

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

PUEBLO OF SAN FELIPE, a federally
recognized Indian tribe,

Plaintiff,

v.

DEBRA HAALAND, Secretary of the Interior;
ROBERT ANDERSON, Solicitor, Department of
the Interior; TRACY STONE-MANNING,
Director, Bureau of Land Management; JERRY
GIDNER, Director, Bureau of Trust Funds
Administration; DARRYL LACOUNTE,
Director, Bureau of Indian Affairs; PATRICIA
MATTINGLY, Regional Director, Bureau of
Indian Affairs Southwest Region; SANTEE
LEWIS, Superintendent, Bureau of Indian Affairs
Southern Pueblos Agency; and DEPARTMENT
OF THE INTERIOR,

Defendants.

Case No. 1:23-CV-00296-JB-JF

**[PROPOSED] FIRST AMENDED
COMPLAINT**

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

TABLE OF CONTENTS

INTRODUCTION	3
JURISDICTION AND VENUE	4
PARTIES	6
GENERAL ALLEGATIONS	7
I. The History of the Federal Trust Relationship to San Felipe.....	7
A. The San Felipe 1864 Patent was Confirmed by Congress.....	7
B. Santa Ana’s Patented Lands Do Not Overlap the San Felipe 1864 Patent.....	10
C. The 1916 Joy Survey Confirmed the Clements Plat Map of the San Felipe Pueblo Boundaries.....	17
D. The Pueblo Lands Act and Pueblo Lands Act Proceedings Did Not Alter the 1864 Patent Boundaries.....	18
E. Rights-of-way across the San Felipe Patent Confirmed the Defendants’ Fiduciary Duties to San Felipe related to the Lands within the 1864 Patent. In 1979, Santa Ana Asserted an Extra-Judicial Claim to Land Ownership.....	24
II. Defendants’ Unauthorized Actions	27
A. Santa Ana’s Petition to “Correct” the Boundaries of the San Felipe Patent.	27
B. The 2000 Solicitor’s Opinion M-37000 Did Not Authorize Defendants’ Subsequent Unlawful Actions.....	27
C. 2009-2010 Olver Dependent Resurveys.....	29
D. 2012 Hickey Field Investigation.....	29
E. Solicitor’s Opinion M-37027.....	30
F. 2013 BLM Resurvey	33
G. The 2014 IBLA Decision.	35
H. 2017 Filing of the Plat	36
I. Disbursement of Right-of-Way Trust Funds.....	37
III. Defendants’ Actions Harmed San Felipe	38
SECOND CLAIM FOR RELIEF	41
THIRD CLAIM FOR RELIEF	43
FIFTH CLAIM FOR RELIEF	46
EIGHTH CLAIM FOR RELIEF	49
NINTH CLAIM FOR RELIEF	53
TENTH CLAIM FOR RELIEF	56
PRAYER FOR RELIEF	57

INTRODUCTION

1. The Pueblo of San Felipe (“San Felipe”) brings this action to set aside unconstitutional and unlawful actions by officials of the Department of the Interior attempting to resurvey and alter and diminish the southern and western boundaries of the 1864 San Felipe Patent mandated by Congress and signed by President Abraham Lincoln, Patent to San Felipe Pueblo (Nov. 1, 1864) (“1864 Patent”), by ordering the destruction of survey boundary markers and ordering the alteration of federal agency records of surveys evidencing the established boundaries of the 1864 Patent.

2. In furtherance of these unlawful acts, Defendants issued letters to San Felipe admitting they had altered Department of Interior records to obscure San Felipe’s rights to possession of certain restricted fee lands owned by San Felipe located within the 1864 Patent boundaries.

3. Finally, based upon the preceding unconstitutional and unlawful acts outside the scope of their authority, and in breach of their statutory and common law of trust duties owed to San Felipe, Defendants disbursed trust funds held in Individual Indian Money (“IIM”) account S-200093 for two tribal beneficiaries – San Felipe and Pueblo of Santa Ana (“Santa Ana”) – to Santa Ana alone without legal authority and without prior notice to San Felipe as a trust beneficiary.

4. Defendants’ actions interfered with San Felipe’s use of and sovereign authority over some of the lands within the 1864 Patent boundaries and diminished the trust funds in the IIM account in violation of federal statutes, the Fifth Amendment to the U.S. Constitution, and the United States’ fiduciary duties as owed only to San Felipe that arise from San Felipe’s 1864 Patent.

5. Defendants had exclusive fiduciary duties to San Felipe established by the restriction against alienation enacted by Congress in the Pueblo Lands Act of 1924 - a restriction that can only be removed with congressional authorization.

6. Only Congress could authorize Defendants to alter congressionally mandated boundaries of the 1864 Patent. Because it did not, Defendants' actions were *ultra vires* and are *void ab initio*.

7. San Felipe seeks declaratory, injunctive, and other equitable relief against the Defendant officials necessary and appropriate to remedy Defendants' *ultra vires*, unlawful, and unconstitutional actions taken in breach of their fiduciary duties to San Felipe established by federal statute and the federal common law of trusts.

JURISDICTION AND VENUE

8. This Court has jurisdiction over the subject matter of this action pursuant to: 28 U.S.C. § 1331 (federal question), as this is a civil action arising under the Constitution, laws, and treaties of the United States; 28 U.S.C. § 1362 (federal question action by an Indian tribe), as this is a civil action brought by an Indian tribe or band with a governing body duly recognized by the Secretary of the Interior, wherein the matter in controversy arises under the Constitution, laws or treaties of the United States; and 28 U.S.C. § 1361 (mandamus against federal official), as this is an action in the nature of mandamus to compel an officer or employee of the United States or an agency thereof to perform a duty owed to Plaintiff.

9. This action arises under the Constitution, laws, and treaties of the United States, as hereinafter more fully appears, including but not limited to: the Indian Commerce Clause, U.S. Const. Art. I, § 8, cl. 3; the Treaty and Appointments Clause, U.S. Const. Art. II, § 2, cl. 2; U.S. Const. Art. III, §§ 1 and 2 (judicial power of the United States and jurisdiction of U.S. courts); the Property Clause, U.S. Const. Art. IV, § 3, cl. 2; the Due Process and Takings

Clauses, U.S. Const., Amend. 5; the Treaty of Guadalupe Hidalgo, Feb. 2, 1848, 9 Stat. 922; the Act of July 22, 1854, c. 103, 10 Stat. 308 (appointing Surveyor General of New Mexico to investigate and report to Congress on the validity of land claims under Spanish and Mexican laws); the Act of Dec. 22, 1858, c. 5, 11 Stat. 374 (congressionally confirming San Felipe’s land grant claim and authorizing survey and issuance of a patent thereon); the Private Land Claims Act, March 3, 1891, c. 539, 26 Stat. 854; the Pueblo Lands Act of June 7, 1924, c. 331, 43 Stat. 636, and all amendments thereto; the Act of May 31, 1933, c. 45, 48 Stat. 108 (clarifying the right of Pueblos to bring actions under the Pueblo Lands Act and extending the statute of limitations for Pueblos to bring actions such claims); 25 U.S.C. § 176 (surveys of Indian reservations); 43 U.S.C. § 772 (retracements and resurveys of public lands); the Federal Land Policy and Management Act of 1976, Pub. L. No. 94-579, §§ 316 & 701(h), 43 U.S.C. §§ 1746 & 1701 Note (correction of conveyance documents subject to valid existing rights); 25 U.S.C. § 211 (prohibiting additions to Indian reservations in the State of New Mexico except by act of Congress); 25 U.S.C. § 398d (prohibiting changes in the boundaries of Indian reservations except by act of Congress); the American Indian Trust Fund Management Reform Act of 1994, Pub. L. 103-412, 108 Stat. 4239, §§ 101 and 102, 25 U.S.C. §§ 162a(d), 4011, and 4043(b)(2)(A); the Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.* and 701 *et seq.* (“APA”); the Declaratory Judgments Act, 28 U.S.C. §§ 2201-2202; the Mandamus Act, 28 U.S.C. § 1361; the All Writs Act, 28 U.S.C. § 1651; and federal common law, including federal common law on fiduciary responsibilities to Indian tribes and pueblos and the federal common law of trusts.

10. Venue is proper in this Court under 28 U.S.C. §§ 111 and 1391(e)(1) because a substantial part of the events, acts and omissions giving rise to this action occurred within the District of New Mexico, and the purported “survey and dependent resurvey” of the southern and

western boundaries of the 1864 San Felipe Patent, and actions taken by Defendants related to the IIM account challenged herein are exclusively related to lands situated therein.

11. The Defendants' actions in excess of lawful authority, in violation of the Fifth Amendment to the U.S. Constitution and in violation of their fiduciary duties to San Felipe, deprive Defendants of any immunity from suit they may otherwise assert as agents of the United States under the Administrative Procedures Act, §702.

12. This Court also has jurisdiction over both this action and Defendants, and venue is proper in this Court, because the United States invoked the Court's jurisdiction in *United States v. Algodones Land Co.* ("*Algodones*"), No. 1870 in Equity (D.N.M. Apr. 22, 1930); *see* Final Decree, ECF 40-2 at 42. This action seeks relief consistent with that judgment.

PARTIES

13. Plaintiff PUEBLO OF SAN FELIPE is a federally recognized Indian tribe with a governing body duly recognized by the Secretary of the Interior. *See* Indian Entities Recognized . . . , 89 Fed. Reg. 944, 946 (Jan. 8, 2024).

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

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

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

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

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

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

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

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

GENERAL ALLEGATIONS

I. The History of the Federal Trust Relationship to San Felipe.

A. The San Felipe 1864 Patent was Confirmed by Congress.

22. San Felipe has occupied the land within the boundaries of the 1864 San Felipe Patent since time immemorial.

23. The King of Spain granted San Felipe a formal pueblo land grant on September 20, 1689.

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

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

Annual Report of the Surveyor General of New Mexico, Sept. 30, 1856, printed in H.R. Ex. Doc. No. 1, 34th Cong., 3d Sess., at 503-504 (Dec. 18, 1856). Other copies of the certified translation use the word “Culebra” instead of “Culcura.” *See, e.g.,* Pueblo of San Felipe Land Status, Report Prepared by the Land Division, United Pueblos Agency, U.S. Dep’t. of Interior, Office of Indian Affairs (Apr. 1, 1940), ECF 49-3, p.6.

25. In 1848, the United States and Mexico entered into the Treaty of Guadalupe Hidalgo, transferring to the United States territory in the American Southwest, including what is now the State of New Mexico. Treaty of Guadalupe Hidalgo, Feb. 2, 1848, 9 Stat. 922, ECF 49-1 p. 2. Under the treaty, The United States agreed to honor all titles to land in the ceded territory founded upon Spanish or Mexican law.

26. To fulfill that obligation, in 1854 the United States Congress created the office of Surveyor General of New Mexico and charged him with the responsibility to “ascertain the origin, nature, character, and extent of all claims to lands under the laws, usages, and customs of Spain and Mexico.” He was instructed to “make a full report on all such claims, denoting the various grades of title, with his decision as to the validity or invalidity of the same . . . which report shall be laid before Congress for such action as may be deemed just and proper, with a view to confirm *bona fide* grants.” Act of July 22, 1854, c. 103, § 8, 10 Stat. 308, 309, ECF 49-1 p. 14.

27. The Surveyor General was also instructed to give public notice of his readiness to receive evidence of land claims and to examine the extent of any conflicting claims. Report of the Commissioner of the General Land Office, 1854, printed in S. Ex. Doc. No. 1, 33d Cong., 2d Sess., at 90-91 (Dec. 4, 1854), ECF 49-1 p. 133-34; *see also* Annual Report of the Surveyor General of New Mexico, Sept. 30, 1855, printed in H.R. Ex. Doc. No. 1, 34th Cong., 2d Sess., at

302, 305-07 (Feb. 14, 1856), ECF 49-1 p. 150, 153-54 (indicating Surveyor General issued notice as instructed).

28. San Felipe submitted to the Surveyor General its claim under its September 20, 1689, Spanish land grant. *See* Annual Report of the Surveyor General of New Mexico, Sept. 30, 1856, printed in H.R. Ex. Doc. No. 1, 34th Cong., 3d Sess., at 503-504 (Dec. 18, 1856), ECF 49-2 p. 95-96 (setting forth the terms of the Spanish grant and the English translation).

29. The Surveyor General reported to Congress on September 30, 1856, that San Felipe's title to its 1689 Spanish land grant was valid and recommended that Congress confirm San Felipe's claim. Annual Report of the Surveyor General, 1856, *supra*, at 411, ECF 49-2 p. 3.

30. On December 22, 1858, Congress accepted the recommendation. Congress confirmed San Felipe's claim, directed that the land be surveyed as recommended for confirmation by the Surveyor General, and directed that a patent be issued for the land as surveyed. Act of Dec. 22, 1858, c. 5, 11 Stat. 374, ECF 49-1 p. 18.

31. The congressionally ordered survey of the confirmed San Felipe Spanish land grant boundaries by Reuben E. Clements was approved by the Surveyor General on October 25, 1860. *See* R.E. Clements, Field Notes of the Survey of Pueblo de San Felipe (Jan. 12, 1860), ECF 49-3 p. 28; *See* **Exhibit A**, Plat of the Pueblo de San Felipe (approved Oct. 25, 1860).

32. The Clements survey located the boundaries consistent with the boundaries described in the 1689 Spanish land grant.

33. President Abraham Lincoln signed and issued the San Felipe Patent, from the United States to San Felipe, on November 1, 1864. **Exhibit B**, Patent to San Felipe Pueblo (Nov. 1, 1864). The Patent recites and incorporates the metes and bounds description of the boundaries

as surveyed by Clements and states the patent “Contains Thirty-Four thousand Seven hundred and Sixty acres and Eighty-six one hundredths Acres.” *Id.* at 39.

34. The Patent was issued in fee status, with no explicit restriction against alienation. *Id.*

35. The Patent specifically relinquished all of the United States’s claims of interests in the lands within is the Patent. *Id.*

B. Santa Ana’s Patented Lands Do Not Overlap the San Felipe 1864 Patent.

1. The Court of Private Land Claims 1897 Decree on the El Ranchito Tract Did Not Include Lands within the 1864 Patent Boundaries.

36. On March 3, 1891, Congress enacted the Act of March 3, 1891, c. 539, 26 Stat. 854 (“Private Land Claims Act”) to provide for the settlement of private land claims in certain States and Territories, by establishing a Court of Private Land Claims, that had limited authority that did not include authority to grant patents that overlapped with patents previously issued by the United States. Private Land Claims Act §§ 8, 13, and 14.

37. Section 8 of the Private Land Claims Act provides that the confirmation of any claim determined to be valid “shall be for so much land only as such perfect title shall be found to cover, always excepting any part of such land that shall have been disposed of by the United States. . .,” and Section 13 of the Private Land Claims Act excluded from the powers of the Court of Private Land Claims the ability to alter the patents of lands that had “hitherto been lawfully acted upon and decided by Congress, or under its authority.” Private Land Claims Act §§ 8, 13.

38. Section 14 of the Private Land Claims Act provided that, if the lands confirmed to any claimant included land that the United States had sold or granted to another person, the “title from the United States to such other person shall remain valid, notwithstanding such decree.” Private Land Claims Act § 14.

39. On March 2, 1893, Santa Ana petitioned the Court of Private Land Claims to confirm claims to lands it asserted it had purchased from numerous private parties prior to the execution of the Treaty of Guadalupe Hidalgo. *Pueblo of Santa Ana v. United States*, Ct. Prvt. Land Cls. Case No. 157, Petition (March 2, 1893), ECF 49-3 p. 48.

40. The United States Attorney filed an Answer to the Petition objecting to the claim and filed a Motion with the court to require the Court to join the Pueblo of San Felipe, the town of Bernalillo and several private individuals as “adverse possessors and claimants.”

41. Santa Ana filed an Amended Petition in May 1896, reducing its initial claim of over 95,000 acres to an estimated total of 8,000 acres of land. *Pueblo of Santa Ana v. United States*, No. 157, Amended Petition ¶ 19 (Ct. Prvt. Land Cls., May Term 1896), ECF 49-3 p. 52.

42. The Amended Petition asserted that Santa Ana had acquired several parcels of land comprising the El Ranchito lands by separate purchases in 1709 and 1742, a “fragmentary conveyance” sometime between “1709 and 1739”, by separate purchase in an unspecified month and date in 1753, and separate purchase on July 5, 1763, from various private individuals, none of which were acquired by Santa Ana by land grant directly to Santa Ana from Spain. *Id.* ¶¶ 4-15. The Petition attached Exhibits A-C, but stated, “your petitioners have lost or misplaced, with the Exception of Exhibit A filed in this cause, the original instruments or documents set forth in this petition and in Exhibit B.” *Id.* at ¶ 17.

43. No grants of land from Spain or Mexico to the non-Indian purchasers from whom Santa Ana asserted had purchased title were presented to the Court of Private Land Claims. *Id.*: *See also*, Letter from Special Attorney George A.H. Fraser to C.J. Rhoads, Commissioner of Indian Affairs (October 1, 1932) (“None of the deeds evidencing this purchase indicate the grant or grants under which these Spaniards claimed.”), ECF 49-5 p. 102.

44. Santa Ana's amended Petition recognized a potential conflict between its claim to land with the Southern boundary of the San Felipe patent. Santa Ana's petition stated that its claim "does not conflict in whole or in part with other grants derived from Spain or Mexico, other than as the same may be infringed upon in the northern part thereof by the patented lands of the Pueblo of San Felipe, to what extent your petitioners are not now able to state." *Id.* ¶ 19.

45. On May 25, 1897, the Court of Private Land Claims held a trial at which the United States was represented by three Assistant United States Attorneys, and a private attorney represented Santa Ana. *See Pueblo of Santa Ana v. United States*, Ct. Prvt. Land Cls. Case No. 157, Trial Transcript (May 25, 1897), ECF 49-3 p. 60.

46. At hearing, the United States attorney made numerous objections to testimony at the hearing. *Id.* at 2-22, ECF 49-3 at 61-81. The United States attorney objected to the evidence of land title presented by Santa Ana. He objected to Exhibit A because one of the purported grants was not signed by the grantor and its custody had not been established. He objected to Exhibits A and B because they were "not connected to any grant." *Id.* p. 1-2, ECF 49-3. Exhibits B and C were also objected to as not being original documents. *Id.* p. 2, 22, ECF 49-3 p. 61, 81.

47. On November 19, 1897, the private attorney for Santa Ana filed a Notice of Satisfaction with the Court of Private Land Claims, ending Santa Ana's claim against the lands within the San Felipe patent. ECF 40-1.

48. On December 19, 1897, the Court of Private Land Claims issued a Decree in which it partially confirmed and partially rejected the claim to "the several tracts of land claimed in this cause" included within the El Ranchito tract. *Pueblo of Santa Ana v. United States*, Decree (Dec. 19, 1897), ECF 49-3, p. 85, 89, ¶14.

49. The Decree's sixteenth finding of fact excepted from confirmation any land previously sold or granted by the United States, as required by the Private Land Claims Act. The Decree stated, **"This confirmation shall not pass to the confirmees herein any right or title to any lands heretofore sold or granted by the United States to any other parties."** *Id.* pp. 89-90, ¶ 16 (emphasis added).

50. The Decree ordered the entire El Ranchito tract to be surveyed. *Id.* The Decree's eighteenth finding of fact directed that "This tract shall be surveyed with the limits and boundaries set forth in the fourteenth finding of fact hereof." *Id.* p. 90, ¶ 18.

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

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

Id. The Decree rejected Santa Ana's claims to lands located within the San Felipe Patent boundaries.

52. Santa Ana did not appeal the 1897 Decree, evidencing its decision, with legal representation present, not to further pursue a claim to title to lands located within the 1864 Patent boundaries.

2. San Felipe's 1864 Patent was Derived from the Original Land Granted to San Felipe by Spain, Santa Ana's Claim to Lands within the 1864 Patent was Not.

53. Santa Ana admitted the El Ranchito tract was not part of the original pueblo land grant granted to Santa Ana by Spain. *Pueblo of Santa Ana v. United States*, No. 157, Amended Petition ¶ 21 (Ct. Prvt. Lands Cls., May Term 1896), ECF 49-3, p. 52.

54. Santa Ana's original Spanish land grant was submitted to the Surveyor General, for examination and approval, and once approved, Congress confirmed it on February 2, 1869, and President Chester Arthur executed a patent for it on April 25, 1883 – ten years before the El Ranchito tract claim was presented to the Court of Private Land Claims. *See*, Act of February 9, 1869, 15 Stat. 438, c. XXVI. This patent did not include the El Ranchito tract within either the patent or confirmation.

3. Federal Surveys and Resurveys of the 1864 Patent and the El Ranchito Tract Confirmed the Boundaries of the 1864 Patent.

55. The Court of Private Land Claims ordered a survey of the El Ranchito tract to determine if an overlap existed with the 1864 San Felipe Patent.

56. A survey of the El Ranchito tract and a resurvey of the 1864 San Felipe Patent were ordered by the Surveyor General and conducted by Surveyor Walker to determine the extent of the conflict of the El Ranchito claim with the 1864 Patent boundaries. The purpose was to ensure the El Ranchito Patent would not include any lands located within the 1864 Patent boundaries, in accordance with the Court of Private Land Claims 1897 Decree. *See* ECF 49-3 p. 92; ECF 49-3. p. 120-121.

57. The Walker Survey of the El Ranchito tract was completed on November 2, 1898, ECF 49-3 p. 92, and the Walker resurvey of the south, east and west boundaries of the 1864 San

Felipe Patent was completed prior to February 4, 1899. *See* ECF 49-3, p. 117; ECF 49-3, pp. 120 ECF 49-3, pp.145, 146, 152.

58. The Walker resurvey of the 1864 San Felipe Patent south, east and west boundaries was not accepted by the Surveyor General and was not filed in the Surveyor General's official agency records because Surveyor Walker located those boundaries north of the El Ranchito tract and one mile north of the 1860 Clements survey and plat boundary, and because the Walker resurvey differed "very materially" from two prior public surveys conducted by Surveyor Hiram T. Brown in 1894 and Surveyor William White in 1879. ECF 49-3, p. 120-121; ECF 49-3, p. 124-125.

59. Based on those concerns, on February 4, 1899, and February 24, 1900, the Surveyor General directed Special Examiner Thomas Hurlburt to conduct separate field examinations of the Walker El Ranchito tract survey and the Walker resurvey of the south, east and west boundaries of the San Felipe Patent. ECF 49-3, p. 117; ECF 49-3, pp. 124-125.

60. On April 20, 1900, Special Examiner Hurlburt filed his report on his field examination of the Walker "El Ranchito" tract survey. ECF 49-3, p. 129-135. Specifically, he noted problems with the Walker resurvey including missing survey monuments on the southern boundary marked by Walker, and a discrepancy in distances from the creek on the eastern boundary of the 1864 Patent to the southeast corner of the 1864 Patent of one mile, with the Walker resurvey placing the southeast corner one mile north of where the Clements survey placed the southeast corner. *Id.*, p. 152. This resulted in Hurlburt raising the question of whether the original southeast corner of the San Felipe Patent could be located based on sufficient monuments of the same on the "courses and distances" listed in the 1864 Patent, and if they

were, whether that would prevail, or whether the distances marked by chains, would be the proper measure to use, as Walker did. *Id.* at 152.

61. On May 16, 1900, Special Examiner Hurlburt filed his field examination of portions of the south, east, and west boundaries of the San Felipe Patent Clements survey. ECF 49-3, pp. 137-146. Special Examiner Hurlburt found several geographical features and monuments consistent with Clements original survey, most importantly, the “culebra hill” described in the original 1689 Spanish land grant on the southern boundary of the Clements survey, which was not located where the rejected Walker survey of the 1864 Patent had the southern boundary located. *Id.* at pp. 145-146.

62. The United States Attorney filed an objection to the Walker Survey of the El Ranchito Tract with the Court of Private Land Claims, noting “it was not executed in accordance with the Decree of Confirmation entered by the Court in the case.”

63. On August 30, 1900, the Surveyor General filed a report with the Commissioner of the General Land Office for the Department of Interior recommending approval of the Walker Survey and Plat of the El Ranchito tract to the Court of Private Land Claims, with the exception of the undetermined conflict with the San Felipe Patent, based in part on the pending objections of the United States attorney. ECF 49-3. pp. 148-152. (“I recommend its acceptance and approval by the Court, and suggest the approval exclude this unknown conflicting area...”) *Id.* at p. 152.

64. A plat of the El Ranchito tract was approved by the Surveyor General on December 18, 1900. ECF 49-4 p. 2.

65. By resurvey undertaken September 25 through October 15, 1907, Wendell V. Hall reestablished the corners and boundaries of the San Felipe Patent. Hall reestablished Reuben E.

Clements 1859-1860 southern boundary for the San Felipe Patent. Wendell V. Hall, Field Notes of the Resurvey of San Felipe Pueblo Grant (Oct. 15, 1907), ECF 49-4, p. 4.

66. The Surveyor General accepted Hall's resurvey on January 15, 1909, with corrections recommended in G.D.D. Kirkpatrick's examination thereof in 1908, ECF 49-4, p. 73-75, and the Commissioner of the Department of the Interior General Land Office approved Hall's resurvey on March 19, 1909.

67. The Surveyor General approved the Plat of San Felipe Pueblo Grant on March 19, 1909. *See Exhibit C*, Plat of the San Felipe Pueblo Grant (approved March 19, 1909).

68. On October 18, 1909, only after the Hall resurvey of the 1864 Patent was approved earlier in 1909, President William H. Taft issued a patent to Santa Ana in fee status for the confirmed portion of the El Ranchito purchases. The patent stated, "that the said grant **is made subject to all the limitations and terms of the said Act of Congress of March 3, 1891, and all the restrictions and limitations of said decree.**" *Exhibit D*, Oct. 18, 1909 El Ranchito Patent (emphasis added).

69. **By its terms, the 1909 El Ranchito Patent excluded all lands previously patented to San Felipe**, ending any claim to overlapping patents. The Surveyor General's failure to file a survey and Plat Map showing the boundaries of the El Ranchito Patent consistent with the Court's Decree does not alter this fact.

70. The area of the El Ranchito tract that Santa Ana claimed in 1893 lies within the 1864 Patent and is referred to herein as the "Conflict Area."

C. The 1916 Joy Survey Confirmed the Clements Plat Map of the San Felipe Pueblo Boundaries.

71. In 1916, Basil C. Perkins and Francis E. Joy performed a dependent resurvey of the east and south boundaries of the San Felipe Grant ("Joy Survey"), recovering and accepting

Hall's reestablished southeast corner and confirming Hall's straight-line south boundary of the 1864 Patent. *See* Perkins & Joy, Field Notes of Retracement and Resurvey of Portions of Boundaries of San Felipe Pueblo Grant (filed Apr. 9, 1917), ECF 49-4 p. 80; Plat Mat of T. 13 N., R. 4 E. (approved May 31, 1920), ECF 49-4 p. 117.

72. Congress, the Pueblo Lands Board, and the United States District Court for the District of New Mexico each relied upon and adopted the Joy Survey as establishing the boundaries of Pueblo patented lands in proceedings under the Pueblo Lands Act. *See* § D, *infra*.

D. The Pueblo Lands Act and Pueblo Lands Act Proceedings Did Not Alter the 1864 Patent Boundaries.

1. The Pueblo Lands Act.

73. Congress enacted the Pueblo Lands Act on June 7, 1924, c. 331, 43 Stat. 636, for the express purpose

... to quiet title to various lots, parcels, and tracts of land in the State of New Mexico for which claim shall be made by or on behalf of the Pueblo Indians of said State as hereinafter provided, the United States of America, **in its sovereign capacity as guardian of said Pueblo Indians shall**, by its Attorney General, file in the District Court of the United States for the District of New Mexico, its bill or bills of complaint with a prayer for discovery of the nature of any claim or claims of any kind whatsoever adverse to the claim of said Pueblo Indians, as hereinafter determined.

Pueblo Lands Act § 1 (emphasis added).

74. The Pueblo Lands Act provided the only opportunity granted by Congress to challenge pueblo title to lands located within their patent boundaries. The legislative history confirms this was Congress' intent. S. Rep. No. 492, 68th Cong., 1st Sess., 3 (1924).

75. The Pueblo Lands Act established the Pueblo Lands Board ("Board") which had the duty to "investigate, determine, and report" to the District Court for the District of New Mexico, the Attorney General and the Secretary what the actual lands owned by pueblos were.

Pueblo Lands Act § 2.

76. Under Section 13 of the Pueblo Lands Act, unless the Secretary of the Interior determined otherwise, the Joy Survey was to be used to establish the recognized boundaries of the Pueblos, including San Felipe.

77. The Board investigated, determined and reported on all lands within the 1864 Patent that had not been extinguished, and in so doing, confirmed that the 1864 Patent boundary remained intact. *See* Section D.2, *infra*.

78. Further confirming the fiduciary duties owed to San Felipe by the United States, the Attorney General was required to and did bring a quiet title action in the United States District Court for the District of New Mexico on behalf of San Felipe for all lands within the 1864 Patent boundaries. *Id.*; *see also* Pueblo Lands Act § 1.

79. In addition, Congress provided Santa Ana a right to bring its own claim to ownership of lands within the 1864 Patent boundaries by separate suit, or by intervening in a pending proceeding under Section 4 of the Act and Santa Ana failed to do so. Pueblo Lands Act §§ 4, 12; *see also* Section D.2, *infra*.

80. Congress provided Santa Ana with two additional opportunities to challenge ownership within the 1864 Patent boundaries including filing an objection to the surveys and plat maps filed under Section 13 of the Act, and then, by amending the Act in 1933 to provide an extension of the statute of limitations for Santa Ana to file claims before May 31, 1934. Pueblo Lands Act § 13; Act of May 31, 1933, c. 45, § 6, 48 Stat. 108.

81. By establishing a specific statute of limitations of May 31, 1934, Congress emphasized its legislative intent that “litigations and pending and potential litigations, affecting the ownership of these Pueblo lands, will be forever ended.” S. Rep. No. 73, 73d Cong., 1st Sess. 17 (1933), ECF 49-1, p. 105.

82. Santa Ana failed to file any claim before the expiration of the extended statute of limitations. *See* Section D.2, *infra*.

83. Good faith claimants whose claims were rejected were potentially eligible for compensation, but Santa Ana never filed any claim for compensation for any lands within the 1864 Patent boundaries, further confirming it did not own lands within the 1864 Patent. Pueblo Lands Act § 15.

84. Through its 2005 amendment to the Pueblo Lands Act, Congress confirmed San Felipe's criminal jurisdiction on all lands located within the 1864 Patent boundaries. Pub. L. 109-133, 119 Stat. 2573 (Dec. 20, 2005), 25 U.S.C. §331 Note.

85. Defendants' attempts to alter the 1864 Patent boundaries were *ultra vires* - any administrative attempt to alter patent boundaries would impermissibly seek to divest San Felipe inherent sovereignty over its lands, in addition, placing those lands outside Santa Ana's criminal jurisdiction because they are outside of the boundaries of the 1909 El Ranchito Patent confirmed by the Court of Private Land Claims.

86. The 2005 Pueblo Lands Act amendment states:

20. CRIMINAL JURISDICTION.

‘(a) IN GENERAL. —Except as otherwise provided by Congress, jurisdiction over offenses committed *anywhere within the exterior boundaries of any grant from a prior sovereign, as confirmed by Congress or the Court of Private Land Claims to a Pueblo Indian tribe of New Mexico*, shall be as provided in this section.

(b) JURISDICTION OF THE PUEBLO. —The Pueblo has jurisdiction, as an act of the Pueblos' inherent power as an Indian tribe, over any offense committed by a member of the Pueblo or an Indian as defined in title 25, sections 1301(2) and 1301(4), or by any other Indian-owned entity.

(c) JURISDICTION OF THE UNITED STATES. —The United States has jurisdiction over any offense described in chapter 53 of title 18, United States Code, committed by or against an Indian as defined in title 25, sections 1301(2) and 1301(4) or any Indian-owned entity, or that involves any Indian property or interest.

Pub. L. 109-133, 119 Stat. 2573 (Dec. 20, 2005), 25 U.S.C. §331 Note (emphasis added).

2. The Pueblo Lands Board Proceedings and Quiet Title Actions Decided by the United States District Court for the District of New Mexico Court Did Not Alter the 1864 San Felipe Patent Boundaries, but Instead, Confirmed Them.

87. In reports produced pursuant to the Pueblo Lands Act, the Pueblo Lands Board recognized in 1927 and 1928 that the Conflict Area was located within the boundaries of the 1864 San Felipe Patent and not within the boundaries of the 1909 El Ranchito Patent. *See* Act of June 1924, c. 331, 43 Stat. 636, ECF 49-1 p. 30; Pueblo Lands Board, Santa Ana Pueblo El Ranchito Grant or Purchase, Report on Title to Lands Purchased by Pueblo Indians, at 2 (Jul. 19, 1927), ECF 49-4 p. 120; Pueblo Lands Board, San Felipe Pueblo, Report of Title to Lands Granted or Confirmed to Pueblo Indians Not Extinguished, at 1 & 3 (May 14, 1928), ECF 49-5 p. 10 & 12; *id.* Ex. A, ECF 49-5 p. 45 (Plat of San Felipe Pueblo Grant). *See also* Ltr. from H.G. Hagerman to Malcolm McDowell (Jul. 20, 1927), ECF 49-4 p. 160; Pueblo Lands Bd., Transcript of Evidence, Santa Ana-San Felipe Controversy (Mar. 20, 1931), ECF 49-5 p. 84.

88. In a quiet title action commenced by the United States as Guardian of San Felipe pursuant to the Pueblo Lands Act, the United States District Court for the District of New Mexico quieted title to the lands located within the 1864 Patent, including the Conflict Area, in San Felipe Pueblo (except for the parcels to which the Pueblo Lands Board found San Felipe's title was extinguished, including the parcels known as "Private Claims" or "P.C." 4, 5, and 6, and the claims for which the Court ruled against San Felipe, including P.C. 101). *United States v. Algodones Land Co.*, No. 1870 in Equity, Final Decree at 1-2 (D.N.M. Apr. 22, 1930), ECF 40-2 p. 2-3; *see id.*, Complaint (Jul. 17, 1928), ECF 49-5 p. 47. *See also United States v. Brown*, D.N.M. No. 1814 in Equity, Complaint (Nov. 25, 1927) (quiet title action filed on behalf of

Santa Ana), ECF 49-4 p. 164; *id.* Final Decree (May 31, 1931), ECF 49-5 p. 2 (same); Warranty Deed from Louis Ilfeld to Pueblo of San Felipe (Dec. 30, 1936), (San Felipe's reacquisition in restricted fee of parcels P.C. 4, 5, and 6 partially within Conflict Area to which its title had been extinguished under Pueblo Lands Act proceedings).

89. In bringing the quiet title action, the United States incorporated the Pueblo Lands Board's 1928 report reciting the boundaries of the San Felipe Patent as those identified in the 1916 Joy Survey. ECF 49-5, at pp. 10, 45.

90. The District Court's 1930 Final Decree in *Algodones* adopted the 1916 Joy Survey as establishing the boundaries of the San Felipe Patent and for the purpose of adjudicating title to all land within the boundaries the Joy Survey established. *Algodones* Final Decree at 1-2, 11, ECF 40-2 p. 2-3, 12.

91. The *Algodones* Final Decree stated that the Court "retains jurisdiction of this cause for the purpose of making any orders or issuing any writs necessary to give effect to said decree." *Id.* at 40, ECF 40-2 p. 42.

92. In *Algodones*, the Court quieted title against San Felipe to a tract known as Private Claim 101 in favor of the Algodones Community. ECF 40-2, pp. 21-22. The Pueblo Lands Board had earlier found San Felipe's title was extinguished to three tracts known as Private Claims 4, 5, and 6. ECF 49-5, p. 22-28. These four private claims are partially located within the Conflict Area.

93. The Pueblo Lands Board filed a Supplemental Report regarding the Santa Ana claim to lands within the 1864 Patent previously rejected by the Court of Private Land Claims. Supplemental Report of the Pueblo Lands Board Upon a Conflict between the San Felipe Pueblo and Ranchitos Purchase of the Santa Ana Pueblo, at 3-4 (Jun. 30, 1931), ECF 43-1 p. 5-6

(recognizing the land is within the 1864 San Felipe Patent, and recommending the controversy be resolved “in a friendly suit” between Santa Ana and San Felipe); Ltr. from Sp. Atty. George A.H. Fraser to C.J. Rhoads, Comm’r of Indian Affairs (Oct. 1, 1932), ECF 49-5 p. 101. Both that report and the 1932 letter from Santa Ana’s special attorney recognized the Santa Ana claim was a claim to adverse possession against another pueblo with a prior patent confirmed by Congress.

94. Although Santa Ana was aware that its claim to the Conflict Area conflicted with the 1864 Patent, Santa Ana did not appeal the Court of Private Land Claims Decree; did not intervene in *Algodones*; did not commence a separate suit under the Pueblo Lands Act; and did not otherwise assert in any court a claim to any land within the 1864 Patent prior to the May 31, 1934 expiration of its time to assert such claims pursuant to the Pueblo Lands Act as amended. *See* Act of May 31, 1933, c. 45, § 6, 48 Stat. 108, ECF 49-1 p. 86-87.

95. Beginning in approximately 1934, pursuant to the authority under the Pueblo Lands Act, the United States paid for the reacquisition of several parcels within the San Felipe Pueblo and the 1864 San Felipe Patent boundaries to which it had lost title as a result of the Pueblo Lands Act proceedings. Among other lands, these “compensation purchases” included Private Claims 4, 5, and 6, which include a total of 92.36 acres, and which the United States acquired in restricted fee status for San Felipe from Louis Ilfeld on December 30, 1936. Private Claims 4, 5, and 6 were paid for with compensation funds appropriated by Congress by the Act of March 4, 1929, 45 Stat. 1569. ECF 49-5, pp. 110-114.

96. Santa Ana filed no objections to those reacquisitions of land within the 1864 San Felipe Patent boundary for San Felipe.

E. Rights-of-way across the San Felipe Patent Confirmed the Defendants' Fiduciary Duties to San Felipe related to the Lands within the 1864 Patent. In 1979, Santa Ana Asserted an Extra-Judicial Claim to Land Ownership.

97. In the decades following the enactment of the 1924 Pueblo Lands Act and the proceedings concluded thereunder, the Secretary of the Interior obtained the consent of San Felipe to grant numerous rights-of-way across the Conflict Area including the right-of-way for what became the I-25 highway corridor. These rights-of-way included one approved in 1927 and expanded in 1929 for the construction of Highway 85, a right-of-way approved in 1954 for construction of State Road 422, and another approved in 1955 for construction of a spur connecting State Road 422 and Highway 85 and for drainage. *See* ECF 49-5, p. 116; ECF 49-5, p. 120; ECF 49-5, p. 123; ECF 49-5, p. 126; ECF 49-5, p. 129; ECF 49-5 p. 131; ECF 49-5, p. 134; ECF 49-5, p. 138.

98. The Secretary of Interior paid all compensation due because of the 1927, 1929, 1954, and 1955 right-of-way grants exclusively to San Felipe. *Id.*

99. The Secretary of the Interior, with the consent of San Felipe, also approved at least one railroad easement crossing the Conflict Area for which remuneration was paid solely to San Felipe. *See* ECF 49-6, p. 22.

100. As late as 1989, the Secretary approved easements crossing the Conflict Area only after obtaining the consent of San Felipe, with payment made only to San Felipe. *See*, ECF No. 49-6, p. 24; ECF No. 49-6, p. 26.

101. Not until 1979, at Santa Ana's demand, did officials with the Department of Interior change the longstanding course of dealing with respect to rights-of-way across San Felipe's 1864 Patent.

102. Officials within the Department of Interior accepted for consideration Santa Ana's time-barred claim to ownership of lands located within the 1864 Patent as part of the El Ranchito Tract.

103. For the first time in over one hundred and six years, Santa Ana claimed a right to compensation for a right-of-way across the Conflict Area within the San Felipe Patent boundaries.

104. As a result, when the Secretary approved a right-of-way for improvements to Interstate Highway 25 on March 24, 1980, Department officials determined a portion of it was located within the Conflict Area within the 1864 Patent boundaries and withheld \$189,200.00 of the compensation paid by the New Mexico Highway Department.

105. They placed these funds in an interest-bearing trust account designated IIM Account No. S-20093 for the benefit of San Felipe Pueblo and Santa Ana Pueblo to "be held in this account until the dispute concerning the overlap is settled." Letter from Samuel Montoya, BIA Southern Pueblos Agency Superintendent, to Joe Sanchez, Governor of San Felipe (Mar. 31, 1980), ECF 49-5 p. 149; *see also* BIA Voucher No. M20-80-R-19, Public Voucher for Disbursement (April 1, 1980), ECF 49-5 p. 151; *Pueblo of San Felipe v. Hodel*, 770 F.2d 915, 916-917 (10th Cir. 1985) (holding "where, as here, there is a dispute over which tribe owns the land in question, the Secretary has not only the right but the fiduciary duty to condition the grant of the right-of-way to which both tribes consent upon some just condition by which the appropriate recipient of the proceeds can be protected."). *See also* ECF 49-5, p. 140; ECF 49-5, p. 146; ECF 49-5, p. 153; ECF 49-5, p. 164; *San Felipe Pueblo v. Comm'r of Indian Affairs*, IBIA 80-5-A, 8 IBIA 155 (Sept. 12, 1980), ECF 49-5, p. 169; *Pueblo de San Felipe v. Andrus*,

No. 80-1005 HB, Complaint (D.N.M. Dec. 24, 1980), ECF 49-6, p. 2; *Pueblo de San Felipe v. Andrus*, No. 80-1005 HB, Opinion (D.N.M. Nov. 23, 1982), ECF 49-6, p. 16.

106. In 1985, Santa Ana filed suit against a non-Indian landholder in *Pueblo of Santa Ana v. Baca*, 844 F.2d 708 (10th Cir. 1988). In *Baca*, the Tenth Circuit issued a decision regarding a tract called Private Claim 101, a tract which was previously quieted against San Felipe in favor of the community of Algodones in *United States v. Algodones Land Co.*, No. 1870 in Equity, Final Decree at 1-2 (D.N.M. Apr. 22, 1930), ECF 40-2.

107. No restricted fee lands held by San Felipe were at issue in the *Baca* case, because while the tract at issue was located within the exterior boundaries of the 1864 Patent, it was a tract to which San Felipe had no claim at the time of the *Baca* decision. Rather, Private Claim 101 was land that the *Algodones* court had quieted in favor of the community of Algodones, a non-Indian settlement.

108. Nevertheless, in *Baca*, Santa Ana invoked a new historical argument that it held prior title under Spanish adjudicatory proceedings on its purchase of lands from non-Indians in the Conflict Area, and Santa Ana's claim to title by adverse possession against private owners was upheld by the Court. *Id.* at 708.

109. Neither the 1864 Patent boundary nor San Felipe's restricted fee lands were at issue in the *Baca* case, nor was the exterior boundary of the patent at issue. As a result, San Felipe was not a party in the case, nor was the United States, because no restricted fee lands were at issue that would require the United States to appear and to act on behalf of San Felipe as its guardian.

110. None of these historical events altered the exterior boundaries of the 1689 Spanish land grant to San Felipe confirmed by Congress and patented to San Felipe in 1864. Rather, this

history confirms both the correctness of the 1864 Patent boundary and San Felipe's title to all lands within those boundaries not extinguished in *Algodones* or by any other act of Congress authorizing alienation of the lands therein. This Complaint does not bring claims under the Quiet Title Act, however, understanding established title exposes the *ultra vires* and unconstitutional nature of the Defendants' actions.

II. Defendants' Unauthorized Actions

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

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

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

B. The 2000 Solicitor's Opinion M-37000 Did Not Authorize Defendants' Subsequent Unlawful Actions.

113. The Interior Department first addressed Santa Ana's petition in an opinion by Solicitor Leshy in 2000, *Boundary Dispute Between Santa Ana Pueblo and San Felipe Pueblo*:

The Secretary's Authority to Correct Erroneous Surveys, Revising Part IV of Solicitor's Opinion on "Pueblo of Sandia Boundary," 96 I.D. 331 (1988), Opinion M-37000 (Dec. 5, 2000), ECF 49-6 p. 28.

114. Solicitor Leshy cited to 25 U.S.C. § 176 for the Interior Department's authority "to determine whether it has itself made survey mistakes in the past and to move to correct them." *Id.* at 5. The statute conveys authority "to correct alleged mistakes in earlier surveys," to "correct allegedly erroneous boundary locations," and "the ability to reexamine and if appropriate correct factual mistakes in surveys." Opn. M-37000 at 5, 7, and n.8, ECF 49-6, pp. 32-34.

115. However, Opinion M-37000 also found that when the agency resurveys the boundaries of a federal land patent, the resurvey cannot "constitute an adjudication of the rights taken by the patentee." *Id.* at 8. According to Solicitor Leshy, the Secretary's power "may not be exercised against the rights of patentees or good faith purchasers of public lands." *Id.* at 9, ECF 49-6, pp. 35-36.

116. Opinion M-3700 concluded that three additional statutes still prohibited the Secretary from impairing "the rights of patentees." M-37000 at 9, ECF 49-6, p. 36 (retracements and resurveys of public lands), 16 U.S.C. § 488 (establishment of exterior boundaries of national forests), and 43 U.S.C. § 1746 (correction of patents and conveyance documents).

117. Opinion M-37000 held that the Department of the Interior may resurvey "to define more accurately what [a reservation's] boundaries are," but it may not "redraw the boundaries of a reservation in order to adjust the quantity of lands set aside for the Indians." *Id.* at 13, ECF 49-6, p. 40.

118. In conclusion, Solicitor Leshy declared "I hereby vacate and withdraw part IV of the Tarr Opinion. Another Opinion on the merits of the Santa Ana petition will follow in due course." *Id.* at 14, ECF 49-6, p. 41.

119. No further M-Opinion followed for 25 years.

C. 2009-2010 Olver Dependent Resurveys

120. Ten years after Leshy's Opinion M-37000, BLM Surveyor William F. Olver completed dependent resurveys of portions of the San Felipe Pueblo Grant boundaries in 2009 and 2010. William F. Olver, Field Notes of Dependent Resurvey of Portions of Boundaries of San Felipe Pueblo Grant, etc. (May 21, 2009), ECF 49-6, p. 75; William F. Olver, Field Notes of Dependent Resurvey of Portions of Boundaries of San Felipe Pueblo Grant, Portion of Boundary of El Ranchito Grant, etc. (Mar. 31, 2010). These dependent resurveys correctly identified the location of the San Felipe Patent's southeast and southwest corners and its southern boundary where they had been located by Clements in 1860 and confirmed by Hall in 1909 and Joy in 1916. The Olver resurveys once again confirmed the validity of the patent boundaries mandated in the 1864 patent confirmed by Congress to San Felipe.

D. 2012 Hickey Field Investigation

121. On July 3, 2012, BLM Indian Lands Surveyor Paul J. Hickey conducted a field investigation and provided a report "in response to inquiries by U.S. government solicitors concerning the location" of San Felipe Grant's southeast corner. Paul J. Hickey, Report on the Search for Evidence of the 1859 Southeast Corner of the San Felipe Pueblo Grant at 1 (Jul. 3, 2012), ECF 49-6, p. 96. Hickey reported that his investigation did not reveal "any conclusive evidence that can be accepted as sufficient proof to overturn Hall's 1909 reestablished position of the southeast corner of the [San Felipe Grant], which has been continually recognized by adjoining landowners as the true corner of the Grant for over 100 years." *Id.* at 101.

E. Solicitor's Opinion M-37027

122. In 2013, the Solicitor again addressed Santa Ana's petition. **Exhibit E**, *Boundary Dispute: Pueblo of Santa Ana Petition for Correction of the Survey of the South Boundary of the San Felipe Grant*, Opinion M-37027 (June 7, 2013). Asserting incorrectly that "the Solicitor's Office has already confirmed the Secretary's authority to correct erroneous surveys in circumstances such as these," Opinion M-37027 "address[ed] whether there is a need to resurvey the disputed boundary." *Id.* at 2.

123. Despite having received the 2009 Olver resurvey confirming the original Clements survey of the 1864 Patent boundary was correct, and an independent field investigation of the original Clements Survey boundary from Surveyor Hickey in 2012, Opinion M-37027 asserted Defendants had authority to alter the existing boundary of the 1864 San Felipe Patent through a "resurvey", stating:

The correction of an existing boundary is called a "resurvey," and is generally conducted in a multi-step process. First, a resurvey is conducted in accordance with BLM's survey manual. BUREAU OF LAND MANAGEMENT, U.S. DEPT OF THE INTERIOR, MANUAL OF SURVEYING INSTRUCTIONS 129-145 (2009). Second, the results of the survey are accepted by the Director of the BLM. See 43 C.F.R. § 9180.0-3. The acceptance of a resurvey establishes a new boundary except where the resurveyed boundary conflicts with private property rights. The Secretary's authority to conduct surveys and resurveys of public lands and Indian reservations is found in 25 U.S.C. § 176 (surveys of Indian or other reservations), 43 U.S.C. § 772 (retracements and resurveys of public lands), 16 U.S.C. § 488 (establishment of exterior boundaries of national forest), and 43 U.S.C. § 1746 (correction of patents and conveyance documents).

Id. at 2, n.5.

124. Opinion M-37027 evaluated San Felipe's and Santa Ana's respective claims to ownership of the Conflict Area under Spanish and Mexican law in order to conclude that a resurvey was necessary. *Id.* at 3-10.

125. Disregarding the centuries of patent confirmations and consistent record of surveys establishing the boundaries of the Congressionally mandated patent, the Interior Solicitor

improperly chose to rely on the findings of a court case to which San Felipe had not been party, *Pueblo of Santa Ana v. Baca*, 844 F.2d 708 (10th Cir. 1988).

126. While Opinion M-37027 purported to rely on Opinion M-37000, it ignored that opinion's caution to limit reliance on the *Baca* case, noting that *Baca* did not bind San Felipe. **Exhibit E** at 2.

127. The Solicitor without authority and in violation of San Felipe's rights under the 1864 Patent "determine[ed] that Santa Ana's title to the overlap area is superior," and that "**San Felipe never had a compensable interest in the overlap area.**" *Id.* at 15 (emphasis added).

128. The Solicitor's Opinion asserts authority previously exclusively delegated by Congress to and exercised by the United States Federal Court of Private Land Claims, despite a statute of limitations long exhausted in 1934 and despite no congressional delegation of authority to do so.

129. Even worse, the Solicitor ignored the historical record, *see* Section I, *infra*, with no evidence that the Clements survey contradicted any geographical landmark identified in San Felipe's 1689 Spanish grant, and failed to identify a clear error in any survey to justify a "resurvey." Opinion M-37027 ignored the dependent resurvey it commissioned from Surveyor Olver in 2009 and 2010 and the 2012 Hickey Investigation Report commissioned by the Solicitor one year earlier.

130. The Solicitor erroneously asserted the Hall 1909 survey relied on distances alone, ignoring critical evidence from the Hurlburt 1900 re-examination of the original Clements survey that Clements' southern boundary as re-established by Hall in 1909 did not rely on distances alone, in fact, crossed "Culcurra' or "Culebra" Hill, as described in the original 1689 Spanish Land Grant. ECF 49-3, pp. 145-146.

131. The Solicitor failed to explain how the very specific language in the 1864 Patent that the patent “Contains Thirty-Four thousand Seven hundred and Sixty acres and Eight six one hundredths Acres” could be reconciled with the purported resurvey removing approximately 700 of those acres from the congressionally confirmed patent.

132. The Solicitor also erroneously concluded that “the boundaries of the lands patented to the respective pueblos conflict.” Ex. E at 2, 11, 15. In fact, the El Ranchito Patent by its terms, and as confirmed by the Court of Private Lands Claims Decree, excludes all land already patented to San Felipe in 1864. *See* Section I.B.1. *supra*..

133. The Solicitor incorrectly found that, because of its unlawful determination that Santa Ana had superior title under Spanish law, “a resurvey of the disputed boundary is necessary,” and further declared “that the boundary between Santa Ana’s El Ranchito Tract and the Pueblo of San Felipe lies north of the southern boundary line of the San Felipe patent.” Ex. E at 15.

134. The Solicitor failed to cite any evidence by which the Solicitor asserted the southern boundary of the San Felipe 1689 Spanish Land Grant and 1684 Patent actually was located. *See* Ex. E. at 6-8.

135. The Solicitor directed “the BLM, in coordination with the BIA, ... to address this overlap and undertake a resurvey of the disputed boundary based on this opinion.” *Id.* at 15.

136. The Solicitor had no legal authority to order a resurvey based on no conflict between the San Felipe 1689 Spanish land grant description of the boundaries and the 1864 Patent, let alone the Solicitor’s unwarranted findings of superior title under Spanish and Mexican law in contradiction to the Act of July 22, 1854, c. 103, 10 Stat. 308.

F. 2013 BLM Resurvey

137. Defendant BIA Regional Director for the Southwest Region issued a “Request for Cadastral Survey” that included the following illegal instruction: “officially identifying the north and east boundaries of the El Ranchito Grant...as follows:

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

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

In addition, please remove all monuments marking the south and west boundaries of the San Felipe Pueblo Grant that fall within the exterior boundaries of the El Ranchito Grant.

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

138. The apparent goal of the resurvey was to eradicate the historical boundaries – the record of all prior federal confirmations mandated by International Treaty, Federal Law, and the 1864 congressionally mandated United States patent. *See* 18 U.S.C. § 1858 (providing that anyone who “willfully defaces, changes, or removes any monument or benchmark of any Government survey” is guilty of a misdemeanor).

139. The “El Ranchito Grant” boundaries referenced in these survey instructions are the boundaries of the portion of the El Ranchito tract, a series of purchases and not a grant, that the Court of Private Land Claims rejected in its 1897 Decree and excepted from the El Ranchito Patent issued in 1909.

140. On September 4, 2013, Defendant BIA Southwest Region Regional Director, continuing to ignore the historical record, filed a “Supplemental Request” for Cadastral Survey,

in violation of San Felipe's rights, requesting the following: "This is a request for additional surveying to identify Private Claims No. 4, No. 5 and No. 6 and a portion of No. 101 lying within the disputed overlap area between the El Ranchito Tract and the San Felipe Pueblo Grant in conjunction with the original request." See **Exhibit G**, Supplemental Request for Cadastral Survey from BIA Southwest Regional Director to Robert Casias, Deputy State Director, Cadastral Survey, BLM (Jul. 12, 2013).

141. Private Claims 4, 5 and 6 were three tracts the title to which was quieted to a non-Indian in *Algodones*, that were repurchased 1936 by the United States for San Felipe pursuant to the Pueblo Lands Act. ECF 49-5 p. 110.

142. On July 15, 2013, the BLM Chief Cadastral Surveyor for New Mexico issued Assignment instructions to Cadastral Surveyor Olver directing Olver that "You are hereby assigned, authorized and directed to proceed with the survey as provided for under Special Instructions for Group No 1154, NM. You will be guided by the Special Instructions Dated July 15, 2013." The Special Instruction Group No. 1154 provided for the "Retracement and Dependent Resurvey of portions of the North and East Boundaries of the El Ranchito Grant, Portions of the South and West Boundaries of the San Felipe Grant...and the amendment of Certain Corners on the South and West Boundaries of the San Felipe Pueblo Grant..." See **Exhibit H**, BLM Assignment Instructions Group No. 1154, New Mexico (July 15, 2013), at p. 2.

143. In accordance with the direction of the Solicitor in Opinion M-37027, and the Special Instruction and Supplemental Special Instructions, BLM Surveyor Olver conducted a "corrective resurvey" in October 2013 purporting to eliminate the southern boundary and a portion of the western boundary of the 1864 San Felipe Patent and replacing it with the Walker survey El Ranchito tract survey and plat of the El Ranchito tract. William F. Olver, Field Notes

of the Dependent Resurvey of a Portion of the North Boundary of the El Ranchito Grant, Portions of Wendell V. Hall's South and West Boundaries of the San Felipe Pueblo Grant, etc. (October 24, 2013), ECF 49-7 p. 2. Olver is the same BLM surveyor who previously resurveyed and reconfirmed the 1864 San Felipe southern Patent boundary in conformity with the 1909 Hall and 1916 Joy surveys in 2009 and 2010 in accordance with the BLM Survey Manual. The only change between 2009 and 2013 was the Defendants' Cadastral Survey Request Instructions to BLM.

144. The BLM published notice of its intent to officially file the resurvey in February 2014. Notice of Filing of Plat of Survey, New Mexico, 79 Fed. Reg. 8205 (Feb. 11, 2014), ECF 49-7 p. 52.

145. Without authority and in violation of San Felipe's rights, on April 20, 2017, the Defendant BLM filed a new survey plat in the records of the BLM that purported to eliminate the existing southern boundary and portions of the western boundary of the 1864 Patent, and to replace those boundaries with the northern boundary of the El Ranchito tract Walker Survey and Plat rejected by the Court of Private Land Claims by Decree and excluded from the El Ranchito Patent, based solely on Defendants' unlawful direction.

G. The 2014 IBLA Decision.

146. San Felipe timely protested the filing of the plat on April 9, 2014. The BLM New Mexico State Director denied San Felipe's protest on August 1, 2014. San Felipe then timely appealed the denial of its protest to the Interior Board of Land Appeals (IBLA) on August 29, 2014.

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

El Ranchito Tract” following the Solicitor’s special instruction. *Pueblo of San Felipe*, No. IBLA 2014-256, 190 IBLA 17 (Apr. 5, 2017), ECF 49-7 p. 54.

148. The IBLA decision stated that because “the Solicitor’s 2013 Opinion, which confirmed BLM’s authority to perform a corrective resurvey and directed BLM to perform one, is binding on the Board and final for the Department, we lack authority to adjudicate BLM’s authority to undertake the corrective resurvey at issue.” *Id.* at 67.

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

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

H. 2017 Filing of the Plat

151. The Plat filed, mislabeled as a plat of the “dependent resurvey,” was officially filed on April 20, 2017. The filing of the Plat was a final agency action. **Exhibit I**, Plat of Dependent Resurvey of the San Felipe Pueblo Grant (approved January 31, 2014). The resurvey stated,

“This plat, In two sheets, represents the dependent resurvey of a portion of the north boundary of the El Ranchito Grant, portions of Wendell V. Hall’s south and west boundaries of the San Felipe Pueblo Grant, a portion of the subdivisional lines and portions of the boundaries of private claims 4, 5 , 6 and 101 of the San Felipe Pueblo Grant, designed to restore the corners, in their true original locations according to the best available evidence, Township 13 North, Range 4 East, New Mexico Principal Meridian, New Mexico.

Id.

152. Each of Defendants' actions disregarded the binding legal effect of the Act of July 22, 1854, ECF 49-1, p. 13-17; the Act of Dec. 22, 1858, c. 5, 11 Stat. 374, ECF 49-1, p. 17-18; the 1860 Clements Survey, ECF 49-3, p. 26; the 1864 Patent, ECF 49-3, p. 36; the Court of Private Land Claims 1897 Decree, ECF 49-3, p. 84; the 1909 Hall resurvey, ECF 49-4, p. 3; the 1916 Joy Survey, ECF 49-4, p. 79; the *Algodones* decision; the Pueblo Lands Act May 31, 1934 statute of limitations on claims against pueblo patented lands; and the 2009 and 2010 Olver surveys ECF 49-7, p. 2.

I. Disbursement of Right-of-Way Trust Funds

153. On January 11, 2018, the Office of Special Trustee for American Indians ("OST") disbursed the total balance of IIM Account No. S-20093 to Santa Ana. Letter from OST Regional Administrator for Southwest Region and BIA Regional Director for Southwest Region to the Governor of San Felipe, p. 2 (Apr. 18, 2018), ECF 49-7, p. 80.

154. OST disbursed the trust account funds to Santa Ana based on BIA's notification to OST that "BIA had updated its Trust Asset and Accounting Management System ("TAAMS") as a result of BLM's April 20, 2017, official filing of the corrective resurvey. The BIA's TAAMS update was also a necessary administrative step given the Solicitor's Opinion M-37027 conclusions and the IBLA's decision upholding the BLM's resurvey. ... **[T]he disputed area has been established to be under Santa Ana's ownership, and consequently, Santa Ana was entitled to disbursement of funds held in the escrow account.**" *Id.* (emphasis added); *see also* Mem. from John E. Antonio, Superintendent, So. Pueblos Agy., to Peter J. Fredericks, Fiduciary Trust Ofr., Ofc. of the Sp. Trustee for Am. Indians (Nov. 14, 2017), ECF 29-2.

155. The Department of the Interior did not notify San Felipe of its receipt of a request from Santa Ana to disburse the trust account funds, or its actions disbursing the trust account

funds to Santa Ana until the letter of April 18, 2018, **after the trust account funds were disbursed.**

156. The Defendants thereafter rejected San Felipe's argument that the disbursement violated the trust responsibilities to San Felipe. Ltr. from Patricia Mattingly, BIA Acting Reg. Dir. Sw. Reg., to Gov. Anthony Ortiz, Pueblo of San Felipe (Nov. 8, 2018), ECF 49-7, p. 89; *see* Ltr. from Stetson Law Offices to BIA Acting Reg. Dir. Sw. Reg. and OST Reg. Trust Admin'r Sw. Reg. (May 15, 2018), ECF 49-7, p. 82.

157. The trust account held approximately \$1.6 million when OST disbursed it. The disbursement of the trust funds was a final agency action and was taken in violation of Defendants' fiduciary duties and in violation of San Felipe's Fifth Amendment rights.

III. Defendants' Actions Harmed San Felipe

158. San Felipe's occupation of the lands encompassed within the 1864 Patent has existed since time immemorial and been recognized and confirmed by three successive sovereigns—Spain, Mexico, and the United States.

159. The special survey instructions, the survey conducted as a result thereof, the Plat Map filed in 2017, the purported title adjudication contained within in Solicitor's Opinion M-37027 (which precipitated the survey actions), Ex. B, p. and the subsequent agency actions that relied upon the BLM Plat filed, including the alteration of TAAMS records and disbursement of the IIM Account without prior notice to San Felipe, were each made and taken without legal authority, in violation of applicable statutory and constitutional restrictions, and in violation of the Defendants' singular fiduciary duties to restrict the San Felipe 1864 Patent from alienation without San Felipe's consent under the Pueblo Lands Act. *See Exhibit J*, Map of Dispute Area Resurveyed by BLM (Sept. 20, 2013) (depicting Private Claims 4, 5 and 6). Accordingly, all such actions should be deemed null and void.

160. San Felipe objected to each of the actions taken by the Department's officials purporting to alter the southern and western boundaries of San Felipe's 1864 Patent.

161. The Defendants' actions have interfered with and substantially harmed San Felipe by restraining San Felipe's access to, use of, and exercise of jurisdiction over the lands within the 1864 Patent boundaries so affected; access to and use of the waters of the Rio Grande bordered by and contained within the area affected by Defendants' actions; and exercise of jurisdiction over all lands within the 1864 San Felipe Patent boundaries to protect the lands and the natural resources located thereon.

162. Defendants used their wrongful alteration of TAAMS IIM account records to disburse the IIM account entirely to Santa Ana - substantially harming San Felipe by eliminating present and future interests in a trust fund established for their benefit and tied integrally to San Felipe's 1864 Patent.

163. San Felipe has exhausted all administrative remedies concerning the agency officials' actions complained of herein. The foregoing actions by the Defendants have caused substantial injury to San Felipe in contravention of law.

FIRST CLAIM FOR RELIEF

Declaratory Relief, 28 U.S.C. § 2201

Defendants Lack Authority to Alter the Exterior Boundaries of San Felipe's Congressionally Confirmed Pueblo Patent.

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

165. The 1689 San Felipe Spanish Land Grant was examined, investigated, and confirmed by the Surveyor General as authorized by Congress pursuant to the Act of July 22, 1854. Upon his recommendation, Congress confirmed the grant and directed the President to

sign 1864 San Felipe Patent. The patent established the exterior boundaries of the San Felipe Pueblo Spanish Land Grant as confirmed by Congress.

166. The Solicitor had no congressional authority to alter the 1864 Patent boundaries, and nothing in Opinion M-37027 changes that.

167. Put another way, absent congressional authority none of the arguments made by the Solicitor justify Defendants' unlawful actions.

168. The actions of the Defendants purporting to alter the boundaries of the 1864 Patent and the title to any lands within those boundaries are null and void *ab initio*.

169. Even if they had been granted any authority, their authority would be limited to remedying clear error, and there was no clear error in this case corrected by the Defendants' actions purporting to obliterate the southern and portions of the western boundary of the 1864 San Felipe Patent. The attempted alteration of San Felipe's Patent boundary was an arbitrary and capricious *ultra vires* action by the Defendants.

170. Defendants' actions were solely based on the Solicitor's Opinion M-37027 conclusions regarding title to land, not on any evidence of where the southern boundary of the San Felipe Patent was located based on the Patent issued and the description in the 1689 Spanish Land Grant to San Felipe.

171. Defendants violated the restrictions on resurveys including the restrictions that Defendants may "survey and resurvey what [the United States] owns," but "what it thus does for its own information cannot affect the rights of owners on the other side of the line." *Lane v. Darlington*, 249 U.S. 331, 333 (1919).

172. Defendants were barred from resurveying by 25 U.S.C. § 176 (surveys of Indian or other reservations), 43 U.S.C. § 772 (retracements and resurveys of public lands), 16 U.S.C. §

488 (establishment of exterior boundaries of national forest), and 43 U.S.C. § 1746 (correction of patents and conveyance documents), the only congressional acts cited in the M-Opinions, from altering the boundaries of non-public restricted fee patented lands that ceased to be public lands of the United States once patented to San Felipe (*see* Opn. M-37000 at 9; Opn. M-37027 at 2 n.5).

173. Congress did not grant the Defendants “continuing power to address errors made in earlier surveys or patents [to be] exercised against the rights of patentees.” Opn. M-37000 at 9.

174. Neither the executive nor the judicial branches may interfere with Congress’ decision to confirm San Felipe’s 1689 Spanish Land Grant and to mandate the issuance of the 1864 Patent to San Felipe. *See United States v. Conway*, 175 U.S. 60, 66-71 (1899); *Astiazaran v. Santa Rita Land & Mining Co.*, 148 U.S. 80, 82-84 (1893); *United States v. Maxwell Land-Grant Co.*, 121 U.S. 325, 365-66, 382 (1887); *Tameling v. U.S. Freehold & Emigration Co.*, 93 U.S. 644, 662-63 (1876); *Mondragon v. Tenorio*, 554 F.2d 423, 424-25 (10th Cir. 1977); *Sanchez v. Taylor*, 377 F.2d 733, 737 (10th Cir. 1967).

175. San Felipe requests a declaration that Defendants lacked legal authority to alter the boundary of the San Felipe Patent and lacked authority to take any subsequent action, including the disbursement of tribal trust funds held in escrow, based wholly or in part upon the improper and unauthorized alteration of agency records of such boundary, and that such alteration of records, and Defendants’ subsequent actions are void.

SECOND CLAIM FOR RELIEF

Declaratory Relief, 28 U.S.C. § 2201

Defendants Lack Authority to Diminish San Felipe’s Territorial Jurisdiction

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

177. San Felipe's jurisdiction historically has extended to all lands within the boundaries of the San Felipe Patent and all other lands the United States has set aside for the benefit of San Felipe.

178. Under San Felipe law, the San Felipe Tribal Council possesses the inherent authority to enact tribal ordinances and laws to regulate the activities of tribal members and non-tribal members within San Felipe's jurisdiction.

179. San Felipe's Tribal Council consistently exercises its governmental authority over all lands, waters, and persons within its boundaries, including the San Felipe Patent boundaries, to protect its community, its land, and its resources.

180. For purposes of applying San Felipe's ordinances and laws, land within the boundaries of San Felipe Pueblo includes land within the Conflict Area.

181. The Defendants have impeded San Felipe's ability to "make their own laws and be ruled by them" by exceeding their authority as agency officials and willfully obscuring San Felipe's sovereign authority over the Conflict Area. *Williams v. Lee*, 358 U.S. 217, 220 (1959).

182. The Solicitor's decision to direct the BLM to change the 1864 Patent's boundaries violates the principle that "only Congress can divest a reservation of its land and diminish its boundaries." *Solem v. Bartlett*, 465 U.S. 463, 470 (1984); *see McGirt v. Oklahoma*, 591 U.S. 894, 903-04; 140 S. Ct. 2452, 2462-63 (2020) (if Congress wishes to diminish a reservation's boundaries, it must "clearly express its intent to do so."). Federal statutes also expressly prohibit changes in the boundaries of Indian reservations except by act of Congress. 25 U.S.C. § 398d;

see also 25 U.S.C. § 211 (prohibiting additions to Indian reservations in the State of New Mexico except by act of Congress).

183. The jurisdictional boundaries of New Mexico Pueblos are tied to the exterior boundaries of grants from prior sovereigns as confirmed by Congress or the Court of Private Land Claims. *See United States v. Smith*, 100 F.4th 1244, 1248 (10th Cir. 2024) (discussing the 2005 amendment to the Pueblo Lands Act, Pub. L. 109-133, 119 Stat. 2573 (Dec. 20, 2005)).

184. Because the Solicitor’s decision purports to “correct” the size of the grant that Congress confirmed, reducing it from the description provided in the original 1689 Spanish land grant and the 1864 Patent, the decision effectively purports to diminish the boundaries of San Felipe’s reservation.

185. The Solicitor’s authority to take an action having this effect requires clear authorization from Congress, and no such authorization exists.

186. Defendants’ resurvey action, purporting to relocate the southern boundary of San Felipe Pueblo and remove approximately 700 acres of land from within the 1864 Patent exterior boundaries interfered with San Felipe’s exercise of its congressionally recognized inherent sovereignty and territorial jurisdiction, interfering with San Felipe’s criminal and civil regulatory jurisdiction over the Conflict Area. *See*, Pueblo Lands Act, Pub. L. 109-133, 119 Stat. 2573 (Dec. 20, 2005), 25 U.S.C. § 331 note, Section 20(a).

187. San Felipe requests a declaration that Defendants had no legal authority to interfere with San Felipe’s jurisdictional territory or to remove lands from the application of San Felipe’s criminal and civil regulatory laws and ordinances, and that any such actions are void.

THIRD CLAIM FOR RELIEF

Declaratory Relief, 28 U.S.C. § 2201

Defendants Lacked Authority to Alter the Title to Lands Located Within the 1864 San Felipe Patent Boundaries Based on Claims of Adverse Possession or Ownership under Spanish law by Another Pueblo under the Pueblo Lands Act Statute of Limitations.

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

189. On May 31, 1933, Congress extended the window to bring adverse claims against pueblo patented lands for one year. That window closed on May 31, 1934, precluding any further adjudication.

190. Santa Ana Pueblo failed to initiate an independent cause of action claiming the Conflict Area before the statute of limitations expired on May 31, 1934,.

191. The Pueblo Lands Board, and the United States special attorneys for San Felipe and Santa Ana were aware of Santa Ana's claims to the Conflict Area prior to the United States attorneys' filing of the complaint in *Algodones*.

192. The consistent representation of San Felipe by the United States Attorney in all proceedings in *Algodones*, and the decision of the United States attorney representing Santa Ana in *United States v. Brown* not to bring a claim on behalf of Santa Ana before the District Court of New Mexico, all confirm that Defendants owed a singular fiduciary duty to San Felipe regarding title to lands within the 1864 Patent boundaries.

193. Defendants were barred from reconsidering the validity of the 1864 Patent or its boundaries. *See United States v Algodones*.

194. San Felipe requests a declaration that Defendants' actions were time barred under the doctrine of *res judicata* and the statute of limitations imposed by the May 31, 1933, amendment to the Pueblo Lands Act.

FOURTH CLAIM FOR RELIEF

Declaratory Relief, 28 U.S.C. § 2201

Defendant Officials Lack Authority to Adjudicate Ownership to Any Restricted Fee Patented Lands within the Boundaries of the 1864 San Felipe Patent.

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

196. Defendants relied upon Opinion M-37027's determination of ownership to order the obliteration of survey monuments evidencing the 1864 Patent boundaries, replace that boundary with the Walker El Ranchito tract survey plat map boundary, to alter its TAAMS records on the IIM account and to disburse over \$1.6 million dollars in tribal trust funds held in escrow in the IIM Account to Santa Ana.

197. The adjudication and determination of pueblo ownership of congressionally patented lands within New Mexico is a congressional function under the Act of July 22, 1854.

198. Congress did not authorize the Interior Department or its officials to adjudicate or otherwise determine ownership of real property within the Conflict Area.

199. San Felipe requests a declaration that Defendants had no legal authority to adjudicate or otherwise determine ownership of any restricted fee lands within the congressionally confirmed 1864 Patent boundaries.

200. San Felipe requests a declaration that Defendants had no legal authority to take any of their other actions, including the obliteration of survey monuments and markers, purported obliteration of the southern and western boundaries of the 1864 Patent boundary and

replacement with the northern boundary of the El Ranchito Tract Walker Survey, and the disbursement to Santa Ana of funds held in escrow, based wholly or in part upon an improper and unauthorized determination of ownership or title, and that all such actions are void.

FIFTH CLAIM FOR RELIEF

Declaratory Relief, 28 U.S.C. § 2201:

Defendants Lack Authority to Entertain and Act Upon a Boundary Claim Antagonistic to San Felipe

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

202. In *United States v. Algodones Land Co.*, acting on Congress' direction and as guardian of San Felipe, the United States brought an action to quiet title in San Felipe to lands situated within the boundaries of the San Felipe Patent including the Conflict Area.

203. Santa Ana's 1989 petition to the Department of the Interior sought a resurvey of the southern boundary of the San Felipe Patent as adopted in the *Algodones* Final Decree. Santa Ana's position was antagonistic to San Felipe and the Final Decree the United States sought and obtained on behalf of San Felipe as its guardian.

204. The claim asserted in Santa Ana's 1989 petition is barred because Santa Ana waived the claim before the Court of Private Land Claims, and because it did not timely assert it prior to the expiration of the May 31, 1934, Pueblo Lands Act statute of limitations.

205. San Felipe requests a declaration that, as San Felipe's guardian in *United States v. Algodones Land Co.*, the United States owed and continues to owe a duty to San Felipe to defend the *Algodones* Final Decree, including the Final Decree's adoption of the Joy Survey as establishing the lawful boundaries of the San Felipe Patent, and to reject any claim that is

antagonistic to San Felipe's interests in the continued recognition of the lawful boundaries of the 1864 Patent, and that Defendants' actions in violation of such duties are void.

SIXTH CLAIM FOR RELIEF

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

Unconstitutional Deprivation of Liberty and Property Interests without Due Process of Law in Violation of the Fifth Amendment

Agency Actions Taken Without Lawful Authority, Contrary to Constitutional and Statutory Limitations

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

231. Defendants' actions, including Opinion M-37027, the destruction of survey monuments marking the southern and portions of the western boundaries of the 1864 San Felipe Patent, the April 5, 2017 IBLA decision, the April 20, 2017 filing of the resurvey, the 2017 change to the record ownership of the Conflict Area in BIA TAAMS records, the January 11, 2018 disbursement of the tribal trust funds, and the ongoing actions of the Defendants to deny San Felipe access to the lands and waters within the Conflict Area were each taken without legal authority, and Defendants unconstitutionally deprived San Felipe of liberty and property interests, including but not limited to San Felipe's exercise of jurisdiction over the all lands within the 1864 Patent boundaries; San Felipe and its members access to, use of its Restricted Fee lands located within the 1864 Patent boundaries, San Felipe and its members access to and use of the waters, including the waters of the Rio Grande, bordered by and contained within the area affected by Defendants' actions, without due process of law, in violation of the Fifth Amendment to the U.S. Constitution.

232. Defendants' actions were contrary to constitutional right, power, privilege, or immunity, in violation of the APA. 5 U.S.C. § 706(2)(B).

233. Defendants' conduct was in excess of any statutory jurisdiction, authority, or limitations, or short of statutory right, in violation of the APA. 5 U.S.C. § 706(2)(C).

234. San Felipe is entitled to be made whole and be restored to the position they were in before Defendants' malfeasance including their breach of fiduciary duty to San Felipe.

235. San Felipe requests that Defendants' actions be declared unlawful and set aside; that Defendants be ordered to restore the boundaries of the 1864 San Felipe Patent to the status that existed before the Defendants' actions; that Defendants be ordered to refile previous surveys and plats or resurveying; that Defendants be ordered to restore the survey boundary monuments that were removed to their original locations; and finally that Defendants be enjoined from taking any further actions reliant on Opinion M-37027.

SEVENTH CLAIM FOR RELIEF

Administrative Procedure Act, 5 U.S.C. § 706.

Taking of Property Interests in Violation of the Fifth Amendment

Agency Actions Taken Without Lawful Authority, Contrary to Constitutional and Statutory Limitations

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

237. Defendants' actions, including Opinion M-37027, the destruction of survey monuments marking the southern and portions of the western boundaries of the 1864 San Felipe Patent, the April 5, 2017 IBLA decision, the April 20, 2017 filing of the resurvey, the 2017 change to the record ownership of the Conflict Area in BIA TAAMS records, the January 11, 2018 disbursement of the tribal trust funds, and the ongoing actions of the Defendants to deny

San Felipe access to the lands and waters within the Conflict Area, effected an unconstitutional taking of San Felipe's property interests, without just compensation, in violation of the Fifth Amendment to the U.S. Constitution.

238. Defendants' actions were contrary to constitutional right, power, privilege or immunity, in violation of the APA. 5 U.S.C. § 706(2)(B).

239. Defendants' actions were also in excess of statutory jurisdiction, authority, or limitations, or short of statutory right, in violation of the APA. 5 U.S.C. § 706(2)(C).

240. San Felipe requests that Defendants' actions be declared unlawful and set aside.

241. San Felipe further requests that Defendants be ordered to recognize the boundaries of the San Felipe Patent as they existed before the Resurvey Actions, including restoring the record ownership in the BIA TAAMS to San Felipe, refiling previous surveys and plats or resurveying, as appropriate, and restoring the survey boundary monuments that were removed to their original locations.

EIGHTH CLAIM FOR RELIEF

Breach of Trust Responsibility to San Felipe - 1864 San Felipe Patent Boundaries

Declaratory, Injunctive and Equitable Relief

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

243. Spanish and Mexican Land grants to pueblos were subject to restrictions against alienation without authority of the Spanish or Mexican government. *United States v. Candelaria*, 271 U.S. 432, 440 (1926) (citing *United States v. Sandoval*, 231 U.S. 28, 48 (1913)).

244. The United States carried forward this obligation to pueblos as wards of the sovereign acting as guardian, even though pueblo Spanish land grants patented after confirmation by

Congress were deemed to be fee simple. Pueblo Lands Act § 17; *see also Candelaria*, 271 U.S. at 440 (holding pueblo lands were “‘subject to the legislation of Congress enacted in the exercise of the government's guardianship’ over Indian tribes and their property.”) (internal citations omitted).

245. Congress affirmed the Defendants’ duty to defend San Felipe’s rights to their patented lands in Section 1 of the Pueblo Lands Act, which directed the United States Attorney to act as the guardian of each pueblo in proceedings to quiet title to lands within congressionally confirmed patents or patents issued pursuant to lawful Court of Private Land Claims Decrees.

246. The explicit restriction against alienation of San Felipe’s fee patented lands set forth in Section 17 of the Pueblo Lands Act clarified an explicit restriction against alienation absent Congressional authorization.

247. Defendants have a fiduciary duty to San Felipe to protect the 1864 Patent as the pueblo whose patent was confirmed by Congress and protected under the Pueblo Lands Act of 1924.

248. Defendants are without administrative powers associated with trust lands they administer elsewhere in Indian country and as to which the United States holds trust title, because patented pueblo lands are held in restricted fee status. Pueblo Lands Act, § 17.

249. San Felipe is the only beneficiary of the 1864 Patent issued by Congress, and the only beneficiary to whom the Defendants owed a fiduciary duty to protect the lands within the 1864 Patent against alienation.

250. Defendants’ duties include a duty to protect the interests of San Felipe from interference by the trustee in their exercise of their rights including, but not limited to, the right to

exercise sovereign jurisdiction, the right to use, and the right to access waters on or adjacent to the lands within the 1864 Patent boundaries.

251. Defendants' exclusive obligations to San Felipe are evidenced by the United States Attorney's representation of only San Felipe before this Court in *United States v. Algodones*.

252. The Defendants' actions were inconsistent with their fiduciary duty.

253. Defendants' conduct degraded and harmed San Felipe's rights, including but not limited to: access to and use of all San Felipe restricted fee patented lands within the pueblo patent boundaries (except Private Claims 4, 5 and 6); access to water adjacent to and within the boundaries including access to the Rio Grande River, sovereign rights to exercise jurisdiction over all activities, natural resources and lands located within the patent boundaries, and – measurably – the right to present and future benefit from the IIM funds flowing from an easement over the 1864 Patent lands.

254. Each and every separate act of the Defendants was a breach of their fiduciary obligations to San Felipe as the sole beneficiary of those obligations in violation of section 17 of the Pueblo Lands Act, and therefore void.

255. The Defendants' breaches of their fiduciary duties under section 17 of the Pueblo Lands Act waive the Defendant's sovereign immunity, if any, from suit.

256. The Defendants' breaches of their fiduciary duties provide this court with broad authority and responsibility to fashion equitable relief necessary to restore San Felipe, as beneficiary, to the position it would have enjoyed but for Defendants' shocking breaches of fiduciary duties.

257. San Felipe requests a declaration that: Defendants owe fiduciary duties exclusively to San Felipe to protect the congressionally confirmed boundaries of the 1864 Patent; Defendants' actions breached their trust obligations to San Felipe related to the 1864 Patent; and Defendants did not possess the authority to remove the restriction on alienation on San Felipe restricted fee lands within the 1864 Patent boundaries.

258. San Felipe requests injunctive and mandamus relief ordering the Defendants to: rescind M-Opinion-37027; restore the TAAMS records to their original condition prior to the alteration of those records as well as the restoration of any other agency records in the Department of Interior and specifically within the BLM or the BIA that purport to alter the boundaries of the 1864 San Felipe Patent or the ownership of any lands therein; restore the obliterated survey monuments removed from the southern and portions of the western boundary of the 1864 San Felipe patent; rescind the January 31, 2014 San Felipe Dependent Survey filed in the records of the BLM and the Surveyor of New Mexico; and prohibit any actions to restrain San Felipe or its members from accessing restricted fee lands within the 1864 Patent original boundary or the waters flowing through or adjacent thereto; protect San Felipe's and its members rights to access and use the restricted fee lands and waters within the San Felipe 1864 patent boundaries with the exception of Private Claim 101; take such actions as are necessary and appropriate to protect and defend and not to interfere with San Felipe's sovereign jurisdiction over all lands within the original boundaries of the 1864 Patent.

NINTH CLAIM FOR RELIEF

Breach of Trust Responsibility – IIM Account

Declaratory and Injunctive Relief

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

259. The trust corpus of the IIM Account is held and controlled by the Defendants creating a full trustee-beneficiary relationship between the Defendants to San Felipe subject to the federal common law of trusts.

260. The Defendants owed San Felipe duties of loyalty, impartiality, duty to properly administer the trust account, and incumbent duties to communicate with beneficiaries regardless of disagreement of what those duties are to conflicting beneficiaries' interests under the common law of trusts.

261. 25 U.S.C. § 162a(d) provides in part:

The Secretary's proper discharge of the trust responsibilities of the United States shall include (but are not limited to) the following:

(1) Providing adequate systems for accounting for and reporting trust fund balances.

(2) Providing adequate controls over receipts and disbursements.

(3) Providing periodic, timely reconciliations to assure the accuracy of accounts.

(4) Determining accurate cash balances.

(5) Preparing and supplying account holders with periodic statements of their account performance and with balances of their account which shall be available on a daily basis.

...

(8) Appropriately managing the natural resources located within the boundaries of Indian reservations and trust lands.

262. Defendants owed statutory duties and responsibilities to San Felipe as a named trust beneficiary of IIM Account No. S-20093, including but not limited to the duty to hold the funds therein for the benefit of San Felipe, and

- a. To maintain adequate books and records of the account, including but not limited to records on the easements, rights-of-way and other contractual arrangements giving rise to income in the tribal trust account, and as to investments of moneys held in trust in the tribal trust account;
- b. To maintain adequate books and records of the tribal trust account, including but not limited to, records of the devolution of rights in and to such account, by assignment, bequest, or otherwise;
- c. To maintain adequate systems and controls to guard against error and dishonesty;
- d. To invest such funds as permitted by law, and to deposit them in such depository institutions as are permitted by law; to exercise prudence in selection of such investments and depository institutions as are authorized by law, and within the constraints of law and prudence, to maximize the return on such investments and deposits;
- e. To account regularly and accurately to San Felipe as a beneficiary, to give San Felipe upon request accurate information as to the state of the tribal trust account, and to pay San Felipe upon demand such account as it may be entitled to; and
- f. To refrain from self-dealing and benefitting from the management of the tribal trust fund.

263. Defendants breached their trust duties to San Felipe as a named beneficiary of the tribal trust account to account for the amounts in the tribal trust account and the interest paid into the account from the first deposit on April 1, 1980 through the present date, including the duties set forth in 25 U.S.C. § 4011(a), (b) and (c); not reporting on the beginning and ending balance of funds in the tribal trust account quarterly to San Felipe at any time prior to January 11, 2018, and by not reporting to San Felipe the disbursement and dissipation of funds on January 11, 2018.

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

265. San Felipe requests that Defendants' disbursement of the tribal trust account funds be declared unlawful and set aside.

266. San Felipe further requests that Defendants be ordered to restore the complete balance of the tribal trust account as it should be, had it not been disbursed, in accordance with an accounting completed by Defendants for that purpose, with interest to the present.

267. San Felipe further requests that Defendants be ordered to comply with their duties for management of the tribal trust account, including but not limited to the duties set forth in 25 U.S.C. §§ 162a(d) and 4011(a), (b), and (c) and their common law trust duties.

TENTH CLAIM FOR RELIEF

Administrative Procedure Act, 5 U.S.C. § 706

**Unconstitutional Deprivation of Property Interests in Violation of the Fifth Amendment
Agency Actions Taken Without Lawful Authority, Contrary to Constitutional and
Statutory Limitations**

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

269. The Defendants' disbursement of the funds in IIM Account No. S-20093 was an *ultra vires* unconstitutional taking of property without just compensation, in violation of the Fifth Amendment to the U.S. Constitution.

270. Defendants' disbursement of the IIM Account was contrary to constitutional right, power, privilege, or immunity, in violation of the APA. 5 U.S.C. § 706(2)(B).

271. Defendants' disbursement of the IIM Account was in excess of statutory jurisdiction, authority, or limitations, or short of statutory right, in violation of the APA. 5 U.S.C. § 706(2)(C).

272. Defendants' disbursement of the IIM Account was arbitrary and capricious and based on clear errors of fact in violation of the APA. 5 U.S.C. § 706(2)(A) and (2)(F).

273. San Felipe requests that the disbursement of the IIM Account be declared unlawful and set aside.

274. San Felipe requests that Defendants be ordered to restore the IIM account with interest to the present time, in accordance with an accounting completed by Defendants for that purpose.

275. San Felipe requests Defendants be ordered to restore the BIA TAAMS records to their original status before the Defendants' unlawful actions.

276. San Felipe further requests that Defendants be ordered to comply with their trust fund management duties, including but not limited to the duties set forth in 25 U.S.C. §§ 162a(d) and 4011(a), (b), and (c) and their common law trust duties.

PRAYER FOR RELIEF

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

1. A Declaration declaring that:
 - a. Defendants' actions breached their fiduciary duties to San Felipe related to the 1864 Patent; Defendants' actions were time-barred under the doctrine of *res judicata*, and the statute of limitation imposed the May 31, 1933, amendment to the Pueblo Lands Act;
 - b. Defendants lacked any legal authority to alter the boundaries of the 1864 San Felipe Patent;
 - c. Defendants' actions breached their trustee duties to San Felipe related to the trust corpus – the IIM Account;
 - d. Defendants lacked any legal authority to diminish San Felipe's jurisdictional territory unilaterally and to remove lands from the application of San Felipe's criminal and civil regulatory laws and ordinances;
 - e. Defendants lacked any legal authority to adjudicate or otherwise determine ownership of any restricted fee lands held by San Felipe within the Conflict Area;
 - f. Defendants lacked any legal authority to take any subsequent action based wholly or in part upon an unauthorized determination of ownership or title, an unauthorized alteration of the San Felipe Patent boundary, an unauthorized diminishment of San Felipe's jurisdictional territory, or all of these;

- g. As San Felipe's Guardian in *United States v. Algodones Land Co.*, the United States owes a duty to San Felipe to defend the *Algodones* Final Decree, including the Final Decree's adoption of the Joy Survey, as establishing the proper and valid boundaries of the San Felipe Patent, and to reject any claim that is antagonistic to San Felipe's interests in the continued recognition of the boundaries of the 1864 Patent;
- h. Defendants' actions deprived San Felipe of liberty and property without due process of law in violation of the Fifth Amendment to the U.S. Constitution;
- i. Defendants' actions effected a taking of property rights without just compensation in violation of the Fifth Amendment to the U.S. Constitution
- j. Defendants' actions were contrary to constitutional right, power, privilege, or immunity, and were also in excess of statutory jurisdiction, authority, or limitations, or short of statutory right, all in violation of the APA. 5 U.S.C. § 706(2)(B) and (C);
- k. Defendants' actions effected a taking of San Felipe's property interests in IIM Account S-20093 without just compensation in violation of the Fifth Amendment to the U.S. Constitution;

2. An Order setting aside the Defendants' actions, including Solicitor's Opinion M-37027, the April 5, 2017 IBLA decision, the April 20, 2017 filing of the 2013 resurvey, the alteration of BIA TAAMS records and any other agency records of the BLM or the BIA purporting to alter the boundaries of the 1864 Patent or title to any restricted fee lands located therein, and the January 11, 2018 disbursement of the tribal trust account funds from IIM Account No. S-20093;

3. An Order compelling Defendants to:
 - a. Restore, repair, and replace the obliterated survey monuments destroyed by Defendants on the southern and a portion of the western boundary of the 1864 Patent;
 - b. Restore all BIA records, BLM records including surveys and plats on file, and any other Department records destroyed or altered to obscure the 1864 Patent boundary, and to provide a full accounting of the actions taken to effectuate such restoration to San Felipe; and
 - c. Restore to their previous status any and all agency records within the Department of Interior regarding San Felipe Pueblo restricted fee lands located within the 1864 Patent original boundaries that were altered by Defendants as a result of Opinion M-37027 or Defendants' subsequent *ultra vires* actions, including but not limited to TAAMS records; and
 - d. complete an accounting of IIM Account No. S-20093 to establish the balance that should be in the account as of the date of the Court's Order, had it not been disbursed, and restoring the balance of the account to that amount;
 - e. comply with their duties for management of the trust account, including but not limited to the duties set forth in 25 U.S.C. §§ 162a(d) and 4011(a), (b), and (c) and their duties under the common law of trusts;
 - f. withdraw Opinion M-37027 and take any other actions as necessary to declare it void;
 - g. Take such other restorative actions necessary to reverse the harm caused by Defendant's *ultra vires* interference with San Felipe and its members rights to use, possession, and San Felipe's sovereign jurisdiction over lands with the

boundaries of the 1864 Patent and as necessary to inform other federal, state and tribal agencies of the status of the 1864 San Felipe Patent boundaries as necessary to protect the same from further interference by others.

4. An Order enjoining Defendants from:
 - a. Taking any further actions to alter the 1864 Patent boundaries;
 - b. Taking any further actions to interfere with San Felipe or its members access to or use of any of its restricted fee patented lands located within the original 1864 Patent boundaries;
5. An Award of San Felipe's attorney fees and costs; and
6. Such other and further relief as may be just and equitable.

Respectfully submitted this 29th day of July 2024.

/s/ Rebecca L. Kidder

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CERTIFICATE OF SERVICE

I hereby certify that on July 29, 2024, 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