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

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

FEDERAL DEFENDANTS' OPPOSITION TO THE PUEBLO OF SAN FELIPE'S MOTION FOR LEAVE TO FILE FIRST AMENDED COMPLAINT

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INTRODUCTION

San Felipe's Proposed First Amended Complaint ("FAC") suffers from the same fatal flaw as the initial Complaint that this Court dismissed. The central premise of San Felipe's proposed FAC is that Federal Defendants lacked authority to resolve a centuries-long dispute regarding the location of the common boundary between Santa Ana and San Felipe through a resurvey. This premise is based on San Felipe's allegation that it possesses superior and inviolate title to land where the two boundaries formerly overlapped ("the Former Overlap Area"). Each of San Felipe's claims thus would require the Court to determine that San Felipe has superior title relative to Santa Ana in restricted fee lands in which the United States has an interest.

San Felipe's motion to amend its complaint should be denied. The amendments would be futile because the Quiet Title Act ("QTA"), 28 U.S.C. § 2409a, applies to and bars such claims. San Felipe's FAC offers new or revised legal theories seeking to vindicate San Felipe's allegedly superior title. But Congress, in the QTA, preserved the United States' sovereign immunity from claims, like San Felipe's, that seek title to "restricted Indian lands." 28 U.S.C. § 2409a(a). All of San Felipe's proposed claims would thus still need to be be dismissed under Federal Rule of Civil Procedure 12(b)(1).

Moreover, San Felipe's proposed amendments fail to state a claim for a trust accounting. The proposed allegations relate to funds that were placed in an escrow account until the dispute over which Pueblo is the rightful owner of the Former Overlap Area was resolved. Federal Defendants do not owe San Felipe any trust duty relating to Santa Ana's lands or funds. But even if that were not the case, San Felipe's proposed amendments allege that the Bureau of Indian Affairs ("BIA") provided San Felipe with the information regarding receipts and disbursements necessary to meet any accounting duty that is potentially applicable under Tenth

Circuit precedent. San Felipe's proposed accounting claim would therefore need to be dismissed under Federal Rule of Civil Procedure 12(b)(6), making the proposed amendment futile.

BACKGROUND

I. The Former Overlap Area

San Felipe and Santa Ana's dispute regarding "the proper placement of the northern boundary" of the El Ranchito Tract and the San Felipe Pueblo Grant's southern boundary stretches back hundreds of years. *Pueblo of Santa Ana v. Baca*, 844 F.2d 708, 710 (10th Cir. 1988). "In 1763, Santa Ana purchased . . . a large tract of land later confirmed as the El Ranchito" Tract. *Id.* at 709. Shortly thereafter, "[t]he Spanish government interceded in this dispute. A local official rode on horseback along Santa Ana's northern boundary, heard testimony, and inspected documents produced by the Indians." *Id.* at 710. The Tenth Circuit stated that the official "resolved the dispute in favor of Santa Ana, finding that the northern boundary of Santa Ana's property and the southern boundary of San Felipe's lands was a straight line through the middle of the Angostura settlement." *Id*. The Tenth Circuit further stated that "San Felipe appealed this adjudication several times" with the appellate process concluding with "the opinion of the Real Audiencia of Guadalajara, which essentially sat as the Supreme Court of the territory, affirming the earlier decision" and resolving the boundary dispute in favor of Santa Ana. *Id*. at 710-12. The Tenth Circuit found that Spain's resolution of the boundary dispute in 1819 should be given "substantial weight" because its "multi-tiered judicial system served as a full-scale boundary adjudication with a trial, appeal de novo, and further appeal." *Id*. at 711-12.

In 1858, Congress confirmed certain Pueblos' land claims, thereby relinquishing "all title and claim of the United States to any of said lands." Act to confirm the land Claim of certain Pueblos and towns in the Territory of New Mexico, 11 Stat. 374 (Dec. 22, 1858)). The 1858 Act

explicitly restricted its scope, as it provided that its "confirmation shall only be construed as a relinquishment of all title and claim of the United States to any of said lands, and shall not affect any adverse valid rights, should such exist." *Id*. In 1864, the United States issued a patent to San Felipe. ECF No. 78-4.

The boundary dispute persisted through multiple resurveys and efforts to settle title after the United States acquired New Mexico. Congress created a Court of Private Land Claims, which confirmed in 1897 that the El Ranchito Tract's northern boundary is located approximately a half-mile south of Angostura. *Baca*, 844 F.2d at 710. "Subsequent surveys were confused and offered conflicting placements of the boundary. Without resolving this conflict, the General Land Office simply issued overlapping patents to San Felipe and Santa Ana." *Id.*[1]

Next, Congress "enacted the [Pueblo Lands Act of 1924] 'to provide for the final adjudication and settlement of a very complicated and difficult series of conflicting titles affecting lands claimed by the Pueblo Indians.'" *Mountain States Tel. & Tel. Co. v. Pueblo of Santa Ana*, 472 U.S. 237, 240 (1985) (citation omitted). The Pueblo Lands Act ("PLA"), 43 Stat 636 (1924), created a Pueblo Lands Board ("Board") to address non-Indian claims to Pueblo lands. *United States v. Smith*, 482 F. Supp. 3d 1164, 1168 (D.N.M. 2020). But the Board "did not provide a device for deciding land disputes between Indians." *Baca*, 844 F.2d at 709 n.1. The Board thus "recommended a 'friendly suit' between" Santa Ana and San Felipe to resolve the conflict. Off. of the Solicitor, M-37027, Mem. re: Boundary Disp.: Pueblo of Santa Ana Petition for Corr. of the Survey of the S. Boundary of the Pueblo of San Felipe Grant ("M-37027") at 9 (June 7, 2013) (ECF No. 29-1). However, "[t]his suggested judicial resolution has never been

[1] A "1909 dependent resurvey of the San Felipe Pueblo Grant reestablished the southern boundary approximately one-half mile to the south, thus overlapping the northeastern corner of the El Ranchito Tract". *Pueblo of San Felipe*, 190 IBLA 17, 21 (2017).

pursued because neither [Pueblo] has been willing to [waive] their sovereign immunity." *Id*.

In 1980, BIA approved a right-of-way through the Former Overlap Area. BIA addressed the now-centuries-old land dispute by placing the portion of the right-of-way payment related to the Former Overlap Area in escrow pending resolution of the dispute. FAC ¶ 196. San Felipe challenged Interior's decision to escrow the funds and the Tenth Circuit rejected San Felipe's request to "dissolve the escrow agreement and obtain possession of the proceeds." *Pueblo de San Felipe v. Hodel*, 770 F.2d 915, 917 (10th Cir. 1985).

In 1989, Santa Ana petitioned Interior for a corrective resurvey of the San Felipe Grant's south boundary to the extent the boundary overlaps with the El Ranchito Tract. FAC ¶ 111. Santa Ana requested that Interior reconsider a 1988 M-Opinion by then-Solicitor Ralph Tarr that Interior lacked the "authority to consider an Indian boundary claim which pre-dates 1946." Boundary Disp. Between Santa Ana Pueblo and San Felipe Pueblo: The Sec'y's Auth. to Correct Erroneous Surveys, 2000 DEP SO LEXIS 5, *3-4 ("M-37000") (Dec. 5, 2000). In 2000, then-Solicitor John Leshy's Opinion M-37000 reconsidered and reversed the Tarr Opinion. M-37000. He concluded that Interior retained authority under "25 U.S.C. § 176 to conduct surveys in order to resolve boundary disputes where Indian land is involved" *Id*. at *2. Moreover, a resurvey is appropriate to "assure that a tribe has what it was originally entitled to under the relevant transactions and title documents." *Id*. at *35.

Interior then unsuccessfully attempted to assist Santa Ana and San Felipe in negotiating a settlement. M-37027 at 2, 3 n.9. In 2013, then-Solicitor Hilary Tompkins determined that "[t]he time has come to bring resolution to this longstanding boundary dispute." *Id*. at 15. The Tompkins Opinion analyzed the evidence presented and concluded that "the boundaries of the lands patented to the respective Pueblos conflict, that a resurvey of the disputed boundary is

necessary, and that the boundary between Santa Ana's El Ranchito Tract and the Pueblo of San Felipe lies north of the southern boundary line of the San Felipe patent." *Id*. at 2. The M-Opinion directed BLM to address the overlap and resurvey the disputed boundary. *Id*.

BLM resurveyed the El Ranchito Tract's and San Felipe Pueblo Grant's relevant boundaries in 2013. *San Felipe*, 190 IBLA at 23-26. San Felipe protested BLM's official filing of the plat of corrective dependent resurvey. FAC ¶ 146. BLM denied the protest, and San Felipe appealed that denial to the Interior Board of Land Appeals ("IBLA"). *Id*. ¶ 147. IBLA affirmed BLM's decision, finding that BLM "'reestablished the common boundary between the San Felipe Pueblo Grant and the El Ranchito Tract'" *San Felipe*, 190 IBLA at 39. IBLA also recognized that the resurvey "eliminate[d] the perceived overlap between [the two] Pueblo['s] landholdings, thus resulting in a common boundary." *Id*. IBLA concluded that San Felipe failed to carry "its burden to demonstrate that BLM violated applicable Board precedent, Federal survey law, or policy prescriptions of the 2009 Survey Manual." *Id*.

Interior officially filed the resurvey in 2017, and subsequently updated its Trust Asset Accounting Management System ("TAAMS") database consistent with the Tompkins Opinion and the subsequent corrective resurvey. FAC ¶ 154. And because the corrective resurvey's reestablishment of the Pueblos' common boundary resolved the question of which Pueblo was entitled to the escrowed right-of-way payment, Interior complied with Santa Ana's request for its funds and disbursed the entire $1.6 million in the escrow account to Santa Ana. FAC ¶¶ 157, 196.

II. Procedural Background

San Felipe's original Complaint challenged Interior's actions resolving the long-standing dispute in Santa Ana's favor. San Felipe sought, among other things, a judgment: 1) that "the final decision in *United States v. Algodones Land Co*. conclusively and finally quieted San

Felipe's unextinguished title"; 2) "declaring that all claims adverse to San Felipe's title are now barred"; 3) recognizing "San Felipe's title and right to sole possession of the lands within the boundaries of the San Felipe Patent, including the Conflict Area"; and 4) imposing a "legal obligation to recognize and to not interfere with San Felipe's title." Compl. at 64-65. Federal Defendants moved to dismiss San Felipe's original complaint because it was barred by the QTA.

The Court granted the motion to dismiss, holding that "San Felipe's claims all necessitate adjudicating its underlying assertion that it owns what are indisputably Indian lands, and so the QTA's Indian lands exception retracts the QTA's waiver otherwise of federal sovereign immunity, thereby eliminating the Court's jurisdiction to hear San Felipe's suit." Order, ECF No. 55 at 2.

III. The Proposed Amended Complaint

San Felipe moved for leave to amend. ECF No. 78. Its proposed FAC seeks declaratory relief that Federal Defendants:

- Owe San Felipe fiduciary duties "related to" an 1864 Patent that San Felipe contends provides San Felipe with title to the Conflict Area;
- "lacked any legal authority to alter the boundaries of the 1864 San Felipe Patent;"
- "lacked any legal authority to diminish San Felipe's jurisdictional territory and to remove lands from the application of San Felipe's . . . laws and ordinances;"
- "lacked any legal authority to adjudicate or otherwise determine ownership of any restricted fee lands held by San Felipe;"
- "take any subsequent action based wholly or in part upon an unauthorized determination of ownership or title . . . alteration of the San Felipe Patent boundary, [or] diminishment of San Felipe's jurisdictional territory;"
- "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 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;" and
- Took San Felipe's property in violation of the Constitution.

FAC at 57-58. San Felipe's proposed FAC recasts or adds claims that seek a declaration that San Felipe possesses superior and inviolate title to, and jurisdiction over, lands that San Felipe claims were granted to it by Spain. FAC ¶¶ 164-199, 201-05. San Felipe also makes a series of claims related to alleged trust duties and seeks funds derived from the Former Overlap Area, which are dependent upon San Felipe's effort to quiet title and cannot be decided absent resolution of the title dispute. FAC ¶¶ 200, 242-76. And San Felipe adds two claims alleging that Federal Defendants, by resolving the longstanding dispute over the Former Overlap Area in favor of Santa Ana, took San Felipe's land in violation of the Constitution and the Administrative Procedure Act ("APA"). FAC ¶¶ 230-41. All of these claims depend on San Felipe's foundational allegations that it, rather than Santa Ana, has title to and jurisdiction over the Former Overlap Area. And each claim and requested relief requires the Court to declare, either directly or in resolving the request for declaratory relief, that San Felipe has title to the Former Overlap Area. *E.g.* FAC ¶¶ 168, 187, 192-93, 200, 231, 235, 237, 240, 250, 253, 257, Prayer for Relief.

IV. Legal Standard

Courts "'may deny leave to amend where amendment would be futile" and that a "proposed amendment is futile if the complaint, as amended, would be subject to dismissal." *Hinkle Fam. Fun Ctr., LLC v. Grisham*, 2022 U.S. App. LEXIS 35747, *6 (10th Cir. Dec. 28, 2022) (quoting *Bradley v. Val-Mejias*, 379 F.3d 892, 901 (10th Cir. 2004)); *Nat'l Wrestling Coaches Ass'n v. Dep't of Educ.*, 366 F.3d 930, 945 (D.C. Cir. 2004) ("discretion to deny a motion to amend on grounds of futility where the proposed pleading would not survive a motion to dismiss"). Thus, "[t]he futility question is functionally equivalent to the question whether a complaint may be dismissed . . . ." *Gohier v. Enright*, 186 F.3d 1216, 1218 (10th Cir. 1999). And where a "jurisdictional infirmity . . . would still exist" under a proposed complaint, "granting an

amendment . . . would be utterly futile, and therefore must be denied." *Narragansett Indian Tribe v. Banfield*, 294 F. Supp. 2d 169, 174 (D.R.I. 2003); *Sanders v. Anoatubby*, 631 Fed. Appx. 618, 623 (10th Cir. 2015) (upholding denial of motion to amend due to lack of jurisdiction).

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

Motions to dismiss pursuant to Rule 12(b)(1) may take two forms. First, if the movant asserts that the complaint's allegations facially fail to establish subject matter jurisdiction, "the court must consider the complaint's allegations to be true." *Alto Eldorado Ptnrs v. Santa Fe*, 2009 U.S. Dist. LEXIS 47158, *25-26 (D.N.M. Apr. 20, 2009) (Browning, J.). Alternatively, the movant may present evidence challenging the complaint's factual allegations. *Id*. Rule 12(b)(6) allows parties to move to dismiss claims for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). It authorizes courts "to dismiss a claim on the basis of a dispositive issue of law." *Neitzke v. Williams*, 490 U.S. 319, 326 (1989) (citations omitted).

ARGUMENT

The motion to amend should be denied because amendment would be futile. The FAC would be subject to dismissal for lack of jurisdiction and for failure to state a plausible claim for relief. For one, the Court lacks jurisdiction. The QTA bars San Felipe's effort to quiet title to lands within the Former Overlap Area because: 1) the QTA is the exclusive means to contest title to land in which the United States holds an interest; and 2) the QTA's Indian lands exception maintains the United States sovereign immunity from San Felipe's effort to quiet title to Santa Ana's restricted fee lands in which the United States holds an interest. And San Felipe's accounting claims are doubly barred because, even assuming a duty exists (it does not), the FAC alleges that Federal Defendants have provided San Felipe with more than enough information to comply with any accounting duty. San Felipe's proposed amendment thus fails to state a claim for an accounting.

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

The United States is immune from suit unless it consents to be sued. *United States v. Sherwood*, 312 U.S. 584, 586 (1941). Congress alone may grant consent to suit, and its consent must be "unequivocally expressed." *United States v. Idaho, ex rel. Dir., Idaho Dep't of Water Res.*, 508 U.S. 1, 6 (1993). "[T]he Government's consent to be sued must be construed strictly in favor of the sovereign, and not enlarge[d] . . . beyond what the language requires." *United States v. Nordic Vill., Inc.*, 503 U.S. 30, 34 (1992) (internal citations and quotations omitted). "Since federal courts are courts of limited jurisdiction, there is a presumption against [their] jurisdiction, and the party invoking federal jurisdiction bears the burden of proof." *Penteco Corp. P'ship-1985A v. Union Gas Sys., Inc.*, 929 F.2d 1519, 1521 (10th Cir. 1991); *McGuire v. Nielsen*, 448 F. Supp. 3d 1213, 1250 (D.N.M. 2020) (Browning, J.). The QTA provides the exclusive waiver of

sovereign immunity available for title challenges to the United States' real property interests. The QTA, however, explicitly excludes Indian lands from its waiver of sovereign immunity. *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak*, 567 U.S. 209, 215-16 (2012). This Court thus lacks jurisdiction over all of Plaintiffs' claims.

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

The United States is immune from suit except when Congress explicitly waives sovereign immunity. *Block v. N. Dakota ex rel. Bd. of Univ. & Sch. Land*, 461 U.S. 273, 280 (1983).

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

Id. at 287. San Felipe identifies no applicable waiver of sovereign immunity.

San Felipe's proposed FAC bases jurisdiction on 28 U.S.C. §§ 1331 (federal question jurisdiction), 1361 (mandamus against federal officials), and 1362 (jurisdiction over suit by Indian tribes). FAC ¶ 8. However, "sovereign immunity is not waived by general jurisdictional statutes" such as 28 U.S.C.§ 1331. *Fostvedt v. United States*, 978 F.2d 1201, 1203 (10th Cir. 1992); *See also*, *Cheyenne & Arapaho Tribes v. First Bank & Trust Co*., 560 F. App'x 699, 708 (10th Cir. 2014); *La Casa de Buena Salud v. United States*, 2008 U.S. Dist. LEXIS 42352, *17-20 (D.N.M. Mar. 21, 2008) (Browning, J.).

San Felipe's proposed FAC also asserts, FAC ¶ 12, that this Court has jurisdiction over this case based upon the final decree in *United States v. Algodones Land Co.* ("*Algodones*"), No. 1870 in Equity (D.N.M. Apr. 22, 1930). The PLA required the Board to identify the lands owned by each Pueblo within their exterior boundaries, as well as the lands for which Indian title had been extinguished in accordance with the PLA. PLA § 2. The Board's resulting reports set "forth

the metes and bounds of the lands of each Pueblo that were found not to be extinguished under the rules established in the Act." *Mountain States Tel. & Tel. Co.*, 472 U.S. at 244-245. The United States' quiet title suits were based on the PLB reports. *Id*. at 246; PLA § 3; *United States v. Thompson*, 708 F. Supp. 1206, 1209 (D. N.M. 1989), *aff'd,* 941 F.2d 1074 (10th Cir. 1991). But those reports only "examine[d] **non-Indian claims** to Pueblo lands." *Id.* (emphasis added). *Algodones* thus could not quiet title to the Former Overlap Area with respect to Santa Ana's claim, as San Felipe contends. *See id.* at 1217; 1215 n.11.

In 1931, the PLB confirmed that, rather than attempt to resolve the San Felipe/Santa Ana title dispute, its "reports . . . merely indicated" but "should not attempt to decide the conflict" between the two Pueblos because "both parties" are Pueblos. Supp. Rep. on Conflict Between San Felipe Pueblo and El Ranchitos Purchase of Santa Ana Pueblo at 1-2 ("PLB Rep.") (June 30, 1931) (ECF No. 43-1).[2] The *Algodones* decree thus did not resolve the San Felipe/Santa Ana title dispute. ECF No. 55 at 6-9. And San Felipe elides, FAC ¶ 12, the decree's retention of jurisdiction only: 1) "as to the defendants," which did not include the United States or Santa Ana; and 2) "for the purpose of making any orders or issuing any writs necessary to give effect to said decree," which did not resolve the San Felipe/Santa Ana dispute. ECF No. 40-2 at 42.[3]

[2] Congress can waive tribal sovereign immunity to resolve intertribal boundary disputes. For instance, it explicitly permitted the Navajo and Hopi "to commence or defend . . . an action against each other and any other tribe of Indians claiming any interest in [land] for the purpose of . . . quieting title." Act to Determine the Rights and Interests of the Navaho Tribe, Hopi Tribe, and individual Indians, 72 Stat. 403 (July 22, 1958); *Sekaquaptewa v. MacDonald*, 626 F.2d 113, 115 (9th Cir. 1980). Congress has not passed a similar waiver in response to the Board's reports. And the "'friendly suit'" that the Board recommended in 1931 has yet to occur due to the Pueblos asserting their sovereign immunity. M-37027 at 9.

[3] San Felipe is also incorrect, FAC ¶¶ 205, that the United States "owe[s] a duty to San Felipe to defend" San Felipe's alleged title. The United States need not take affirmative actions to pursue claims in favor of a tribe, as an "Indian tribe cannot force the government to take a specific

Regardless, the PLA does not override Congress's later retention, in the QTA, of sovereign immunity from actions quieting title to restricted Indian lands. ECF No. 55 at 37.[4]

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

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

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

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action unless a treaty, statute or agreement imposes, expressly or by implication, that duty." *Shoshone-Bannock Tribes v. Reno*, 56 F.3d 1476, 1482 (D.C. Cir. 1995).

[4] To the extent San Felipe continues to argue that *Algodones* provides continuing jurisdiction, this argument fails for the reasons set forth in the motion to dismiss briefing. *See* ECF No. 43 at 9. By authorizing the United States to file quiet title actions, the PLA did not "unequivocally" waive the United States' immunity from quiet title suits. *See N. New Mexicans Protecting Land Water & Rights v. United States*, 161 F. Supp. 3d 1020, 1036 (D.N.M. 2016) , *aff'd*, 704 F. App'x 723 (10th Cir. 2017). The *Algodones* decree retained jurisdiction only over the *Algodones* defendants, which excludes the United States. ECF No. 40-2 at 40. And an *Algodones* decree entered in 1930 could not have decided, much less established continuing jurisdiction over, an issue that the PLB confirmed was undecided in 1931. ECF No. 40-2 at 40; PLB Rep at 3-4.

In *Block*, North Dakota sought to resolve a "dispute as to ownership of [a] riverbed" by suing federal officials. 461 U.S. at 277-78. "As the jurisdictional basis for its suit, North Dakota invoked" a number of statutes, including the APA and QTA. *Id.* at 278. The Supreme Court rejected North Dakota's reliance on statutory provisions beyond the QTA, holding that North Dakota could not evade the QTA by invoking the APA: "Congress intended the QTA to provide the exclusive means by which adverse claimants could challenge the United States' title to real property." *Id.* at 286; *id.* at 286 n.22 (the QTA "expressly 'forbids the relief'" sought pursuant to the APA (citation omitted)). It noted that "[i]f North Dakota's position were correct, all of the carefully-crafted provisions of the QTA deemed necessary for the protection of the national public interest could be averted." *Id.* at 284-85. Thus, the Supreme Court concluded, "North Dakota's action may proceed, if at all, only under the QTA." *Id.* at 292-93.

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

The QTA is thus the "'exclusive means by which adverse claimants' . . . meaning plaintiffs who themselves assert a claim to property antagonistic to the Federal Government's" can challenge the United States' real property interests. *Patchak*, 567 U.S. at 219-20 (quoting *Block*, 461 U.S. at 286). *Patchak* permitted an APA challenge to Interior's acquisition of title for a Tribe. But the Court's reasoning confirmed that such APA suits may proceed **only** "because

although it contests the Secretary's title, it does not claim any competing interest" in the property at issue. *Id.* at 217. The Court illustrated its reasoning with two hypotheticals. In the first, the Court examined a case where the Plaintiff sued under the

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

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

C. San Felipe's proposed claims still seek to adjudicate title to the Former Overlap Area, and thus must be brought, if at all, under the QTA.

San Felipe's effort to replead its grievance does not obscure that this action can only be understood as one to quiet title. In determining whether a claim is one to quiet title courts must "'focus on the relief . . . request[ed], rather than on the party's characterization of the claim.'" *High Lonesome Ranch, LLC v. Bd. of Cnty. Comm'rs for the Cnty. of Garfield*, 61 F.4th 1225, 1238 (10th Cir. 2023) (citation omitted). That relief remains fatal to San Felipe's claims, as San Felipe continues to seek a decision on the merits of the underlying dispute regarding whether the Former Overlap Area is owned by San Felipe or Santa Ana, specifically:

- that Federal Defendants owe San Felipe fiduciary duties "related to" an 1864 Patent that San Felipe contends provides San Felipe with title to the Conflict Area;
- defining "the boundaries of the 1864 San Felipe Patent;"

- that Federal Defendants illegally "diminish[ed] San Felipe's jurisdictional territory and . . . remove[d] lands from the application of San Felipe's . . . laws and ordinances;"

- that Federal Defendants illegally "determine[d] ownership of" San Felipe's lands;"

- declaring as illegal actions "based wholly or in part upon an unauthorized determination of ownership or title . . . alteration of the San Felipe Patent boundary, [or] diminishment of San Felipe's jurisdictional territory;"

- declaring that Federal Defendants have "duty to San Felipe to defend the *Algodones* Final Decree . . . 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;" and

- That Federal Defendants took San Felipe's property in violation of the Constitution.

FAC at 57-59. This Prayer for Relief, standing alone, makes clear that this is a suit to quiet title. *See High Lonesome Ranch*, 61 F.4th at 1238. The above relief seeks, either directly or as means to the requested relief, to adjudicate title in a manner that is adverse to the United States' and Santa Ana's competing interests. Such relief must be construed as a claim to quiet title.

San Felipe's Memorandum in Support of the Motion for Leave to Amend the Complaint ("Mem."), ECF No. 79, removes any doubt that it seeks to adjudicate its allegedly superior title to land in which the United States asserts an interest on behalf of Santa Ana by arguing that:

- Federal Defendants' actions in favor of Santa Ana were "in contravention of the 1864 Patent." Mem. at 3

- its alleged "title under the laws of the prior sovereign" is conclusive. *Id*. at 7.

- "Legal ownership was always vested in the possession of . . . San Felipe." *Id*. at 8.

- Federal Defendants' resurvey "interfered with" San Felipe's "fixed" rights. *Id*.

- Federal Defendants have "defined fiduciary obligations to San Felipe that preclude the United States from" asserting Santa Ana's title to the land. *Id*. at 15.

- "the land is held by San Felipe in Restricted Fee status" such that Federal Defendants could never hold an interest adverse to San Felipe. *Id*.

- San Felipe can challenge "title of any Restricted Fee lands." *Id*. at 17.
- the 1864 Patent prevents the United States from claiming any interest in the Former Overlap Area adverse to San Felipe. *Id*. at 18.
- Plaintiffs are challenging "title decisions." *Id*. at 19.
- Federal Defendants "actions deprived San Felipe of its property interests indisputably belonging to San Felipe." *Id*.
- The "United States does not have a conflicting trustee duty because there is only one trust beneficiary to the trust corpus (the lands)." *Id*. at 22.
- Rights-of-way revenues are "produced by a burden upon land owned solely by San Felipe." *Id*. at 38-39.
- "the Pueblo of Santa Ana has no trust relationship with the United States regarding the Conflict Area." *Id*. at 39.
- San Felipe is "the exclusive trust beneficiary of the land trust corpus." *Id*.

The FAC and Memorandum thus merely rehash San Felipe's previous arguments—which this Cout already rejected—that this is not a quiet title action because "the land in question was already quieted in San Felipe." *See* ECF No. 40 at 12, 15-18; ECF No. 55 at 34-35. This Court cannot adjudicate that issue in San Felipe's favor without impairing Santa Ana's and the United States' adverse claims to restricted fee Indian lands within the Former Overlap Area. San Felipe's entire case thus falls under the QTA's waiver of sovereign immunity because it "not only challenges someone else's claim, but also asserts [San Felipe's] own right to disputed property." *Patchak*, 567 U.S. at 217-18.

San Felipe doubles down on its theory that it has title to the Former Overlap Area by seeking to add several new claims. But each new claim is predicated on San Felipe's alleged title being so well-established that Federal Defendants lacked any authority to resolve the long-standing boundary dispute in Santa Ana's favor. Indeed, San Felipe devotes most of its brief to arguing that its title to the Former Overlap Area is inviolate. *E.g.* Mem. at 3 (asserting that it

"does not seek to adjudicate title or boundaries because all of those are already established as against the United States"); *id*. at 15 (asserting that "the United States asserts no colorable adverse claim"). San Felipe's assertions cannot evade the QTA's Indian lands exception.

After the Court's finding San Felipe's repetitive use of the words "title", "ownership", and "possession" indicative of the nature of San Felipe's aims, ECF No. 55 at 22, San Felipe's proposed FAC changes some of the words that it uses to describe the relief it seeks. But the FAC still betrays that San Felipe seeks to secure, through this suit, title in a manner that is adverse to the United States' and Santa Ana's interests in the Former Overlap Area. For instance, San Felipe uses the word "title" fifty-two times and "ownership" twenty-one times. *See* FAC. And San Felipe recharacterizes its relief from seeking "possession", *cf*. Compl., to seeking "sovereign jurisdiction" over the Former Overlap Area. FAC (using "jurisdiction" thirty-one times). But as San Felipe admits, these claims to title, ownership, and jurisdiction are inconsistent with Santa Ana's adverse claims to title and corresponding jurisdiction, and could only come at Santa Ana's expense. Mem. at 7, 22, 29-32, 38-39.

The proposed FAC thus suffers from the same flaws that the Court found fatal to the original Complaint. The FAC is:

> at heart a quiet title action, although it, in the first instance challenges the Defendants' Resurvey Actions. The thrust of San Felipe's Complaint is that San Felipe, not Santa Ana, owns the Conflict Area; because of its ownership, San Felipe asserts it is entitled to the disbursement of the I-25 escrow funds. On its face, the heart of San Felipe's grievance, under *Patchak*, is an ownership dispute over land in which the United States has an interest, i.e., as Santa Ana's trustee.

ECF No. 55 at 21 (citing *Patchak*, 567 U.S. at 220). As before, "San Felipe seeks title to the Conflict Area" based on San Felipe's belief that the lands lie within the San Felipe Patent. *Id*. at 22. And as before, San Felipe's claims fail because they are adverse to the United States' interest that it asserts on behalf of Santa Ana as its trustee. *Patchak*, 567 U.S. at 216-17, 219-20.

D. San Felipe's effort to recast its Complaint is futile because it cannot evade the QTA with an officer's suit.

San Felipe references, but fails to engage with, the standard for evaluating a motion to amend. Mem. at 3 (citing *Foman v. Davis*, 371 U.S. 178 (1962)). San Felipe offers only a single basis to argue that amendment would not be futile. *Id*. It contends that, rather than "seek to adjudicate title or boundaries" like the original Complaint, the proposed FAC "seeks to set aside Defendants' *ultra vires* actions taken without authority and in contravention of the 1864 patent." *Id*. at 3, 13-15. San Felipe's assertion that it does not seek to adjudicate title or boundaries is belied by that very sentence, which implicitly admits that San Felipe's case rests on whether its purported title and boundaries are "established" in San Felipe's favor. *Id*. Regardless, San Felipe's effort to recast its attack on Santa Ana's title is futile. It is well-established that San Felipe cannot evade the QTA's restrictions, including the Indian lands exception, by casting its claims as seeking to void Federal Defendants' purportedly "*ultra vires*" actions.

The Supreme Court rejected the theory that the QTA can be circumvented "by the device of an officer's suit" as it would "require the suspension of disbelief to ascribe to Congress the design to allow its careful and thorough remedial scheme to be circumvented by artful pleading." *Block*, 461 U.S. at 284-85; *Mottaz*, 476 U.S. at 851. Thus, "plaintiffs may not avoid the question of sovereign immunity by naming the Secretary, rather than the United States, as defendant--even assuming the Secretary exceeded his statutory authority." *Iowa Tribe v. Salazar*, 607 F.3d 1225, 1237-1238 (10th Cir. 2010) (citing *Block*, 461 U.S. at 285).[5] ECF No. 55 at 16-18. A "suit

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

alleging that the named government officers' actions were *ultra vires* or unconstitutional" is such a prohibited office's suit. *Havasu Landing Homeowners Ass'n v. Babbitt*, 1996 U.S. App. LEXIS 1795, *7 (9th Cir. Jan. 22, 1996).

Lest there be any doubt, claims that an agency failed "to ascertain the existence of valid existing or grandfathered rights and protect those rights, as required by statute, regulation, and/or policy" are barred because they are "no more than a reworking of the officers' suit method of challenging federal government title to real property, a method the Supreme Court has concluded is precluded by the QTA." *Sw. Four Wheel Drive Ass'n v. Bureau of Land Mgmt.*, 2001 U.S. Dist. LEXIS 28375, *15-16 (D.N.M. Aug. 28, 2001) (citing *Block*, 461 U.S. at 281-85); *Havasu Landing Homeowners Ass'n,* 1996 U.S. App. LEXIS 1795, *7 ("claimants may not circumvent the QTA's Indian lands exception through the use of an officer's suit."); *Montanans For Multiple Use v. Barbouletos*, 542 F. Supp. 2d 9, 19-20 (D.D.C. 2008) (rejecting argument that plaintiffs "are not bound by the QTA because they sued defendants for *ultra vires* actions.").[6] "To allow claimants to avoid the QTA by characterizing their complaint as a challenge to the federal government's regulatory authority would be to allow parties to seek a legal determination of disputed title without being subject to the limitations placed on such challenges." *Shawnee Trail Conservancy v. U.S. Dep't of Agric*., 222 F.3d 383, 388 (7th Cir. 2000). "If we were to allow claimants to try the Federal Government's title to land under an officer's-suit theory, the Indian lands exception to the QTA would be rendered nugatory." *Block*, 461 U.S. at 285. San Felipe's

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to quiet title in San Felipe. *Iowa Tribe's* discussion of the principles underlying the QTA, particularly the United States' interests in Indian lands, thus remains applicable here.

[6] The *ultra vires* doctrine also does not apply where the official is exercising the sovereign's powers and where the "requested relief would require us to order federal officials to take various forms of affirmative relief and affect the disposition of sovereign property", *id.*, all of which preclude application of the doctrine here. FAC Prayer for Relief ¶ 3.

effort to quiet title to Santa Ana's lands under an officer's suit theory thus runs squarely and fatally into Supreme Court precedent foreclosing such actions.

San Felipe cites no cases supporting its argument, Mem. at 13-15, that the QTA's Indian lands exception is inapplicable to suits based on alleged *ultra vires* actions. *Moore v. Robbins,* 96 U.S. 530, 533-34 (1877), predates the QTA by almost a century. *In re Mitchell*, stands for the unremarkable proposition that the United States may conduct a corrective resurvey on land in which the United States retains some real estate interest. 104 IBLA 377, 380 (1988). The remaining cases San Felipe cites likewise do not address the QTA. The lynchpin of San Felipe's argument that it can challenge purportedly *ultra vires* actions as void is unavailing. Mem. at 14, 15, 17, 19 (citing *Larson v. Domestic & Foreign Com. Corp.*, 337 U.S. 682 (1949)).[7] *Larson* is, at best, unavailing. The Supreme Court extensively discussed and foreclosed officer's suits under *Larson* by holding that, with the QTA's passage in 1972, "Congress intended the QTA to provide the exclusive means by which adverse claimants could challenge the United States' title to real property." *Block*, 461 U.S. at 281-86 (citing *Larson*).

This Court lacks jurisdiction to entertain San Felipe's claim that it has superior and inviolate title to the Former Overlap Area. Because San Felipe seeks to adjudicate the merits of competing title claims, the Indian lands exception prohibits such an inquiry. "Whether the government's claim to the disputed property has merit is irrelevant." *Graham v. United States*, 2022 U.S. Dist. LEXIS 78470, at *9-10 (D. Colo. Apr. 29, 2022). "[T]he United States' 'claim' to Indian trust lands need only be 'colorable' for the United States to invoke sovereign immunity."

[7] Plaintiffs also rely on *Larson's* progeny to argue that the United States lacks immunity from allegedly *ultra vires* actions. *See* Mem. at 19 (citing *Chamber of Commerce v. Reich*, 74 F.3d 1322, 1329 (D.C. Cir. 1996)). But *Chamber of Commerce* did not confront the QTA. 74 F.3d at 1328-29. The QTA forbids the relief San Felipe seeks here, even if the suit is characterized as challenging *ultra vires* action, thus making the APA's waiver inapplicable.

N. New Mexicans, 161 F. Supp. 3d at 1047-48 (quoting *Iowa Tribe*, 607 F.3d at 1231). Indeed, "the Secretary need only make a colorable claim that the land is held in trust on behalf of an Indian tribe" because the purpose of sovereign immunity "is to prevent a judicial examination of the merits of the government's position." *Iowa Tribe*, 607 F.3d at 1232 (quoting *Wildman v. United States*, 827 F.2d 1306, 1309 (9th Cir. 1987). San Felipe's entire argument, Mem. at 5-14, that title claims based on patents are fundamentally different, cannot be reconciled with the QTA.[8] The QTA does not condition the United States' immunity on the source document that parties cite as the basis of their competing title claims.

E. The United States has a colorable claim to an interest in Santa Ana's restricted fee lands.

The United States' more than colorable claim to a restricted fee interest in the Former Overlap Area on behalf of Santa Ana is dispositive. *Iowa Tribe*, 607 F.3d at 1232. Interior's position that the United States holds an interest in the disputed lands on behalf of Santa Ana is supported by Tenth Circuit precedent. *Baca*, 844 F.2d 708. San Felipe oversimplifies the title dispute, suggesting that it centers on the relative age of the document upon which each Pueblo bases its title assertion. Mem. at 8 n.1.[9] To the contrary, the dispute is over "proper placement of the northern boundary." *Baca*, 844 F.2d at 710. The Tenth Circuit recognized that the Spanish adjudication "resolved the dispute in favor of Santa Ana, finding that the northern boundary of Santa Ana's property and the southern boundary of San Felipe's lands was a straight line through the middle of the Angostura settlement." *Id*. Spain's "full-scale boundary adjudication . .

[8] As San Felipe itself admitted, "the Indian lands exception to the Quiet Title Act . . . foreclosed title challenges to 'restricted Indian lands," including the Former Overlap Area. Letter from San Felipe Gov. Troncosa to T. Vollman, Interior at 1-2, 24-27 (Jan. 7, 2001) (ECF No. 29-3).

[9] Indeed, San Felipe recognizes that the title dispute here dates to the 1700s. Mem. at 8 n.1.

. evaluated a relative wealth of evidence over a considerable period of time" and "conclusively determined the dispute in favor of Santa Ana." *Id*. at 711-12. The strength of the United States' claim on behalf of Santa Ana is reinforced by the boundary resurvey. *San Felipe*, 190 IBLA at 31-32. This robust examination of the merits of title that Santa Ana obtained and defended under Spain, combined with Interior's boundary resurvey, easily clears the "colorable interest" test.

The PLA proceedings reinforce that the United States' position is more than colorable because they recognized an unresolved dispute between the two Pueblos. The PLB reports that formed the basis for the PLA litigation only "examine[d] non-Indian claims to Pueblo lands." *Thompson*, 708 F. Supp. at 1209. And the PLA was "'intended only to oblige non-Indians to prove claims to Pueblo lands; Pueblos could only file suit in response to claims made against them by non-Indians.'" *Id*. at 1215 n.11 (quoting *Baca*, 844 F.2d at 709 n.1). The PLB confirmed an existing, unresolved dispute, as its "reports . . . merely indicated the conflict" between the Pueblos. PLB Rep at 1; ECF No. 55 at 5.

San Felipe is thus incorrect that this Court should ignore the Tenth Circuit's *Baca* decision based on the unsupported assertion, Mem. at 32-33, that the *Algodones* lawsuit regarding San Felipe's lands resolved the San Felipe/Santa Ana dispute. [10] The PLB recognized that "it should not attempt to decide the conflict inasmuch as both parties were Pueblo[s]." PLB Rep. at 1-2. It suggested instead that the "controversy should be settled . . . in a friendly suit"

[10] San Felipe recognizes that its claims depend on the Tenth Circuit being incorrect. Mem. at 32 ("even if *Baca* were correctly decided"). The Court cannot take up this invitation to overturn *Baca* because, among other things, the United States has a colorable interest in the contested land on Santa Ana's behalf. Regardless, San Felipe's arguments regarding the superiority of its title lay bare that this is a suit to quiet title. Indeed, San Felipe's reliance on the PLA proceedings merely repackages arguments that this Court rejected. *See* ECF No. 43 at 6-9; 12 ("the land in question was already quieted in San Felipe" by *Algodones*); *Id*. at 15-18; *see also* ECF No. 55 at 37 ("That it looks to the Pueblo Lands Act proceedings, including *Algodones*, suggests that San Felipe's concerns are about title and ownership, and not about land status.").

between the Pueblos. *Id*. at 3-4. Ultimately, the Tenth Circuit held that *Algodones* "did not affect the rights of Santa Ana to later assert a claim for the property in dispute." *Baca*, 844 F.2d at 709. The *Algodones* PLA proceedings thus do not support San Felipe's central assertion that *Algodones* resolved the San Felipe/Santa Ana dispute.

San Felipe's selective citation to a 1932 letter by Special Attorney George Fraser stating that, "to the best of our information, the San Felipe Title is superior in time," is unavailing. ECF No. 49-5 at 105. The letter makes no reference to the Spanish adjudication that the Tenth Circuit found determinative. And it falls far short of resolving the title dispute in San Felipe's favor, as it states that as of 1932, Santa Ana had occupied 200 acres of contested land "for a period reaching back beyond the memory of living man" and that San Felipe "merely states that if the conflict area lies within its Grant, [San Felipe] continues to claim it." *Id*. at 103. Attorney Fraser went on to note that the "situation is extremely difficult and confused" but that "the clear and predominant equity" lay with Santa Ana. *Id*. at 108. San Felipe thus cannot seriously contest that, as of 1932, the longstanding title dispute was unresolved. The QTA bars San Felipe's suit because it seeks to adjudicate the merits of the United States' more than colorable title claim on behalf of Santa Ana, which is antagonistic to that of San Felipe. *Patchak*, 567 U.S. at 219-20.[11]

[11] While the Court cannot and should not look beyond Federal Defendants' colorable assertion of title on behalf of Santa Ana, Federal Defendants were well within their authority to resurvey the Indian lands at issue. Congress vested Interior with authority "to survey any Indian or other reservations." 25 U.S.C. § 176. San Felipe argues that the United States lacks the authority to resurvey any patented land, including San Felipe's "1864 Patent" boundaries. Mem. at 5. If San Felipe was correct, any resurvey postdating 1864 would be void. But San Felipe selectively bases its proposed FAC on 1907 and 1916 Federal resurveys of the San Felipe Grant that created the overlap. FAC ¶¶ 65, 71; Mem. at 31 (asserting validity of "surveys and resurveys"). San Felipe thus undermines its argument, *id*. at 14-15, that the United States lacks authority to survey Indian land, and that actions related to surveys are *ultra vires*. Indeed, San Felipe's argument relies on mischaracterizing Section 176 as providing authority over public lands. *id*. at 7. But Section 176 authorizes surveys of Indian lands, including Santa Ana and San Felipe's lands. *See* M-37000, 2000 DEP SO LEXIS at *34-35. And 25 U.S.C. § 398d restricts "changes in boundaries of

F. San Felipe's claim that this case is different because it involves patented land is unavailing.

While the Court's analysis need not, and should not, proceed past the question of whether the United States' title claim on behalf of Santa Ana is colorable, San Felipe's arguments related to the patented status of its land fail for other reasons.

First, to answer the Court's question regarding whether "the land's patented status has any bearing" on "whether San Felipe's suit is essentially a quiet title action," ECF No. 70 at 2, the answer is "no." San Felipe offers no statute or case that supports its assertion, Mem. at 17-19, that the APA "precludes" Federal Defendants' sovereign immunity defense.[12] Congress provided that the QTA "does not apply to trust or restricted Indian lands." 28 U.S.C. § 2409a(a). The QTA preserves the United States' sovereign immunity from quiet title suits "**when** they involve Indian lands." *Patchak*, 567 U.S. at 216. Plaintiffs cannot use other statutes such as the APA "to end-run the QTA's limitations." *Id*. at 216. The QTA's text does not condition the Indian lands exception on the quality or nature of title interests adverse to the United States' interests as trustee for Indians. 28 U.S.C. § 2409a(a). It requires only that the title asserted by the United States on behalf of a tribe (here, Santa Ana) is colorable. The QTA also bars San Felipe's officer's suit regardless of whether San Felipe characterizes its claims as arising from a patent. San Felipe's

executive order reservations." Contrary to San Felipe's suggestion, Mem. at 11-12, this restriction "applies only to reservations created by the executive branch, whether by executive order, executive proclamation, or other executive action." *Yankton Sioux Tribe v. Podhradsky*, 606 F.3d 994, 1015-1016 (8th Cir. 2010). Because the land here "is not an executive order reservation" it is "outside the freeze contemplated by this statute." *Id*. Regardless, because the resurvey's point is to reestablish the original boundary, it diminishes no reservation.

[12] San Felipe first mischaracterizes the Court's Order as observing that "Defendants lacked authority under the [APA]." *Id*. at 17 (citing ECF No. 70 at 2). And as discussed above, pages 19-21, the Supreme Court rejected San Felipe's argument, Mem. at 17 (citing *Larson*), that the APA enables San Felipe to bring claims disputing title under an officer's suit theory.

motion should be denied because it cannot recast its explicit challenge to Santa Ana's lands as an officer's suit seeking to void Federal Defendants' colorable claim that it has a real estate interest in Santa Ana's restricted fee lands.

San Felipe's arguments regarding the primacy of patents, at most, raise the issue of what exactly was patented to San Felipe. The two Pueblos' dispute regarding their common boundary location traces back to Spanish rule. M-37027 at 3-10; *San Felipe*, 190 IBLA at 19-26, 39; PLB Rep. at 1; FAC ¶¶ 93, 106-10. And San Felipe cannot reasonably dispute that an overlapping boundary area existed. *San Felipe*, 770 F.2d at 916 ("land that is claimed by both" Pueblos is a "contested parcel [that] is referred to as the overlap area"); *Baca*, 844 F.2d at 710 ("surveys were confused and offered conflicting placements of the boundary. Without resolving this conflict, the General Land Office simply issued overlapping patents.").

San Felipe's focus, *e.g.* Mem. at 6, 20, on the purportedly inviolate nature of its alleged patented boundaries is a red herring. Federal Defendants did not invalidate the San Felipe Patent, alter the Patent's boundaries, or transfer ownership of the patented lands. The challenged resurvey instead reestablished the common boundary of the two Pueblos' lands as they "were originally confirmed and patented" by restoring the Pueblos' common boundary line:

> to its *true original position*, as a matter of fact and law – to the position it occupied when the adjoining Pueblo landholdings were first created by the Spanish government or successors-in-interest to that government, when they were conveyed to the United States in 1848, pursuant to the Treaty of Guadalupe Hidalgo, when Congress and the CPLC recognized them in 1858 (San Felipe) and 1897 (El Ranchito), and, finally, when the United States issued patents for them in 1864 (San Felipe) and 1909 (El Ranchito).

San Felipe, 190 IBLA at 31-32.[13] Indeed, the challenged

[13] Contrary to San Felipe's suggestions, the United States is neither terminating a trust duty to San Felipe, *e.g.* Mem. at 33, nor "purport[ing] to alter the 1864 Patent boundaries." Mem. at 5. To the contrary, Defendants confirmed duties based on each Pueblo's original land interests.

> resurvey "is designed to restore the original conditions of the official survey according to the record," protecting bona fide rights reliant upon the original survey. Further, "the corners of the original survey," which define the boundaries of confirmed and patented lands, "are unchangeable," "[e]ven if the original survey was poorly executed . . . ."

Id. at 38. Placing "the boundary in its true original position, *i.e.*, where it has always been, thus afford[s] [San Felipe] and [Santa Ana] the full extent of their confirmed and patented landholdings." *Id.* at 18-19. Federal Defendants thus sought to correctly survey the boundary between San Felipe's Patent and Santa Ana's El Ranchito Tract. Regardless, the legal question is whether San Felipe can invoke this Court's jurisdiction to redraw the boundary line in a manner that quiets title in San Felipe and impairs the real estate interests of Santa Ana and the United States. The QTA's Indian lands exception provides the answer.

San Felipe is incorrect, Mem. at 20, that the QTA is inapplicable because a Plaintiff seeking to quiet title in itself relies upon a patent. And San Felipe's focus on its 1864 Patent omits Santa Ana's side of the dispute. *E.g. id*. at 18 ("The only interest the United States has in the 1864 Patent is its duty to protect the land from alienation without the consent of San Felipe."). San Felipe's assertions regarding the inviolability of patents, *id*. at 20-21, elide three critical issues. First, the San Felipe Patent was granted pursuant to a statute that explicitly did "not affect any adverse valid rights." Act to Confirm the Land Claim of certain Pueblos, 11 Stat. 374 (1958). Thus, to the extent that Spain vested Santa Ana with valid existing rights, *see Baca*, 844 F.2d at 710-12, Santa Ana's rights survived the San Felipe Patent. Second, the challenged actions restored the Pueblos' common boundary as originally confirmed and patented. Page 6, above. Third, based on the reestablished common boundary, Santa Ana holds title to restricted fee lands in which the United States retains a colorable interest. *See United States v. Candelaria*, 271 U.S. 432, 442-44 (1926); *U.S. on behalf of Santa Ana Indian Pueblo v. Univ. of N.M.*, 731

F.2d 703, 706-07 (10th Cir. 1984). San Felipe is thus incorrect, Mem. at 21, that the United States holds no adverse interest. San Felipe's case falls under the QTA, regardless of whether San Felipe bases its claim on the allegations regarding its patent's borders, because San Felipe "not only challenges [Santa Ana's] claim, but also asserts [San Felipe's] own right to disputed property." *Patchak*, 567 U.S. at 217-18.

G. The Court's hypothetical regarding adjacent patented lands illustrates why San Felipe's claims to Santa Ana's lands are barred.

The Court's June 7, 2024, Order presented a hypothetical that illustrates why the QTA bars San Felipe's effort to quiet title to Santa Ana's lands:

> Congress patents two adjoining parcels of land, one to an Indian tribe and one to a non-Indian person, and the agency authorized to survey the lands completes a contemporaneous survey of the land patents; many years later, a dispute arises about the boundary line and a different agency resurveys the line to favor the Indian tribe; the non-Indian person sues under the Administrative Procedure Act, arguing the agency lacks authority to resurvey the land. Does the Quiet Title Act Exception bar the person's suit or does it not bar the suit?

Order (ECF 70) 2-3. Federal Defendants cannot conclusively state that any hypothetical suit is barred without reviewing the relief requested. *High Lonesome Ranch*, 61 F.4th at 1238. But the hypothetical suit strongly implies (and we therefore assume) that the non-Indian person is asserting ownership of the contested land, which would subject the suit to dismissal under the QTA. The answer would not be different just because the Tribe obtained the Indian lands via a patent. Of course, under *Patchak*, the answer would be different if the non-Indian in the hypothetical was not seeking title. Here, however, San Felipe **explicitly** seeks relief that would quiet title to Indian land in a manner that is adverse to a tribe. If a plaintiff sues under the APA:

> claiming that **he** owned the . . . Property . . . . The QTA would bar that suit . . . . True, it fits within the APA's general waiver, but the QTA specifically authorizes quiet title actions (which this hypothetical suit is) **except when** they involve Indian lands (which this hypothetical suit does). In such a circumstance, a plaintiff cannot use the APA to end-run the QTA's limitations. "[W]hen Congress has dealt in particularity

> with a claim and [has] intended a specified remedy" – including its exceptions – to be exclusive, that is the end of the matter; the APA does not undo the judgment.

Patchak, 567 U.S. at 216 (quoting *Block*, 461 U.S. at 286, n.22). The hypothetical thus helps illustrate that the proposed FAC presents a stronger case for dismissal because the FAC fills in the analytical gap with a prayer for relief that clearly seeks to quiet title. Pages 15-18, above. The motion to amend should be denied because the QTA bars the proposed FAC.

San Felipe also is incorrect that the hypothetical is "inapplicable" because "the QTA does not apply to surveys." Mem. at 21. Disputes regarding surveys generally challenge title to land and, when they do, are thus actions to quiet title. *See, e.g., Fadem v. United States*, 1995 U.S. App. LEXIS 6449, at *2 (9th Cir. 1995) (Challenge to allegedly negligent survey may not proceed under the Federal Tort Claims Act because the negligence "is subsumed in the title question and not an independent claim for relief."); *United States v. Atanasoff*, 1987 U.S. App. LEXIS 16040, at *5 (6th Cir. 1987); ("[T]he Quiet Title Act is the sole means for challenging the survey."); *White Mountain Apache Tribe v. Hodel*, 784 F.2d 921, 925-26 & n.5 (9th Cir. 1986) (challenge to survey barred by, among other things, QTA's statute of limitations); *Fadem v. United States*, 791 F.2d 1381, 1383 (9th Cir. 1986) (Challenges to a survey must be dismissed because "the Quiet Title Act and the Supreme Court's decision in *Block* apply to all boundary disputes with the government."). The non-Indian cannot sue for relief that would quiet title in the non-Indian against the tribe. *Patchak*, 567 U.S. at 219-21; ECF No. 55 at 19-20. It is thus likely that the Indian lands exception bars the hypothetical suit.

San Felipe's reliance on the Court of Federal Claims' decision in *Mannatt v. United States*, Mem. at 21-22, illustrates San Felipe's incorrect answer to the hypothetical. Significantly, the district court dismissed *Mannatt's* boundary dispute claims and transferred the takings claims to the Court of Federal Claims despite the fact that Mannatt's claims were based on a patent. *Id*.

at 150-51. The district court held that "[t]he proposition that a boundary line dispute between an Indian tribe and private party is not an action to quiet title, and therefore is not governed by the QTA, was considered and rejected by the Ninth Circuit" because "the QTA exception to Indian lands applies to boundary disputes between Indian tribes and private parties." *Mannat v. United States*, 951 F. Supp. 172, 175 (E.D. Cal. 1996) , *aff'd*, 185 F.3d 868 (9th Cir. 1999) (citing *Metro. Water Dist. v. United States*, 830 F.2d 139 (9th Cir. 1987)).[14] Contrary to San Felipe's interpretation, *Mannatt* stands for the proposition that the QTA bars suits, including boundary line disputes, claiming that a patent provides superior title to Indian lands.

H. *Sandia* and *Taos* do not support San Felipe's effort to quiet title to Santa Ana's land.

As the Court held, ECF No. 55 at 31, this case is not controlled by *Pueblo of Taos v. Adrus* (*Taos*), 475 F. Supp. 359 (D.D.C. 1979), and *Pueblo of Sandia v. Babbitt*, (*Sandia*) No. CIV 94-2624, 1996 WL 808067 (D.D.C. Dec. 10, 1996). *Taos* and *Sandia* held that the QTA did not bar Pueblos' suits to correct boundary lines between Pueblo and non-Indian Federal land. This case is distinguishable because "it makes a difference that here, on either side of the Conflict Area's boundary line, are two Pueblos, not one Pueblo and an unrelated federal agency. Whereas in *Taos* and *Sandia*, the Indian claims to land were deemed not adverse to the federal agency's interests on the other side, here, San Felipe's interest in the land and right thereto is antagonistic to Santa Ana's." ECF No. 55 at 31. The QTA therefore applies here because the United States has a colorable claim to an interest in the Former Overlap Area on Santa Ana's behalf and "San Felipe 'assert[s] a claim to property antagonistic to the Federal Government's.'"

[14] San Felipe also omits *Mannatt's* holding that an improper survey that enlarges the United States' interest in property constitutes a taking and plaintiffs' allegations "indicate the existence of compensable takings." 48 Fed. Cl. 148, 155-156 (2000).

Id. at 32 (quoting *Patchak*, 567 U.S. at 220).

Rather than address the Court's analysis of this case as distinct from *Taos* and *Sandia* because it involves an intertribal land dispute, San Felipe takes issue with the Court's recognition of a second distinction – that "the pertinent rights [here] predate the United States' involvement." ECF No. 55 at 33. That distinction is unavailing, as it is at least colorable that the rights predating United States involvement were resolved in Santa Ana's favor. ECF No. 29-1 at 2-3 (citing *Baca*, 844 F.2d 708), 9; *San Felipe*, 190 IBLA at 19-23.

The QTA does not generally grant the United States immunity from claims contesting the United States' ownership of its own land. To the contrary, the QTA provides that "[t]he United States may be named as a party defendant in a civil action under this section to adjudicate a disputed title to real property in which the United States claims an interest." 25 U.S.C. 2409a. So anyone, including a tribe, can generally sue the United States to quiet title to land in which the United States holds an interest. *Taos* and *Sandia* thus stand, at most, for the proposition that Pueblos and other parties may generally sue to quiet title to Federal land. To correct Plaintiffs' assertion, Mem. at 18, the QTA's Indian lands exception does not bar suits seeking to restrain breaches of trust **unless those suits seek to adjudicate title to Indian land.** Any other result would conflict with the straightforward analysis that the Indian lands exception preserves the United States' sovereign immunity from quiet title suits "**when** they involve Indian lands." *Patchak*, 567 U.S. at 216. The QTA's plain language does not include an exception to the Indian lands exception where a tribe seeks to seize another tribe's restricted fee lands in which the United States holds an interest. *See Block*, 461 U.S. at 284-85.

II. San Felipe cannot recast its quiet title claim as a takings claim.

San Felipe's proposed addition of counts claiming that its alleged lands and related funds

were taken without due process of law, FAC ¶¶ 230-41, 268-76, cannot salvage its case. To the contrary, San Felipe's taking claim confirms that San Felipe truly seeks a determination that its property rights to the Former Overlap Area are superior to Santa Ana's. Mem. at 38-39 ("Because the trust corpus—the revenue from the right-of-way—is produced by a burden upon land owned solely by San Felipe, Santa Ana is not a rightful trust beneficiary, and any revenue dispersed to Santa Ana by the United States constitutes a taking."). San Felipe cannot dodge the Indian lands exception with a constitutional claim aimed at securing title to Santa Ana's land.

First, San Felipe's assertion that Interior's resolution of a centuries-long dispute failed to provide due process is disproved by the challenged M-Opinion's recap of the significant amount of process provided. Among other things, the M-Opinion identifies San Felipe's many arguments during the administrative process. ECF No. 29-1 at 4. And San Felipe admits that it "timely protested the filing of the plat" and "then timely appealed the denial of its protest to the Interior Board of Land Appeals." FAC ¶ 146-47. While San Felipe failed to offer before IBLA "contrary professional opinion or evidence" in support of its claim that the corrective resurvey disregarded San Felipe's boundary, *San Felipe*, 190 IBLA at 49-50, it had the opportunity to do so.

Second, the Constitution "does not prohibit the taking of private property, but instead places a condition on the exercise of that power." *First Eng. Evangelical Lutheran Church v. Cnty of Los Angeles*, 482 U.S. 304, 314 (1987). Thus, "[e]quitable relief is generally not available when just compensation procedures are." *Alto Eldorado Partners v. City of Santa Fe*, 644 F. Supp. 2d 1313, 1349 (D.N.M. 2009). "Accordingly, 'taking claims against the Federal Government are premature until the property owner has availed itself of the process provided by the Tucker Act.'" *N. New Mexicans*, 161 F. Supp. 3d at 1042-1043 (citation omitted).

Third, and most importantly, San Felipe' effort to add takings claims ultimately fails for

the same reason as its officer's suit theory – Congress prohibited plaintiffs from evading the QTA's Indian lands exception through artful pleading. San Felipe is incorrect, Mem. at 18-19, that the QTA is inapplicable to constitutional claims. In *Montanans For Multiple Use*, plaintiffs sought to "sidestep the QTA" by arguing that they brought Fifth Amendment taking claims rather that claims to quiet title. 542 F. Supp. 2d at 19. The court rejected this Constitutional challenge to the scope of Federal authority because "[t]he Supreme Court made abundantly clear in *Block* that the QTA provides the exclusive means to challenge the United States' title to real property, and despite their attempt to characterize it otherwise, plaintiffs here seek to challenge the United States' title to real property outside the QTA and its strictures." *Id*. at 19-20. Nevada's Constitution challenge similarly could only proceed under the QTA because it could not succeed unless Nevada showed "that the United States lacked title to the lake bed." *Nevada v. United States*, 731 F.2d 633, 636 (9th Cir. 1984). The QTA's limitations thus applied and barred Nevada from establishing its purportedly superior title. *Id*. And the Seventh Circuit likewise dismissed constitutional claims because "Congress intended for suits that require resolution of a disputed claim to real property in which the United States claims an interest to be brought under the QTA." *Shawnee Trail Conservancy*, 222 F.3d at 388. No matter San Felipe's legal theory, "artful pleading does not exempt from the QTA any lawsuit that, at heart, seeks land from the federal government." ECF No. 55 at 18 (citing *Block*, 461 U.S. at 285).

San Felipe's reliance on cases enjoining broad statutes that took small amounts of land from vast numbers of Indians, Mem. at 20, is misplaced. Both *Babbitt v. Youpee*(*Youpee*), 519 U.S. 234 (1997) and *Hodel v. Irving* (*Irving*), 481 U.S. 704 (1987) were pled as takings claims and challenged the constitutionality of statutes. Moreover, the Court "made clear that these cases are exceptional and limited to their facts [and] involved regulatory takings, not physical takings."

Fideicomiso de la Tierra del Cano Martin Pena v. Fortuno, 604 F.3d 7, 19 (1st Cir. 2010) (distinguishing *Youpee* and *Irving*); *Wiese v. Becerra*, 263 F. Supp. 3d 986, 996 (E.D. Cal. 2017) (noting *Youpee* may have departed from the "rule . . . that injunctive relief is generally not available for a takings claim" because the regulation was "extraordinary" and "the normal remedy of" seeking damages was unrealistic).

San Felipe identifies a single case in which a court considered the QTA and takings clause together. Opp. at 20-21 (citing *Dumarce v. Norton*, 277 F. Supp. 2d 1046 (D.S.D. 2003). *Dumarce*, however, only illustrates that San Felipe's case is one to quiet title, instead of one seeking just compensation for a taking. *Dumarce* denied Interior's motion to dismiss because "[n]othing in the plaintiffs' amended complaint hints that this is a title dispute case. To the contrary, the entire amended complaint speaks in terms of unconstitutional takings of private property." *Id*. at 1051. *Dumarce* was reversed on appeal in a manner that rejected plaintiff's effort to recast their takings claim as one "solely . . . for non-monetary relief." *Dumarce v. Scarlett*, 446 F.3d 1294, 1304 (Fed. Cir. 2006). Regardless, *Youpee, Irving,* and *Dumarce* predate *Patchak's* explanation of the QTA's Indian lands exception. San Felipe does not appear to seek just compensation for the allegedly-illegal taking of its title. It instead seeks to quiet that title against the United States and Santa Ana.

San Felipe's reliance on *Del-Rio Drilling Programs v. United States*, Mem. at 14, 19-20, is similarly misplaced. San Felipe is incorrect that *Del-Rio Drilling* precluded San Felipe from seeking compensation in the Court of Federal Claims because San Felipe characterizes Federal Defendants' actions as unauthorized. To the contrary, *Del-Rio* found that an action "in which the alleged taking consists of regulatory action that deprives a property-holder of the enjoyment of property" could proceed in the Court of Federal Claims because "government agents have the

requisite authorization if they act within the general scope of their duties, *i.e.*, if their actions are a 'natural consequence of Congressionally approved measures,'" . . . or are pursuant to 'the good faith implementation of a Congressional Act'". *Del-Rio Drilling Programs v. United States*, 146 F.3d 1358, 1362 (Fed. Cir. 1998). San Felipe cannot credibly argue that Federal Defendants' resurvey of an overlapping boundary pursuant to their statutory authority to survey Indian lands and consistent with the Tenth Circuit's *Baca* decision was done in bad faith. Moreover, *Del-Rio Drilling*, like all of the precedent San Felipe relies upon, predates and cannot overrule *Patchak's* clear prohibition on actions asserting title interests that are adverse to the United States' interest as trustee. San Felipe's taking claim cannot proceed because it seeks to take land over which the United States asserts a colorable interest on behalf of Santa Ana.

III. San Felipe's proposed trust-related claims would have to be dismissed

San Felipe's proposed amended claims alleging breaches of trust duties relating to the contested lands and funds derived from those lands are likewise futile. *See* FAC ¶¶ 242-67. The QTA applies here, regardless of whether the United States' duties to Pueblos regarding restricted fee land are characterized as trust duties. San Felipe's effort to have this Court adjudicate an intertribal title dispute under a trust duty theory runs into the same problem as its other legal theories. The QTA's does not permit San Felipe to evade the United States' retention of sovereign immunity over suits seeking to divest Santa Ana of its restricted fee lands.

A. San Felipe identifies no statute or regulation that requires the United States to favor San Felipe over Santa Ana in the dispute over the Former Overlap Area.

"To maintain [a breach of trust] claim here, the Tribe must establish, among other things, that the text of a treaty, statute, or regulation imposed certain duties on the United States." *Arizona v. Navajo Nation*, 599 U.S. 555, 563 (2023). And "unless Congress has created a conventional trust relationship with a tribe as to a particular trust asset" by imposing specific

statutory duties, courts will not infer any additional common law trust duties. *Id*. at 1814. When a statute establishes a trust obligation of the United States to an Indian tribe, the government acts "not as a private trustee but pursuant to its sovereign interest in the execution of federal law." *United States v. Jicarilla Apache Nation*, 564 U.S. 162, 165 (2011). San Felipe's assertion that cases predating *Navajo* and *Jicarilla* are "the basis for the trust relationship of the United States to tribes," Mem. at 23-24, is thus incorrect.[15] And San Felipe's reliance on the common law of trusts through its citation to the *Restatement of the Law of Trusts***,** Mem. at 25, 34-37, is misplaced. *Jicarilla*, 564 U.S. at 183-84. San Felipe's failure to identify any statute, much less one imposing a relevant trust duty on behalf of San Felipe regarding the Former Overlap Area, is thus fatal to its claim.

San Felipe's alleged trust duties leave no doubt that this is a suit to quiet title. It contends that the United States has no conflicting trust duty to Santa Ana because "there is only one trust beneficiary to the trust corpus (the lands.)." Mem. at 22. San Felipe's trust duty argument is thus predicated on this Court deciding that San Felipe's title claim is superior to Santa Ana's. *Id*. at 26-27, 29, 34. As with San Felipe's *ultra vires* and takings claims, San Felipe cannot evade the QTA by casting its claims to quiet title as challenges to alleged breaches of trust duties. The Indian lands exception bars claims seeking to quiet title "to trust or restricted Indian lands." 28 U.S.C. § 2409a(a).[16] Indeed, Congress passed a single statute that defines the relevant contours

[15] San Felipe is incorrect, Mem. at 24, that a general relationship or responsibility "limits federal agency action." It is likewise incorrect, *id*. at 26, that there are three "types" of trust relationships. To the contrary, Congress acts through specific statutes that generally provide Interior with the authority to manage Indian affairs. 25 U.S.C. § 2. These include specific authority to survey "any Indian . . . reservations." 25 U.S.C. § 176.

[16] And while San Felipe suggests that trust duties relating to Pueblo lands are unique, Mem. at 24, the QTA does not distinguish between Pueblos' restricted fee lands and other trust lands.

of the trust relationship here. *Mesa Grande Band of Mission Indians v. Salazar*, 657 F. Supp. 2d 1169, 1174-75 (S.D. Cal. 2009) (QTA "unambiguously" bars suits to quiet title to Indian lands because they "would interfere with the United States' trust commitment to that tribe, which is the very reason the United States has retained its immunity."). The QTA applies here because the United States has a colorable claim to an interest in the Former Overlap Area for Santa Ana and "San Felipe 'assert[s] a claim to property antagonistic to the Federal Government's.'" ECF No. 55 at 32 (quoting *Patchak*, 567 U.S. at 220).

While the Court need not look beyond the relief San Felipe seeks, San Felipe is incorrect that Federal Defendants "violated specific fiduciary duties to San Felipe [sic] the duty to restrict alienation of lands patented by Congress to specific pueblos, and duty to protect the boundaries of such patents"). The authority San Felipe relies on, Mem. at 27-28, does not privilege San Felipe's claims over Santa Ana's. Congress's "restriction on the alienation of these lands . . . was but continuing a policy which prior governments had deemed essential to the protection of such Indians." *Candelaria*, 271 U.S. at 442. This restriction on alienation thus runs generally to both San Felipe and Santa Ana – but only with respect to each Pueblo's lands. The restriction on alienation thus protects Santa Ana's land from San Felipe's efforts to quiet title. And Congress divested this Court of jurisdiction over suits against the United States seeking to determine which Pueblo's title claims to a particular tract of restricted fee land are superior. 28 U.S.C. § 2409a.

San Felipe is incorrect, Mem. at 28, that the Pueblo Lands Act "confirmed the United States' trustee obligations to a specific beneficiary" in any manner relevant here. The sections of the PLA that San Felipe cites, *id.*, offer no support for San Felipe's suggestion that they favor it over Santa Ana. PLA §§ 16-17. To the contrary, the PLA did not resolve the long-standing dispute regarding ownership of the Former Overlap Area. PLB Rep. at 1-2; *Thompson*, 708 F. Supp. at

1209 (reports only "examine[d] non-Indian claims to Pueblo lands."). Nor does any PLA provision prohibit the United States from performing a corrective resurvey that restores the original confirmed and patented boundary line between San Felipe and Santa Ana.

San Felipe is likewise incorrect, Mem. at 30, that the PLA proceedings "confirm[ed] the United States' exclusive fiduciary duties to San Felipe." To the contrary, the proceedings did not address the two Pueblos' competing title claims. Pages 12, 23-24, above.

And San Felipe's reliance on the Indian canon of construction, Mem. at 29, is misplaced because San Felipe identifies no statutory ambiguity. *Chickasaw Nation v. Dep't of Interior*, 161 F. Supp. 3d 1094, 1099 (W.D. Okla. 2015). San Felipe's reference to *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244, 2266 (2024), is irrelevant. We have not asked the Court to defer to any agency interpretation of a statute. And in any event, San Felipe does not even attempt to identify an ambiguity in the only relevant statute, which divests this Court of jurisdiction over disputes to title to "trust or restricted Indian lands." 28 U.S.C. § 2409a(a). Neither the Indian canon nor *Loper* is cause to revisit the Court's straightforward interpretation that "the QTA's Indian lands exception retracts the QTA's waiver otherwise of federal sovereign immunity, thereby eliminating the Court's jurisdiction to hear San Felipe's suit." ECF No. 55 at 2.

This case turns on a single issue—that the United States holds a colorable interest in restricted fee Indian lands on behalf of Santa Ana. The QTA's Indian lands exception thus provides the only relevant statute regarding the United States' "trust commitment" to protect Santa Ana's land from alienation against all adverse claimants. *Mesa Grande Band of Mission Indians*, 657 F. Supp. 2d at 1174-75; ECF No. 55 at 24-25.

B. Trust beneficiaries can conceivably possess adverse land interests

To answer the Court's question relating to the United States' duties as trustee, ECF No.

70 at 3, two tribal trust beneficiaries can conceivably "possess adverse land interests" even though they share the same trustee. One such example was rooted in an 1882 Executive Order establishing a reservation for "the Hopi and 'such other Indians as the Secretary of the Interior may see fit to settle thereon.'" *Sekaquaptewa*, 626 F.2d at 114 (quotation omitted). "For three quarters of a century, the Hopi and the Navajo coexisted on the 1882 Reservation; neither tribe had a clear right to the land. The Hopi claimed that they had exclusive beneficial use to all of the 1882 Reservation. The Navajo claimed an exclusive interest to almost four-fifths of the reservation." *Id*. at 115. To resolve this dispute, Congress explicitly waived tribal sovereign immunity and explicitly permitted the Navajo and Hopi "to commence or defend . . . an action against each other and any other tribe of Indians claiming any interest in [land] for the purpose of . . . quieting title." Act to Determine the Rights and Interests of the Navaho Tribe, Hopi Tribe, and individual Indians, 72 Stat. 403 (July 22, 1958); *Sekaquaptewa*, 626 F.2d at 115; *See also* Statements on Introduced Bills and Joint Resolutions, 146 Cong Rec S 7542, 7545 (July 25, 2000) (noting that it was up to Congress to resolve the 150-year long "complex set of title disputes between [Pueblos], the federal government, and private land holders").[17] Finally, tribes and individual tribal members can have adverse interests in land. *Estate of Robert Wourinen*, 59 IBIA 314 (2015) (probate dispute between member's heir and Tribe); *Estate of Anita Adakai*, 61 IBIA 2 (2015); *Miami Tribe of Okla. v. United States*, 656 F.3d 1129, 1146 (10th Cir. 2011).

[17] Tribes can also possess adverse interests in trust resources other than land. For example, hunting rights on the Wind River Reservation are "held in common by both" the Shoshone and Northern Arapahoe and "one tribe cannot claim that right to a point of endangering the resource in derogation of the other tribe's rights". *N. Arapahoe Tribe v. Hodel*, 808 F.2d 741, 750 (10th Cir. 1987). The United States has the "right . . . to protect the resources guaranteed the Shoshone by treaty." *Id. See also, Makah Indian Tribe v. Verity*, 910 F.2d 555, 559 (9th Cir. 1990) (upholding dismissal of suit "seek[ing] a reallocation of the [fishing] harvest or . . . inter-tribal allocation decisions" because tribes with competing interests in fishery were necessary parties).

While such complicated adverse interests are possible, the United States cannot owe any enforceable trust duty to a tribe unless a statute, treaty, or regulation imposes an asset-specific duty. "The United States is a sovereign, not a private trustee, meaning that 'Congress may style its relations with the Indians a trust without assuming all the fiduciary duties of a private trustee, creating a trust relationship that is limited or bare compared to a trust relationship between private parties at common law.'" *Navajo*, 599 U.S. at 565-566 (quoting *Jicarilla*, 564 U.S. at 174). Enforceable trust duties typically must attach to a specific trust asset, as "unless Congress has created a conventional trust relationship with a tribe as to a particular trust asset, this Court will not 'apply common-law trust principles' to infer duties not found in the text of a treaty, statute, or regulation." *Id*. at 566 (quoting *Jicarilla*, 564 U.S. at 178 and noting that the treaty at issue did not "establish[] a conventional trust relationship with respect to water."); *United States v. Mitchell*, 463 U.S. 206, 225 (1983) "necessary elements of a common-law trust are "a trustee (the United States), a beneficiary . . ., and a trust corpus (Indian timber, lands, and funds)"); *Ute Indian Tribe v. United States*, 99 F.4th 1353, 1368 (Fed. Cir. 2024) (Act bears hallmarks of a conventional fiduciary relationship when it identifies, among other things, a corpus and beneficiary). Put another way, the United States's enforceable trust duties are typically tethered to specific beneficiaries' assets.

The Court was thus correct, ECF No. 55 at 31-32 and ECF No. 70 at 3, that the United States "standing in the Pueblo of Santa Ana's shoes as Santa Ana's trustee, possesses land interests adverse to San Felipe's." The fact that the United States is also San Felipe's trustee is irrelevant. San Felipe is situated no differently than any plaintiff claiming title to land in which the United States claims an interest on behalf of a Tribe. The United States' recognition that the Former Overlap Area is Santa Ana's based on the resurveyed and reestablished common

boundary line means that the United States restricts the land from alienation on behalf of Santa Ana against all potential adverse claimants, including San Felipe. *See Univ. of N.M.*, 731 F.2d at 706-07. The QTA thus divests this Court of jurisdiction over any claims to quiet title in Santa Ana's Indian land, including San Felipe's claim. *Patchak*, 567 U.S. at 216.

C. Federal Defendants neither owed nor breached any duty to San Felipe relating to the right-of-way funds.

San Felipe's effort to revive its claims to funds escrowed for the rightful owner of the Former Overlap Area, and an unnecessary "accounting" of those funds, is futile because no statute imposes a trust duty to San Felipe regarding Santa Ana's funds. *See Navajo Nation*, 143 S. Ct. at 1813. San Felipe's focus on vague common law trust principles, Mem. at 35-38, is misplaced because the federal "trust is defined and governed by statutes rather than the common law." *Jicarilla*, 564 U.S. at 173-174. San Felipe's failure to identify a statute explicitly imposing a trust duty regarding the escrowed funds is fatal to its claims relating to the funds.

Rather than identify a statute imposing a relevant duty, San Felipe flips the idea of an accounting on its head by arguing that an accounting duty, which is **retrospective** by nature, required Interior to provide San Felipe with notice **prior** to disbursing Santa Ana's funds from the escrow account. Mem. at 35-36, 38. Regardless, San Felipe's trust claim would fail (and need to be dismissed) because it identifies no statute imposing a duty to notify San Felipe prior to granting Santa Ana's request to disburse funds. *Navajo Nation*, 599 U.S. 563-64. And San Felipe's concession that it knows that Federal Defendants disbursed the entire IIM account of "over $1.6 million dollars" to Santa Ana on January 11, 2018, FAC ¶¶ 196, 231, 264, moots San Felipe's claim for notice that Interior paid Santa Ana's funds to Santa Ana.

San Felipe is incorrect, Mem. at 35, that *San Felipe v. Hodel* determined that Federal Defendants owe fiduciary duties to San Felipe relating to the escrowed funds. The Circuit instead

found that the "Secretary's fiduciary duty to each of the Pueblos made imposition of the escrow condition clearly within the Secretary's discretion." *San Felipe,* 770 F.2d at 917. It further found that establishing "the escrow condition is conclusive that [Interior] understood the [right-of-way] grant to affect the interest of whatever Indian tribe is ultimately determined the owner of the property." *Id.* at 917. And it characterized Interior as having one duty—imposing "some just condition by which the appropriate recipient of the proceeds can be protected." *Id*. at 917. The Circuit's characterization of the duty as discretionary and running to whichever Tribe Interior ultimately determined to be the appropriate recipient refutes San Felipe's assertion that Interior owes San Felipe a duty relating to Santa Ana's funds. *See Navajo Nation*, 143 S. Ct. at 1813. The Circuit only considered the Secretary's fiduciary duties in the context of the then-ongoing overlap dispute. Neither Pueblo had an interest in funds derived from the contested land if they lacked an interest in the land. And resolution of the land dispute in Santa Ana's favor means that only Santa Ana had an interest in the escrowed funds. *San Felipe,* 770 F.2d at 917

San Felipe also misstates or elides applicable Indian trust accounting precedent. *Cobell v. Salazar* did not require "the best accounting" Interior can provide to whatever Tribe requests one. To the contrary, Tribes must first establish that they "are entitled to an accounting under the statute." 573 F.3d 808, 813 (D.C. Cir. 2009). San Felipe fails at that hurdle because it is due no accounting for Santa Ana's funds. Moreover, any accounting must make "most efficient use of limited government resources." *Id*. Congress did not impose a duty that would squander limited funds by providing unnecessary or unnecessarily detailed accountings.

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

effect on their beneficial interests." *Fletcher v. United States*, 730 F.3d 1206, 1215 (10th Cir. 2013)); *Fletcher v. United States*, 153 F. Supp. 3d 1354, 1370 (N.D. Okla. 2015) (accounting should not impose "gratuitous costs on the government"); ECF No. 43 at 16-17. Even if Interior had a duty to provide San Felipe an accounting, that accounting need only "give some sense of where money has come from and gone to." *Fletcher*, 730 F.3d at 1215.

San Felipe's proposed allegations make clear that it has a sufficient sense of what happened to the money despite lacking a beneficial interest. FAC ¶¶ 196, 231, 264; Mem. at 38 (citing Letter from BIA to San Felipe at 1 (Apr. 18, 2018), ECF No. 40-3). San Felipe knows the amount that was deposited in the escrow account, as well as the date of deposit. FAC ¶¶ 104-05. It likewise knows the amounts deposited into the account through subsequent easements. Nov. 3, 1998 Easement, ECF No. 49-6 at 25; June 13, 1989 Easement. ECF No. 49-6 at 23. San Felipe needs no accounting to allege that Federal Defendants' breached a purported trust duty to San Felipe by recognizing Santa Ana's interests. *See* ECF No. 49-5 at 165 (claiming that establishing the escrow account was a breach of trust). Nor did it require notice that the escrowed funds would be disbursed. FAC ¶ 105; ECF No. 49-5 at 170 (Secretary stated that "[w]hen ownership is determined, the money could be [disbursed] without delay or hardship."); Compl., *Pueblo of San Felipe v. Andrus* ¶ 18 (Dec. 24, 1980) (ECF No. 49-6 at 2) ("The Secretary intends to continue the impoundment of the $189,200 until clear title to the overlap area can be determined, at which time he intends to disburse the $189,200 to whoever is determined to have clear title to the overlap area."); Prayer for Relief 3(d) (seeking "restoring the balance of the account").

Finally, San Felipe admits that its proposed claims relating to the escrowed funds are derivative of its ownership claim to possession of the land at issue. Mem. at 35. The QTA thus bars the funds-related claims because they are based on San Felipe's attempt to wrest title to the

Former Overlap Area from Santa Ana. *See* ECF No. 55 at 32; *Patchak*, 567 U.S. at 219-21.[18]

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[18] Even if San Felipe's funds claims were not predicated on its jurisdictionally-barred title claim, they would run into a second jurisdictional bar. "The Tucker Act, 28 U.S.C. §§ 1346, 1491, 'vests exclusive jurisdiction' with the Court of Federal Claims for claims against the United States founded upon the Constitution, Acts of Congress, executive regulations, or contracts and seeking amounts greater than $10,000." *Burkins v. United States*, 112 F.3d 444, 449 (10th Cir. 1997). San Felipe seeks more than $10,000. FAC ¶ 196, Prayer for Relief 3(d). This Court would thus lack jurisdiction over the funds-related claims.