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

PUEBLO OF SAN FELIPE, a federally recognized Indian tribe,

Plaintiff,

v.

DEBRA HAALAND, Secretary of the United States Department of the Interior, *et al.*,

Defendant,

Case No. 1:23-cv-296 (JB)(LF)

FEDERAL DEFENDANTS' REPLY IN SUPPORT OF THEIR MOTION TO DISMISS

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INTRODUCTION

This case should be dismissed because San Felipe seeks to quiet title to Santa Ana's restricted fee lands in which the United States has an interest. Congress, through the Quiet Title Act's ("QTA's") Indian Lands exception, preserved the United States' sovereign immunity from such suits seeking to quiet title to lands in which the United States, as trustee, claims an interest on behalf of another Tribe. 28 U.S.C. § 2409a(a). The Court's analysis need proceed no further.

San Felipe's Complaint seeks to quiet title through, among other things, asking the Court to declare that "no claims adverse to San Felipe's title and right may be validly asserted." Defs.' Mot. to Dismiss ("Mot.") at 16-18, ECF 29. It's Opposition to the Motion to Dismiss attempts to recast the Complaint as something other than a quiet title action by claiming that the Pueblo Lands Act ("PLA") proceedings already quieted title to the contested lands in San Felipe almost 100 years ago. San Felipe thus acknowledges that this is a quiet title case in which it seeks to quiet title against the United States and the Pueblo of Santa Ana. San Felipe cannot evade Congress's retention of the United States' sovereign immunity from quiet title suits involving restricted Indian lands by arguing that San Felipe should prevail on the merits of that suit.

San Felipe admits that all of its remaining claims—which challenge recordation of Santa Ana's title and payment of funds derived from Santa Ana's lands—arise from and are dependent on its argument that the land is actually San Felipe's. Because this Court lacks jurisdiction over San Felipe's foundational title challenge, and because the remainder of San Felipe's claims cannot be resolved without addressing its claim to title, Federal Defendants respectfully submit that this Court should dismiss all of San Felipe's claims in this case.

FACTUAL BACKGROUND

Federal Defendants recently resolved a centuries-long dispute regarding the two Pueblos' overlapping land claims. Mot. at 1-9. San Felipe's Opposition argues that "[n]o overlap has

ever existed between the" San Felipe Pueblo Grant and El Ranchito Tract lands. Pl.'s Mem. in Opp'n. to Defs.' Mot. to Dismiss ("Opp.") at 2, ECF No. 40. San Felipe's denial of any boundary overlap is factually incorrect and legally irrelevant.

As to the facts, the Tenth Circuit has twice determined that an overlap existed. *San Felipe v. Hodel*, 770 F.2d 915, 916 (10th Cir. 1985) ("land that is claimed by both" Pueblos is a "contested parcel [that] is referred to as the overlap area"); *Pueblo of Santa Ana v. Baca*, 844 F.2d 708, 710 (10th Cir. 1988) ("surveys were confused and offered conflicting placements of the boundary. Without resolving this conflict, the General Land Office simply issued overlapping patents."). And even San Felipe elsewhere admits that an "overlap of the El Ranchito claim with the San Felipe Patent boundary" existed. Opp. at 5, 7. San Felipe nonetheless argues that this is not a quiet title action because "the land in question was already quieted in San Felipe" under the PLA proceedings. *Id*. at 12; *id*. at 15-18 (arguing that *United States v. Algodones Land Co*., No. 1870 (D.N.M.) quieted title). As discussed at pages 6-9 below, however, the PLA proceedings explicitly did not resolve the San Felipe/Santa Ana boundary dispute.[1]

Regardless, as to the law it does not matter for purposes of the Court's jurisdiction whether San Felipe's title claim is colorable. The question is whether Congress has waived the United States' sovereign immunity to resolve that title question in court. San Felipe's focus on the merits of its title claims betrays its argument that this is not a quiet title case. And because Congress has preserved the United States' sovereign immunity with respect to such title disputes over restricted Indian lands, San Felipe's Opposition largely just proves our point.

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[1] While no more about San Felipe's factual claims need be said, the Tompkins Opinion disproves San Felipe's assertion that no overlap existed between the lands claimed by the two Pueblos. Off. of the Solic., M-37027, Mem. re: Boundary Disp.: Pueblo of Santa Ana Pet. for Corr. of the Surv. of the S. Boundary of the San Felipe Grant ("M-37027") at 3-10, ECF No. 29-1 (tracing dispute back to Spanish rule). *See also, Pueblo of San Felipe*, 190 IBLA 17, 19-26 (2017).

ARGUMENT

I. The QTA bars San Felipe's suit to quiet title to restricted Indian land.

The QTA bars suits against the United States by plaintiffs seeking to quiet title in themselves to Indian trust or restricted fee lands. Mot. at 15-16 (quoting *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak*, 567 U.S. 209, 216-20 (2012)). Our Motion explained why that bar applies here. San Felipe has not met its burden to demonstrate otherwise.

A. The Complaint seeks to Quiet Title in restricted Indian Land.

San Felipe does not seriously contest that the QTA bars cases seeking to quiet title to Indian lands. It instead claims that this case "is not a quiet title action." Opp. at 12-15. San Felipe's effort to recast its Complaint does not withstand scrutiny.

San Felipe's Complaint plainly seeks to quiet title to Indian lands. Mot. at 16-18. San Felipe cannot deny that the relief it seeks—"judgment declaring that all claims adverse to San Felipe's title are now barred" and recognizing "San Felipe's title and right to sole possession of the . . . Conflict Area"—would quiet title to Santa Ana's restricted fee land in which the United States holds an interest. *Id*. at 18 (quoting Compl. at 64-65, ECF No. 1). Indeed, San Felipe understatedly admits that it seeks what "might potentially be characterized as QTA relief." Opp. at 22. San Felipe seeks to elide its prayer for relief by claiming the "critical factor is not the relief requested, but the nature of the plaintiff's grievance." *id*. at 14-15 (citing *Patchak*, 567 U.S. at 214). Not true. *Patchak* made clear that the focus for QTA purposes is a plaintiff's "demand for relief." 567 U.S. at 215. And San Felipe admits that *High Lonesome Ranch, LLC v. Bd. of Cnty. Comm'rs*, 61 F.4th 1225, 1238 (10th Cir. 2023), focuses QTA analysis on the relief requested. Opp. at 14-15. San Felipe's prayer for relief is thus fatal to its claim.

But even if San Felipe had identified the right test, it would fail that test, as every part of its Complaint clarifies that this is a quiet title action. Mot. at 16-18. The facts train on San

Felipe's title allegations. Compl. ¶¶ 20-158. Those allegations lead to requested declarations: 1) of San Felipe's "valid and inviolate title and right to sole possession" of land, *id.* ¶ 198; 2) "to restore [San Felipe's] boundaries and title"; *id.* ¶ 210; 3) that Federal Defendants have a "legal obligation . . . to recognize San Felipe's title," *id.* ¶ 212; 4) "that no claims adverse to San Felipe's title and right may be validly asserted," *id.* ¶ 224; 5) obligating Defendants "to recognize San Felipe's title and right of sole possession," *id*.; and 6) that San Felipe has "title and right to sole possession of the lands" Federal Defendants recognize as Santa Ana's. *id*. at 227. San Felipe's minimization of its Complaint, Opp. at 14, does not withstand scrutiny. Because San Felipe's factual allegations and claims seek to vindicate an alleged ownership interest in restricted Indian lands, this is a QTA case. *Patchak*, 567 U.S. 209, 220; Mot. at 16-18.

San Felipe also attempts to minimize the lands' "restricted fee" status and contends that it can evade the QTA's Indian Lands exception because the United States has no ownership interest in restricted fee lands such as the former overlap area. Opp. at 12-14, 23. As an initial matter, if that is correct then San Felipe's requested relief as to title must be dismissed because the Pueblo has sued the wrong party. But San Felipe is not correct because the Indian Lands exception does not distinguish between trust and restricted fee lands. Mot. at 21-26. Congress provided that the QTA's sovereign immunity waiver "does not apply to trust or **restricted Indian lands**." 28 U.S.C. § 2409a. This Court's "analysis must begin and end with the language of the statute itself." *Woods v. Std. Ins. Co.*, 771 F.3d 1257, 1263 (10th Cir. 2014). San Felipe cannot selectively read the word "restricted" out of the statute. *Sinclair Wyo. Ref. Co. v. United States EPA*, 874 F.3d 1159, 1170 (10th Cir. 2017) (citing *Clark v. Rameker*, 573 U.S. 122, 131 (2014)); *United States v. Candelaria*, 271 U.S. 432, 443-44 (1926) ("A judgment or decree which operates . . . to transfer the lands from the [Pueblo] Indians, where the United

States has not authorized [it] infringes" the United States' interest in restricting alienation of those lands); *United States on behalf of Santa Ana Pueblo v. Univ. of N.M.*, 731 F.2d 703, ("Pueblos are entitled to the same protection . . . regardless of their [restricted] fee simple title."). Indeed, San Felipe elsewhere admits "that the QTA does not waive the government's immunity with respect to restricted fee lands." Opp. at 11.[2] San Felipe's claim must be dismissed because it seeks to quiet title to restricted Indian lands.[3]

San Felipe cites no case supporting its claim, *id.* at 13, 23, that the Indian lands exception is inapplicable where a Tribe seeks to seize another Tribe's restricted fee lands in which the United States holds an interest. The three cases San Felipe cites, *Comanche Nation v. United States*, 393 F. Supp. 2d 1196 (W.D. Okla. 2005), *Kansas ex rel. Graves v. United States,* 86 F.Supp.2d 1094 (D. Kan. 2000) and *Kansas v. United States*, 249 F.3d 1213 (10th Cir. 2001), are inapposite because they involved challenges to gaming decisions rather than adverse title claims to Indian land. And *Pueblo of Sandia v. Babbitt*, 1996 U.S. Dist. LEXIS 20619, *13-14 (D.N.M. Dec. 10, 1996), and *Pueblo of Taos v. Andrus*, 475 F. Supp. 359, 365 (D.D.C. 1979), involved

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[2] San Felipe claims that the contested land's restricted fee status protects its alleged interest. Opp. at 10-11, 20, 23. There is thus no dispute that the lands are Indian. So contrary to San Felipe's suggestion, *id.* at 14, no merits inquiry is necessary to determine jurisdiction. *Cf. Kansas v. United States*, 249 F.3d 1213, 1225, n.7 (10th Cir. 2001). Relatedly, San Felipe stakes much on the issue of whether Interior has authority to resurvey Indian lands. Opp. at 14. San Felipe fails to address Interior's authority to survey "any Indian . . . reservations." 25 U.S.C. § 176. San Felipe cites inapposite authority, Opp. at 9-10, 23-24, to argue that the survey at issue is a "nullity." (citing 43 U.S.C. § 772). But Section 772 applies to undisposed public lands rather than Indian lands. And San Felipe overreads *United States v. Conway*, 175 U.S. 60 (1899). Opp. at 3-4, 23-24. *Conway* neither addressed nor barred Interior from resurveying Indian lands. San Felipe cites no bar to resurveying any Indian land and no such bar exists. *See Pueblo of Sandia v. Babbitt*, 231 F.3d 878, 881 (D.C. Cir. 2000). Courts have long recognized Interior's authority "to take steps . . . to survey Indian lands and correct the mistakes of the past." Boundary Disp. Between Santa Ana Pueblo and San Felipe Pueblo: The Sec'y's Auth. to Correct Erroneous Surveys, 2000 DEP SO LEXIS 5, *34-35 ("M-37000") (Dec. 5, 2000) (analyzing cases).

[3] San Felipe's citation to 28 U.S.C. § 2409a(b), Opp. at 13, which allows the United States to retain land by compensating a prevailing QTA plaintiff, reinforces that it seeks to quiet title.

Tribal efforts to correct surveys in a manner that was not adverse to another Tribe's title.[4] In any event, the cases San Felipe cites predate *Patchak's* straightforward interpretation of the Indian Lands exception. Mot. at 18-23. *Patchak* clarified that the QTA preserves the United States' sovereign immunity from quiet title suits "**when** they involve Indian lands." *Patchak*, 567 U.S. at 216. The QTA's plain language does not include an exception to the Indian Lands exception where a Tribe seeks to seize another Tribe's restricted fee lands in which the United States holds an interest. Indeed, such an exception would frustrate Congress's explicit preservation of sovereign immunity by undermining the interests of the United States, beneficiary Tribes, and tribal sovereign immunity. *See Id.*; *Block v. North Dakota*, 461 U.S. 273, 284-85 (1983); *Iowa Tribe of Kan. & Neb. v. Salazar*, 607 F.3d 1225, 1237 (10th Cir. 2010).[5]

B. Pueblo Lands Act proceedings do not override the QTA's Indian lands exception.

Perhaps recognizing the QTA's preservation of sovereign immunity, San Felipe seeks a waiver through another route. San Felipe argues that *Algodones* established San Felipe's superior title relative to Santa Ana. Opp. at 7-8, 12, 15-18. And San Felipe contends, *id.* at 17-18, that, because the United States was the plaintiff in *Algodones*, the United States has waived sovereign immunity for San Felipe's quiet title action in this case. As an initial matter, the argument itself again lays bare that San Felipe seeks to quiet title against the United States and Santa Ana. If the Pueblo was not seeking title, *Algodones* would be irrelevant. In any event, San Felipe is wrong on both counts. The PLA proceedings did not resolve the San Felipe/Santa

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[4] *Pueblo of Sandia* led Interior to analyze the survey correction authority that San Felipe attacks. M-37000, 2000 DEP SO LEXIS 5 at *4 n.3.

[5] San Felipe's effort to distinguish *Northern New Mexicans* because the Tenth Circuit "declined to affirm dismissal on QTA/sovereign immunity grounds," Opp. at 15, is telling. The Circuit noted the plaintiffs' clarification "that they are not seeking to quiet title" in their names. *N. New Mexicans Protecting Land, Water & Rights v. United States*, 704 Fed. Appx. 723, 726 (10th Cir. 2017). San Felipe, in contrast, seeks to quiet title in its name. Opp. at 8, 12.

Ana title dispute. And the PLA, 43 Stat 636 (1924), does not override Congress's later retention, in the QTA, of sovereign immunity from actions quieting title to restricted Indian lands.

San Felipe is incorrect, Opp. at 5-8, that the PLA and *Algodones* quieted title against Santa Ana. The PLA required that the PLB identify the lands owned by each Pueblo, as well as the lands for which Indian title had been extinguished in accordance with the PLA. PLA § 2. And it required that the Board "be unanimous in all decisions whereby it shall be determined that . . . Indian title has been extinguished." *Id.* The Board's resulting report set "forth the metes and bounds of the lands of each Pueblo that were found not to be extinguished under the rules established in the Act." *Mountain States Tel. & Tel. Co. v. Pueblo of Santa Ana*, 472 U.S. 237, 244-245 (1985). The PLB's reports triggered the United States' quiet title actions on behalf of each Pueblo. PLA § 3. The United States' quiet title suits were thus based on the PLB reports. *United States v. Thompson*, 708 F. Supp. 1206, 1209 (D.N.M. 1989). But those reports only "examine[d] **non-Indian claims** to Pueblo lands." *Id.* (emphasis added).

San Felipe does not identify any PLB determination extinguishing Santa Ana's title to the contested lands. San Felipe argues, Opp. at 7-8, that the PLB's report on San Felipe's lands and the ensuing quiet title action in *Algodones* quieted San Felipe's title against Santa Ana. But in 1931, the PLB confirmed that its "reports . . . merely indicated the conflict" on about 600 acres between the Pueblos. Supp. Rep. on Conflict Between San Felipe Pueblo and El Ranchitos Purchase of Santa Ana Pueblo at 1 ("PLB Rep.") (June 30, 1931) (Ex. 1). The PLB recognized that "it should not attempt to decide the conflict inasmuch as both parties were Pueblo[s]." *Id*. at 1-2. It ultimately suggested instead that the "controversy should be settled . . . in a friendly suit" between the Pueblos. *Id*. at 3-4. Because the United States' quiet title suits were based on the

PLB's reports, *Algodones* could not quiet title as San Felipe contends. *See Thompson*, 708 F. Supp. at 1217.

San Felipe is also wrong, Opp. at 6, that the PLA empowered and required Pueblos to resolve all inter-Pueblo land disputes. San Felipe miscites *Thompson*, which states instead that the PLA was "'intended only to oblige non-Indians to prove claims to Pueblo lands; Pueblos could only file suit in response to claims made against them by non-Indians.'" 708 F. Supp. at 1215 n.11 (quoting *Santa Ana*, 844 F.2d at 709 n.1).[6]

Congress can waive tribal sovereign immunity to resolve intertribal boundary disputes. For instance, it explicitly permitted the Navajo and Hopi "to commence or defend . . . an action against each other and any other tribe of Indians claiming any interest in [land] for the purpose of . . . quieting title." Act to Determine the Rights and Interests of the Navaho Tribe, Hopi Tribe, and individual Indians, 72 Stat. 403 (July 22, 1958); *Sekaquaptewa v. MacDonald*, 626 F.2d 113, 115 (9th Cir. 1980); *See also* Statements on Introduced Bills and Joint Resolutions, 146 Cong Rec S 7542, 7545 (July 25, 2000) (noting that it was up to Congress to resolve the 150-year long "complex set of title disputes between [Pueblos], the federal government, and private land holders"). Congress has not passed a similar waiver in response to the PLB's reports. And the "'friendly suit'" that the PLB recommended in 1931 has yet to occur due to the Pueblos asserting their sovereign immunity. M-37027 at 9. The absence of a waiver of sovereign immunity for the San Felipe/Santa Ana dispute, however, does not mean San Felipe can achieve the same result by simply suing the United States. That is because the QTA contains an "unambiguous

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[6] The PLA allowed Pueblos to intervene to fully adjudicate title to lands claimed by non-Indians. PLA § 13. Contrary to San Felipe's suggestion, Opp. at 6 n.4, *Thompson* was not a dispute between Pueblos. The Tenth Circuit, while affirming the PLA's statute of limitations on challenges to extinguishment of Pueblos' title, considered title disputes with "non-Indian claimants." *United States v. Thompson*, 941 F.2d 1074 (10th Cir. 1991).

retention of sovereign immunity against quiet-title actions affecting trust and restricted Indian lands." *Mesa Grande Band of Mission Indians v. Salazar*, 657 F. Supp. 2d 1169, 1174-75 (S.D. Cal. 2009). Simply put, the PLA's statutory scheme does not waive of the United States' immunity from San Felipe's quiet title action. *See* Mot. at 14-28.

Finally, San Felipe is wrong that any continuing jurisdiction the Court maintains in *Algodones* grants the Court jurisdiction over San Felipe's Complaint. First, San Felipe did not invoke *Algodones'* alleged continuing jurisdiction in the Complaint. Second, by authorizing the United States to file quiet title actions, the PLA did not "unequivocally" waive the United States' immunity from quiet title suits. *See N. New Mexicans Protecting Land Water & Rights v. United States*, 161 F. Supp. 3d 1020, 1036 (D.N.M. 2016); *Cf. Rupp v. Omaha Indian Tribe*, 45 F.3d 1241, 1244-45 (8th Cir. 1995) (sovereign immunity waiver must be unequivocal). Third, the decree retained jurisdiction only over the *Algodones* defendants. ECF No. 40-2 at 40. The United States was not a defendant in *Algodones* (or *Brown*). Fourth, the decree was entered in 1930 and could not have decided, much less established continuing jurisdiction over, an issue that the PLB confirmed was undecided in 1931. ECF No. 40-2 at 40; PLB Rep at 3-4.[7] Fifth, the decree and PLA predate the QTA by over 40 years. So even if the decree applied to the San Felipe/Santa Ana dispute, which it did not, San Felipe fails to explain how the decree could waive a "thorough remedial scheme" imposed later to protect Indian lands from quiet title suits. *Block*, 461 U.S. at 284-85. *Algodones* cannot save San Felipe from the Indian lands exception.

C. San Felipe cannot circumvent the Indian lands exception with an officer's suit.

San Felipe is also incorrect, Opp. at 29-35, that it can evade the Indian lands exception by

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[7] The United States cannot be estopped if an issue was not decided. *Edwell v. Chase*, 05cv34-JB, 2005 U.S. Dist. LEXIS 39269, *3 (D.N.M. Dec. 7, 2005). Nor does non-mutual collateral estoppel apply against the United States. *United States v. Alaska*, 521 U.S. 1, 13 (1997).

reframing this case as an officer's suit. In *Block*, the Supreme Court rejected an officer's suit as a means to challenge the United States' real property interest. 461 U.S. at 280–86. The Court began with the QTA's legislative history. Historically, a claimant could not sue the United States to quiet title because Congress had not waived sovereign immunity. *Id.* at 280–81. "Enterprising claimants" thus pursued officer's suits "as another possible means of obtaining relief in a title dispute." *Id.* at 281. "[T]he claimant would proceed against the federal officials charged with supervision of the disputed area, rather than against the United States." *Id.* Often, these suits—similar to San Felipe's attempted recasting of its suit here—would seek an injunction prohibiting an official's interference with alleged property rights. *Id.* But over time the Court "made it more difficult . . . to employ a suit against federal officers as a vehicle for resolving a title dispute." *Id.* at 282.

"Congress considered and passed the QTA" under a background presumption "that citizens asserting title to or the right to possession of lands claimed by the United States were 'without benefit of a recourse to the courts,' because of . . . sovereign immunity." *Id*. (citation omitted). With the QTA, "Congress sought to rectify this state of affairs." *Id.* The original bill "was short and simple." *Id.* But Congress modified the bill in "several important respects." *Id.* at 283. It "[f]irst . . . excluded Indian lands from the scope of the waiver." *Id.*

> In light of this legislative history, [courts] need not be detained long by [a claimant's] contention that it can avoid the QTA's . . . restrictions by the device of an officer's suit. If [such a] position were correct, all of the carefully crafted provisions of the QTA deemed necessary for the protection of the national public interest could be averted. It would require the suspension of disbelief to ascribe to Congress the design to allow its careful and thorough remedial scheme to be circumvented by artful pleading.

Id. at 284–85 (quotations and citation omitted). "If we were to allow claimants to try the Federal Government's title to land under an officer's-suit theory, the Indian lands exception to the QTA

would be rendered nugatory." *Id*. at 285; *United States v. Mottaz*, 476 U.S. 834, 846–47 (1986).

San Felipe fails to overcome this precedent. First, San Felipe primarily relies on cases in which the plaintiff did not seek to quiet title, instead seeking review under the APA. Opp. at 18-24. Such cases are inapposite because the APA prohibits suits where another statute, like the QTA, forbids the relief sought. Mot. at 14. Second, the three cases San Felipe cites that might be characterized as permitting officer's suits to quiet title predate the QTA. Opp. at 29-30 (citing *Malone v. Bowdoin*, 369 U.S. 643, 647 (1962), *Larson v. Domestic & Foreign Commerce Corp.*, 337 U.S. 682, 690 (1949) and *Tindal v. Wesley*, 167 U.S. 204, 222 (1897)). These cases did not survive the QTA, which forbids suits quieting title to Indian lands. *Block*, 461 U.S. at 282-86.[8]

D. San Felipe cannot recast its quiet title claim as a takings claim it has not pled.

San Felipe's next effort to overcome the QTA's Indian Lands exception is to argue that its case must proceed to prevent unconstitutional confiscation of San Felipe's alleged property, Opp. at 20-24. The argument fares no better. San Felipe pled this case as an action claiming title adverse to restricted Indian lands. Mot. at 16-19. San Felipe did not plead a Fifth Amendment takings claim or petition Congress for a statute addressing the jurisdictional barriers to quieting title to Santa Ana's restricted fee lands. Its effort to recast its Complaint as alleging an unconstitutional taking does not survive scrutiny of the Complaint or caselaw.

While San Felipe could have pled a takings claim, the Constitution "does not prohibit the taking of private property, but instead places a condition on the exercise of that power." *First English Evangelical Lutheran Church v. Cnty of Los Angeles*, 482 U.S. 304, 314 (1987). Thus, "[e]quitable relief is generally not available when just compensation procedures are." *Alto*

[8] San Felipe's claim that the QTA was not meant to immunize Defendants fails because the pre-QTA cases it cites, *see* Opp. at 10, say nothing about: 1) the QTA; 2) Congress's grant of survey authority in 25 U.S.C. § 176; or 3) if one Tribe may use the courts to seize another Tribe's land.

Eldorado Partners v. City of Santa Fe, 644 F. Supp. 2d 1313, 1349 (D.N.M. 2009). "Accordingly, 'taking claims against the Federal Government are premature until the property owner has availed itself of the process provided by the Tucker Act.'" *N. New Mexicans*, 161 F. Supp. 3d at 1042-1043 (citation omitted).

Moreover, San Felipe did not plead a takings claim. It's reliance on two cases enjoining broad statutes that took small amounts of land from vast numbers of Indians, Opp. at 20, is thus doubly misplaced. Both *Babbitt v. Youpee*, 519 U.S. 234 (1997) ("*Youpee*") and *Hodel v. Irving*, 481 U.S. 704 (1987) ("*Irving*") were pled as takings claims and challenged the constitutionality of statutes. Moreover, the Court "made clear that these cases are exceptional and limited to their facts [and] involved regulatory takings, not physical takings." *Fideicomiso de la Tierra del Cano Martin Pena v. Fortuno*, 604 F.3d 7, 19 (1st Cir. 2010) (distinguishing *Youpee* and *Irving)*; *Wiese v. Becerra*, 263 F. Supp. 3d 986, 996 (E.D. Cal. 2017) (noting *Youpee* may have departed from the "rule . . . that injunctive relief is generally not available for a takings claim" because the regulation was "extraordinary" and "the normal remedy of" seeking damages was unrealistic).

San Felipe identifies a single case in which a court considered the QTA and takings clause together. Opp. at 20-21 (citing *Dumarce v. Norton*, 277 F. Supp. 2d 1046 (D.S.D. 2003). *Dumarce*, however, only illustrates that San Felipe's case is one to quiet title, instead of one seeking just compensation for a taking. *Dumarce* denied Interior's motion to dismiss because "[n]othing in the plaintiffs' amended complaint hints that this is a title dispute case. To the contrary, the entire amended complaint speaks in terms of unconstitutional takings of private property." *Id.* at 1051. *Dumarce* was reversed on appeal in a manner that rejected plaintiff's effort to recast their takings claim as one "solely . . . for non-monetary relief." *Dumarce v. Scarlett*, 446 F.3d 1294, 1304 (Fed. Cir. 2006). Regardless, *Youpee*, *Irving*, and *Dumarce*

predate *Patchak's* explanation of the QTA's Indian lands exception. San Felipe does not complain that its title has been taken and that it is owed compensation. It instead seeks to quiet that title against the United States and Santa Ana. A takings claim that San Felipe did not plead cannot provide the Court with jurisdiction over the quiet title action that San Felipe did plead.

E. If San Felipe is truly not seeking to quiet title, nothing is left of its case as pled.

In addition to the specific reasons discussed above, San Felipe argues that its case can proceed because "is not asking the Court to quiet title," Opp. at 15. We have already explained why that is not the case on the Complaint's face. And San Felipe admits that Interior's update of title records and disbursement of funds are derivative the title claims. Opp. at 33; Mot. at 16-18 (collecting allegations). Thus, if San Felipe is truly departing from any effort to quiet title, all the claims for relief seeking to quiet title must be dismissed. Even under a theoretical APA case, San Felipe cannot obtain the declaratory relief it seeks. The only remedy under the APA would be remand for "further consideration" without directing Interior's conclusions after remand. *See N.M. Health Connections v. United States HHS*, 340 F. Supp. 3d 1112, 1164 (D.N.M. 2018).[9] But the Court need not reach those hypothetical questions because San Felipe's suit, as pled, is one against the United States to quiet title in restricted Indian lands. The QTA thus preserves the United States' sovereign immunity. The Complaint should be dismissed for lack of jurisdiction.

II. San Felipe lacks standing to the extent it's claims involve Private Claims 4, 5, and 6.

This Court lacks jurisdiction over San Felipe's claims to the extent that they encompass Private Claims 4, 5, and 6 because there is no current case or controversy regarding that portion

[9] The merits of the foundational title dispute would have to be processed as an appeal based on the administrative record. *N. New Mexicans Protecting Land Water & Rights v. United States*, 2015 U.S. Dist. LEXIS 164739, *21-22 (D.N.M. Dec. 4, 2015); *O Centro Espirita Beneficiente Uniao Do Vegetal v. Duke*, 286 F. Supp. 3d 1239, 1256 (D.N.M. 2017).

of the Former Overlap Area. San Felipe admits that its alleged standing is based on speculation about possible future injuries that may result from a potential future government decision. Opp. at 24-26. Such speculation is insufficient to support standing. *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409–10 (2013). And San Felipe's claim, Opp. at 25, that it has standing because the challenged decisions raised new, harmful jurisdictional questions does not withstand scrutiny. *Pueblo of Santa Ana*, 844 F.2d at 710 (noting longstanding jurisdictional questions). Finally, San Felipe's suggestion that it has suffered an injury that is "capable of repetition [but] evading review," Opp. at 26, fails because: 1) that mootness exception is inapplicable because Federal Defendants have not argued that San Felipe's claims are moot; and 2) San Felipe fails to establish either of the exception's prongs. *Brown v. Buhman*, 822 F.3d 1151, 1166 (10th Cir. 2016). Any claims regarding Private Claims 4, 5, and 6 must therefore be dismissed.

III. San Felipe's trust claims should be dismissed.

San Felipe's trust accounting claim should be dismissed because no statute requires Interior to account to San Felipe for Santa Ana's funds. And San Felipe's Complaint makes clear that San Felipe requires no additional accounting information to determine whether it has been harmed. Mot. at 30-34. San Felipe's opposition fails to identify the necessary foundation of any trust claim against the United States – a statute explicitly imposing a trust duty.

The United States is "not a private trustee." *United States v. Jicarilla Apache Nation*, 564 U.S. 162, 173 (2011). Even though statutes may "denominate the relationship between the Government and the Indians a 'trust,' . . . that trust is defined and governed by statutes rather than the common law." *Id.* And the Court must train its analysis on the "specific rights-creating or duty-imposing statutory . . . prescriptions" imposed by such statutes. *Id.* No trust duty exists

unless imposed by statute. *Arizona v. Navajo Nation*, 143 S. Ct. 1804, 1813 (2023).[10]

Rather than identify a statute imposing a relevant duty, San Felipe makes several inapplicable or irrelevant arguments. San Felipe flips the idea of an accounting on its head by arguing that an accounting duty, which is **retrospective** by nature, required Interior to provide San Felipe with notice **prior** to disbursing Santa Ana's funds from the escrow account. Opp. at 30. Regardless, San Felipe's trust claim fails because it identifies no statute imposing a duty to notify San Felipe prior to granting Santa Ana's request to disburse funds. *Navajo Nation*, 143 S. Ct. at 1813. San Felipe also fails to identify any statute requiring Interior to provide immediate notice of updating TAAMS in a manner that was consistent with previous decisions. Opp. at 31. Regardless, San Felipe's concession that it received "notice" on April 18, 2018, *id*. at 30, moots San Felipe's claim for notice that Interior paid Santa Ana's funds to Santa Ana.

San Felipe's reliance on the Indian canon of construction, Opp. at 29, is misplaced because San Felipe identifies no statutory ambiguity. The Indian canon is inapplicable absent ambiguity. *Chickasaw Nation v. DOI*, 161 F. Supp. 3d 1094, 1099 (W.D. Okla. 2015).[11] San Felipe is also incorrect that *Pueblo of San Felipe v. Hodel* "made clear" that the escrow account

[10] San Felipe's many references to the common law of trusts are thus misplaced. It also conflates the issues of accrual and trust duties. Opp. at 30-31. If a trust duty existed, notice might be relevant to the statute of limitations' accrual. San Felipe addresses *Navajo* only in a brief footnote in which it misinterprets *Cobell v. Norton*, 240 F.3d 1081 (D.C. Cir. 2001), to suggest that the existence of a trust corpus imposes common law and statutory obligations. Opp. at 30 n.14. But it is well-established that the "trust is defined and governed by statutes rather than the common law." *Jicarilla*, 564 U.S. at 174 (common law can only play a role if a tribe establishes a relevant statutory duty). San Felipe's failure to identify a relevant statute is thus fatal to its claim that the common law applies. But if San Felipe is correct that the common law applies to its claim for an accounting of Santa Ana's funds, it is undone by common law cases it dismisses without explanation as "not applicable to tribal trust account claims." Opp. at 31 n.15. If the common law applies, which it does not, then it bars an unnecessary accounting. Mot. at 31.

[11] San Felipe is wrong to the extent it suggests, Opp. at 30, that 25 U.S.C. § 4027 imposes a duty. Section 4027 is a savings clause that applies only to a tribe withdrawing its own funds *Id*.

was "held under" a fiduciary duty to both Pueblos. Opp. at 29-30. The Circuit instead found that the "Secretary's fiduciary duty to each of the Pueblos made imposition of the escrow condition clearly within the Secretary's discretion." *San Felipe,* 770 F.2d at 917. It further found that establishing "the escrow condition is conclusive that [Interior] understood the [right-of-way] grant to affect the interest of whatever Indian tribe is ultimately determined the owner of the property." *Id.* at 917. And it characterized Interior as having one duty—imposing "some just condition by which the appropriate recipient of the proceeds can be protected." *Id*. at 917. The Circuit's characterization of the duty as discretionary and running to whichever Tribe Interior ultimately determined to be the appropriate recipient refutes San Felipe's assertion that Interior owes San Felipe a duty relating to Santa Ana's funds. *See Navajo Nation*, 143 S. Ct. at 1813.[12]

San Felipe also misstates or elides applicable Indian trust accounting precedent. *Cobell v. Salazar* did not require "the best accounting" Interior can provide to whatever Tribe requests one. To the contrary, Tribes must first establish that they "are entitled to an accounting under the statute." 573 F.3d 808, 813 (D.C. Cir. 2009). Then, any accounting must make "most efficient use of limited government resources." *Id*. Congress did not impose a duty that would squander limited funds by providing unnecessary or unnecessarily detailed accountings.

San Felipe does not address the Tenth Circuit's holding that even trust beneficiaries "are not entitled to information that only loosely relates to their own personal beneficial interests, or to information that is unlikely (because it is . . . so *de minimis*, say) to have a meaningful effect

[12] San Felipe also mischaracterizes *Fletcher* to claim it imposes common law duties here. Opp. at 32 n. 18. *Fletcher* found an accounting duty to Osage headright owners where the "1906 Act requires the government to collect the royalties and place them 'to the credit of' each individual headright owner" and then disburse those royalties. 26 F.4th 1314, 1320 (Fed. Cir. 2022). The plaintiffs could then use the accounting to seek damages in the Court of Federal Claims. *Id*. at 1321; *Fletcher v. United States*, 160 Fed. Appx. 792, 796-797 (10th Cir. 2005). No duty exists here because no statute requires Interior to account to San Felipe for Santa Ana's funds.

on their beneficial interests." Mot. at 30-31 (quoting *Fletcher v. United States*, 730 F.3d 1206, 1215 (10th Cir. 2013)); *Fletcher v. United States*, 153 F. Supp. 3d 1354, 1370 (N.D. Okla. 2015) (accounting should not impose "gratuitous costs on the government"). Even if Interior had a duty to provide San Felipe an accounting, that accounting need only "give some sense of where money has come from and gone to." *Id*. San Felipe has a sense of what happened to the money despite lacking a beneficial interest. Mot. at 32-33; Opp. at 32. And contrary to San Felipe's suggestion, Opp. at 32, information regarding funds derived from lands that are not at issue in this title dispute are beyond this case's scope and no statute requires Interior to provide San Felipe with hypothetical damages calculations about interest "that should have" accrued on Santa Ana's funds. *Cf. Shoshone Indian Tribe v. United States*, 364 F.3d 1339, 1354 (Fed. Cir. 2004).

San Felipe correctly admits that its trust duty claims are wholly dependent on the merits of its title claim to the former overlap area. Opp. at 33; *id*. at 26. There is thus no dispute that San Felipe's trust duty claims may not proceed if that foundational quiet title claim is barred. As set forth above, Congress preserved the United States' sovereign immunity from San Felipe's title claim. All derivative claims must therefore also be dismissed.

CONCLUSION

San Felipe's Complaint should be dismissed because it seeks to quiet title to Santa Ana's restricted fee lands in which the United States claims an interest. The QTA's Indian lands exception therefore jurisdictionally bars San Felipe's claims to the former overlap area. All of San Felipe's claims must be dismissed because they derive from and depend upon its foundational effort to quiet title. Federal Defendants therefore respectfully request the Court dismiss San Felipe's Complaint in its entirety.

Respectfully submitted this 9th day of November, 2023,

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CERTIFICATE OF SERVICE

I hereby certify that on November 9, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the ECF registrants in this case.

/s/ Matthew Marinelli
Matthew Marinelli