that because they already acted, no suit can be brought against them. As the Tenth Circuit explained in *Fletcher*, depositing and holding funds in trust "seems pretty nearly pointless" without assurance that disbursements are handled properly too. 730 F.3d at 1212. Such a result seems absurd under the federal common law of trusts, the APA and the Trust Reform Act.

CONCLUSION

Defendants acted without any applicable statutory or constitutional authority. In so doing, they contravened a fundamental principal of all land patents, that once the United States has conveyed lands to a patentee, the executive branch cannot change the boundaries to the patentee's detriment. Their actions conflicted with the actions by Congress to confirm the San Felipe grant,

[19] Defendants' accounting duty is not limited to providing information needed "to determine whether [a beneficiary] suffered an alleged loss." Motion at 31 (citing *Wolfchild v. United States*, 731 F.3d 1280, 1291 (Fed. Cir. 2013)). *Wolfchild*'s formulation was based on a statutory provision that defined when a statute of limitations for claims of mismanagement would commence—only when "the beneficiary receives an accounting from which it can determine whether there has been a loss." *Wolfchild* at 1291 (cleaned up). It is inapposite here.

the President to issue the San Felipe Patent, the PLC Act and PLC Court to safeguard the patent, and finally, under the PLA, this Court's actions to quiet title for all time against all then-existing claims. Defendants do not own this land, and the QTA does not shield their actions from this Court's scrutiny. For the reasons set forth herein, San Felipe respectfully asks this Court to deny Defendants' motion to dismiss.

Respectfully submitted this 13th day of October, 2023.

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CERTIFICATE OF SERVICE

I hereby certify that on October 13, 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/ Rebecca L. Kidder
Rebecca L. Kidder