

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

**PUEBLO OF SAN FELIPE, a federally
recognized tribe,**

Plaintiff,

v.

No. CIV 23-0296 JB/LF

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

Defendants,

PUEBLO OF SANTA ANA,

Intervenor-Defendant

**INTERVENOR-DEFENDANT PUEBLO OF SANTA ANA'S MOTION TO DISMISS
PLAINTIFF'S FIRST AMENDED COMPLAINT (DOC. 127) FOR FAILURE TO STATE
A CLAIM ON WHICH RELIEF CAN BE GRANTED,
OR, IN THE ALTERNATIVE, FOR LACK OF JURISDICTION,
AND MEMORANDUM IN SUPPORT**

Intervenor-Defendant Pueblo of Santa Ana, by and through its counsel, moves the Court to dismiss Plaintiff Pueblo of San Felipe's First Amended Complaint, Doc. 127, pursuant to F.R.Civ.P. Rule 12(b)(1) and/or (6), on the ground that the Amended Complaint fails to state a claim on which relief can be granted, as it fails to meet the requirements for a claim under the Administrative Procedure Act, 5 U.S.C. § 551 *et seq.* ("APA"), or, alternatively, on the ground that the Court lacks jurisdiction over the claim asserted in the Amended Complaint, in that the named defendants are all officials or agencies of the United States and are fully protected by the sovereign immunity of the United States, and that inasmuch as the Amended Complaint plainly seeks the reinstatement of Plaintiff's claim to land long owned and exclusively occupied by the

Pueblo of Santa Ana, a federally recognized Indian tribe, and disputes Santa Ana's title to such land, in which title the United States has an interest, that immunity has not been waived under the federal Quiet Title Act, 28 U.S.C. § 2409a(a), or any other federal statute. The grounds for this motion are set forth in greater detail below.

INTRODUCTION

This is a somewhat unusual situation. It has been clear from the very outset of this litigation that Plaintiff Pueblo of San Felipe's ("San Felipe's") goal has been to reinstate, and even to prevail upon, its claim to a tract of about 695 acres along the Rio Grande that for at least 260 years has been exclusively owned and occupied by the Pueblo of Santa Ana, but that, due to an erroneous American resurvey in 1908, was mistakenly included in the tract known as the "Pueblo of San Felipe Grant." (This 695-acre tract is referred to herein as the "Former Overlap.") San Felipe's original Complaint (Doc. 1) made that purpose abundantly clear, and the United States successfully moved to dismiss it on the ground that in claiming an interest in what is indisputably "restricted Indian lands," San Felipe's Complaint was barred by the United States's sovereign immunity from suit. The Quiet Title Act, 28 U.S.C. § 2409a ("QTA"), is the only federal law that allows the government to be sued "to adjudicate a disputed title to real property in which the United States claims an interest," but that Act "does not apply to trust or restricted Indian lands." 28 U.S.C. § 2409a(a). Any action claiming an interest in such lands is barred by the government's sovereign immunity.

That was the Court's ruling on the United States' motion to dismiss. Finding that the Complaint was "at heart a quiet title action," that disputed title to "restricted Indian lands," Order entered March 29, 2024 (Doc. 55) at 21, the Court dismissed the Complaint.

Plaintiff attempted to craft an Amended Complaint that avoided the QTA problem, *see*

Doc. 78-1, but it met the same fate. *See* Order entered on March 21, 2025 (Doc. 101) and Memorandum Opinion entered on November 24, 2025, (Doc. 120), both denying San Felipe's Motion for Leave to File First Amended Complaint. In those decisions, however, the Court stated that it would allow San Felipe to file an amended complaint attacking the 2013 Solicitor's Opinion, that had found that Santa Ana has "superior title" to the Former Overlap and that had ordered the resurvey of the San Felipe Grant to eliminate the Former Overlap.

Santa Ana moved to reconsider that last portion of the Court's March 21 Order, arguing that the 2013 Solicitor's Opinion was a final agency action, any challenge to which had to have been brought by June 6, 2019, four years before San Felipe filed this action. *See* Doc.105. The Court indicated its disagreement with that position, *see* Doc. 120 at 37-40, and initially said it would deny Santa Ana's motion.

Just ten days later, however, at a status conference, the Court announced that it had changed its mind, stating, "I agree with Santa Ana Pueblo's position that San Felipe Pueblo may challenge only whether the BLM properly conducts the survey, because the six-year statute of limitations bars any direct challenge to the Tompkins opinion." December 4, 2025, Transcript, at 6. The Court gave a summary of the relevant case law supporting its decision, and concluded, "The Court, accordingly, grants the motion to reconsider, and concludes that San Felipe Pueblo may only pursue APA claims challenging whether the BLM properly conducts the survey in compliance with the Tompkins opinion." *Id.* at 11. A brief Memorandum Opinion and Order entered on March 12, 2026 (Doc. 126), reiterated that ruling, referring to the reasoning set forth at the status conference.

That is the ruling by which Plaintiff's First Amended Complaint must be judged, and it is apparent that it fails to meet that standard by a wide margin.

ARGUMENT

I. THE FIRST AMENDED COMPLAINT IS BARRED BY THE FEDERAL GOVERNMENT’S SOVEREIGN IMMUNITY FROM UNCONSENTED SUIT.

“It is ‘axiomatic that the United States may not be sued without its consent and that the existence of consent is a prerequisite for jurisdiction.’” *N. New Mexicans Protecting Land Water & Rights v. United States*, 161 F.Supp. 3d 1020, 1036 (D.N.M. 2016) (Browning, J.) (quoting *United States v. Mitchell*, 463 U.S. 206, 212 (1983)), *affirmed*, 704 F. App’x 723 (10th Cir. 2017). That rule applies equally to suits against federal officers in their official capacities. *Dugan v. Rank*, 372 U.S. 609, 620 (1963).

It has been unmistakably clear since the filing of the original Complaint in this case, Doc. 1, that San Felipe is asserting title to a 695-acre tract of land (the “Former Overlap”) that, though it has been owned and exclusively occupied by Santa Ana for 263 years, was erroneously included in a 1908 resurvey of the San Felipe Pueblo Grant. In 2013, the Solicitor of the United States Department of the Interior determined, in Opinion M-37027 (the “Tompkins Opinion,” or the “2013 Opinion”), that Santa Ana has “superior” title to the tract, and that “San Felipe never had a compensable interest” in it, and the Solicitor ordered a resurvey of the south boundary of the San Felipe Pueblo Grant to eliminate the overlap. San Felipe’s initial Complaint vigorously attacked that Opinion, sought to undo the resurvey, asserted repeatedly that Santa Ana has no valid title to the Former Overlap and is barred from asserting one now, and insisted that the Former Overlap is San Felipe land. But in contesting Santa Ana’s title to the Former Overlap, a title in which, by virtue of the United States’ overriding guardianship of Santa Ana’s lands, the United States clearly has an “interest,” *see, e.g., United States v. Univ. of New Mexico*, 731 F. 2d 703 (10th Cir. 1984), San Felipe ran head-on into the United States’ sovereign immunity from

suit.

It should be unnecessary to repeat here all of the arguments set forth in the United States’ Motion to Dismiss for lack of jurisdiction (Doc. 29), filed on August 18, 2023, and Santa Ana would merely note that, as will be shown below, those arguments are equally applicable to the First Amended Complaint (“FAC”). In its Order entered herein on March 29, 2024 (Doc. 55), this Court, in granting the United States’ motion, concluded that “San Felipe’s claim is at heart a quiet title action.” *Id.* at 21. Given the clear ruling in *Block v. North Dakota*, 461 U.S. 273, 286 (1983), that “Congress intended the QTA [Quiet Title Act] to provide the *exclusive means by which adverse claimants could challenge the United States’ title to real property*” (emphasis added), and the express exclusion of “trust or restricted Indian lands” from that Act’s waiver of the government’s sovereign immunity (the “Indian Lands Exception”), the Court found that San Felipe’s suit was barred by that immunity, leaving the Court with no jurisdiction over the Complaint. Again, the Court’s reasoning and its conclusions as set forth in that Order apply with equal force here, as will be explained in greater detail below.

San Felipe’s next attempt to submit a pleading that might avoid the force of the Indian Lands Exception to the QTA came on July 29, 2024, with its filing of a Motion for Leave to File First Amended Complaint (Doc. 78; the Proposed First Amended Complaint (“PFAC”) is Doc. 78-1). The United States opposed the motion, *see* Federal Defendants’ Opposition to the Pueblo of San Felipe’s Motion for Leave to File First Amended Complaint (Doc. 86), filed on November 1, 2024, as did Santa Ana, by Doc. 87, also filed on November 1, 2024. Both opposition memoranda showed that despite revised wording, the clear thrust of San Felipe’s claims was that *it* held title to the Former Overlap, not Santa Ana, and that federal actions that had recognized Santa Ana’s title were unlawful and should be reversed. That, both the United

States and the Pueblo argued, brought the PFAC squarely within the scope of the Indian Lands Exception to the QTA, and thus it was barred by the government's immunity from suit.

This Court agreed. In a brief Order entered on March 21, 2025 (Doc. 101), the Court ruled that San Felipe's PFAC was "at its core, a claim under the Quiet Title Act and its Indian Lands Exception, which together deprive the Court of subject-matter jurisdiction." *Id.* at 3. The Court further found that San Felipe's claim purportedly arising under the Fifth Amendment was also barred, "because the Quiet Title Act provides the exclusive remedy for land ownership disputes involving the federal government." *Id.* However, the Court ruled that although San Felipe could not file a claim challenging Santa Ana's title to the Former Overlap, it could file a claim challenging the Solicitor's directive to conduct a resurvey (*i.e.*, the 2013 Opinion). In a more extended Memorandum Opinion ruling on Plaintiff's Motion for Leave to File the PFAC, entered on November 24, 2025 (Doc. 120), the Court reiterated that ruling, saying that San Felipe could file an APA suit challenging the 2013 Opinion, as long as its challenge "does not rest on the assertion that Plaintiff owns the disputed land." *Id.* at 40.

Santa Ana had filed a Motion for Reconsideration (Doc. 105) of the portion of the Court's March 21, 2025 Order allowing San Felipe to challenge the 2013 Opinion, and in the Court's Order (Doc. 101) and Memorandum (Doc. 120), the Court indicated an intention to deny that motion. As noted above, however, at a status conference on December 4, 2025, the Court announced that it had changed its opinion on Santa Ana's motion, and now agreed that the 2013 Opinion was a final agency action, any challenge to which would have had to have been brought by June 6, 2019, four years before this action was filed. That ruling was confirmed in a brief Memorandum Opinion and Order that the Court entered on March 12, 2026 (Doc. 126), granting Santa Ana's Motion for Reconsideration, for the reasons stated at the December 4 status

conference, and confirming that San Felipe could pursue an APA claim challenging the implementation of the 2013 Opinion, but could not challenge the validity of the Opinion itself.

That brings us, finally, to the consideration of the FAC filed by San Felipe on April 1, 2026 (Doc. 127). Santa Ana submits that the Court's caution as to its original ruling that San Felipe could file a narrow APA suit, as long as its challenge "does not rest on the assertion that Plaintiff owns the disputed land," Doc. 120 at 40, should likewise apply here, but even a casual analysis of the FAC demonstrates beyond any doubt that it continues to be a claim that San Felipe, not Santa Ana, has title to the Former Overlap, and that federal actions purporting to recognize Santa Ana's title are wrong and unlawful, and must be reversed.

Paragraph 5 of the FAC lists the provisions of federal law under which, San Felipe alleges, this action arises. They include five constitutional provisions, a treaty, nineteen federal laws, and the Bureau of Land Management ("BLM") Manual of Surveying Instructions. None of the provisions listed, except for the Administrative Procedure Act, 5 U.S.C. §§ 701 et seq., waives the government's sovereign immunity from unconsented suit. The Quiet Title Act, of course, is not listed.

Paragraphs 17 through 30 purport to describe the history of the patent to San Felipe based on the 1858 congressional confirmation of the San Felipe Pueblo Grant. Act of December 22, 1858, c. 5 11 Stat. 374 (though these allegations fail to mention that that confirmation, and the patent issued pursuant to it, were subject to "valid adverse rights"). The heading before paragraphs 31 through 65 reads, "Santa Ana's Patented Lands Do Not Overlap the San Felipe 1864 Patent," and those paragraphs purport to show that Santa Ana has never had any ownership interest in the Former Overlap lands. Paragraphs 66 through 91 purport to show that San Felipe's ownership of the Former Overlap area (i.e., the lands included within the 1908 Hall

resurvey of the San Felipe Pueblo Grant) was repeatedly confirmed, and that Santa Ana took no steps to challenge that ownership. Paragraphs 92 through 104 refer to BIA administrative actions regarding the Former Overlap lands, then give a largely inaccurate account of litigation initiated by Santa Ana in 1981 (not 1985, as San Felipe claims in paragraph 100) against a successor in interest to San Felipe's claim to lands within the Former Overlap, in which this Court and the Court of Appeals for the Tenth Circuit held that Santa Ana's title to the Former Overlap was clearly valid, and San Felipe's claim was based on an "inept survey." *See Pueblo of Santa Ana v. Baca*, 844 F.2d 708, 712 (10th Cir. 1988) (though that language from the Tenth Circuit opinion is not quoted in San Felipe's pleading).

Paragraphs 105 through 138 recount various federal actions that led to the determination that Santa Ana's title to the Former Overlap is "superior" to San Felipe's claim, and to the resurvey that followed that determination, all of which actions San Felipe claims were unlawful and wrong. In particular, in paragraphs 116 through 129, San Felipe repeatedly and vigorously attacks the 2013 Opinion that determined that Santa Ana had "superior" title and ordered the resurvey, as being unlawful and erroneous.

Paragraphs 139 through 143 refer to the decision of the Interior Board of Land Appeals ("IBLA"), which affirmed the correctness of the resurvey, though there is no assertion that there was any error in that decision, or any injury to San Felipe arising therefrom. Paragraphs 144 and 145 refer to BLM's filing of the plat of the resurvey, pursuant to the IBLA decision, alleging that that act was unlawful. Paragraphs 146 through 151 describe injuries that San Felipe alleges it has suffered by these federal actions (though the IBLA decision is not referenced).

San Felipe's single Claim for Relief, contained in paragraphs 152 through 183, amounts to a rambling attack on the resurvey, contending it was done contrary to legal authority, that

Santa Ana is barred from claiming any title to the former Overlap, and that the federal defendants acted without legal authority in purportedly reducing the size of San Felipe's Grant. The prayer for relief seeks a declaration that the survey was time-barred and illegal, and an order requiring defendants to restore the boundary of the San Felipe Grant as it was before the resurvey, essentially restoring San Felipe's claim that it, not Santa Ana, owns the Former Overlap.

San Felipe attempts to avoid conflict with the Indian Lands Exception to the QTA by focusing on the change in its boundary, but the change in the boundary was done in recognition of the determination that to the extent that boundary had included the Former Overlap, it included lands in which "San Felipe never had a compensable interest." 2013 Opinion at 5. It is thus impossible to read any portion of this 44-page FAC (most of which Santa Ana would deny were it necessary to file an answer) and not see that San Felipe continues to claim that it is the rightful owner of the Former Overlap, that there is no basis for Santa Ana's claim of ownership, and that the federal actions that removed any evidence of San Felipe's claim to the area are unconstitutional, unlawful and erroneous. Those assertions, just as in the original Complaint (Doc. 1) and the PFAC (Doc. 78-1), make out an unmistakable dispute over ownership of Indian lands, lands in which the United States has an undisputed interest. And federal court jurisdiction over such a dispute is barred by the Indian Lands Exception to the QTA. For all of the reasons set forth in the Court's Order dismissing the original Complaint, Doc. 55, and in its Order and Memorandum Opinion denying the Motion for Leave to File Amended Complaint, Docs. 101 and 120, this FAC should be dismissed.

II. THE FIRST AMENDED COMPLAINT SHOULD BE DISMISSED ON THE GROUND THAT IT FAILS TO STATE A PROPER APA CLAIM ON WHICH RELIEF CAN BE GRANTED.

A party seeking review under 5 U.S.C. § 702 (the portion of the APA providing for judicial review) must show “that he has ‘suffered legal wrong’ because of the challenged agency action, or is ‘adversely affected or aggrieved’ by that action.” *Lujan v. National Wildlife Federation*, 497 U.S. 871, 883 (1990) (quoting 5 U.S.C. § 702). And, of course, any such claim must be brought within six years of the final agency action being challenged. *See, e.g., Wild Horse Observers Assoc. v. Jewell*, 550 F. App’x 638 (10th Cir. 2013) (unpublished). In the Memorandum Opinion and Order entered herein on March 12, 2026 (Doc. 126), the Court specifically ruled that while San Felipe could pursue an APA claim “challenging the implementation of the Tompkins Opinion—whether the BLM properly conducts the resurvey in compliance with the Tompkins Opinion,” it may *not* pursue an APA claim “challenging the Tompkins Opinion itself.” *Id.* at 2. In its oral remarks at the status conference on December 4, 2025, which were specifically referenced in the March 21 Memorandum Opinion and Order, at 2, the Court stated,

I agree with Santa Ana Pueblo’s position that San Felipe Pueblo may challenge only whether the BLM properly conducts the survey, not the Tompkins opinion, because the six-year statute of limitations bars any direct challenge to the Tompkins opinion.

Dec. 4, 2026, Trans. at 6. Santa Ana submits that in addition to limiting San Felipe to an attack on the determination that the BLM resurvey complied with the directive in the Tompkins Opinion (meaning, in effect, an attack on the IBLA decision that affirmed the correctness of the resurvey), San Felipe should also be precluded, as the Court stated in its Memorandum Opinion ruling on Plaintiff’s Motion for Leave to File the PFAC, entered on November 24, 2025 (Doc. 120), from making any “assertion that Plaintiff owns the disputed land,” *Id.* at 40, as that would

plainly bring its action right back within the scope of the QTA.

In light of the requirement that an APA plaintiff show that it has been adversely affected by a final agency action, and the Court’s ruling that the only agency action subject to attack by San Felipe is the IBLA decision which held that BLM had properly conducted the resurvey in accordance with the Tompkins Opinion, it is apparent that the FAC filed by San Felipe does not contain a proper claim for relief under the APA.

It is important to be clear about what the IBLA decided. The decision, *Pueblo of San Felipe*, 190 IBLA 17 (April 5, 2017), which is in the record at Doc. 49-7, p. 54, starts out by stating firmly that “[t]he *only* question before the Board . . . concerns whether BLM properly performed the resurvey.” 190 IBLA at 19 (emphasis added). In its appeal to the IBLA, San Felipe had argued primarily that the Secretary had no authority to order a resurvey of its lands, an issue that, the Board noted, had already been decided (against San Felipe’s position) “with finality by the Solicitor” (referring to the 2000 opinion by Solicitor John Leshy, Doc. 49-65, Bates No. 0792). *Id.* San Felipe also argued that the resurvey wrongly gave Santa Ana title to the Former Overlap lands, a claim that the Board rejected since the resurvey itself was not a determination of title. *Id.* The Board noted that San Felipe “expressly eschews any arguments regarding BLM’s ‘technical conformance’ with the BLM Survey Manual.” 190 IBLA at 29; *and see id.* at 33 (“the *Pueblo of San Felipe* is not arguing that Olver [who conducted the resurvey] failed, in undertaking the mechanics of surveying, to conform to applicable survey law and Survey Manual policy guidance” (emphasis added)). The Board further noted that in criticizing the resurvey, San Felipe “offers no contrary professional opinion or supporting evidence.” *Id.* at 36.

The Board concluded its decision with the determination that San Felipe “has not carried

its burden to demonstrate that BLM violated applicable Board precedent, Federal survey law, or policy prescriptions of the 2009 Survey Manual.” *Id.* at 39. It therefore affirmed the State Director’s decision rejecting San Felipe’s protest of the resurvey.

As was noted *supra*, at 7-9, San Felipe’s FAC is filled with assertions bearing on San Felipe’s claim that it, and it alone, owns the Former Overlap, and that federal actions purporting to divest it of its ownership (by changing the boundary of the San Felipe Pueblo Grant) are unlawful. The agency action that it purports to be challenging, the decision of the IBLA, is barely mentioned.¹ Paragraphs 139 through 143 describe the appeal to the IBLA and its decision, but do not assert that San Felipe suffered any “legal wrong” from that decision, or even that the decision was wrong or unlawful. Paragraphs 146 through 151, labeled “Defendants’ Actions Harmed San Felipe,” do not mention the IBLA or its decision at all. Neither does the Claim for Relief, paragraphs 152 through 183, a lengthy, rambling attack on numerous federal actions and claims by Santa Ana, mention the IBLA or its decision. Only in paragraph 2 of the Prayer for Relief, which is technically not a part of the pleading, *see Coll v. First Amer. Title Ins. Co.*, 642 F. 3d 876, 901 (10th Cir. 2011) (*citing Daniels v. Thomas*, 225 F. 2d 795, 797 & n. 5 (10th Cir. 1955)), does San Felipe ask to have the IBLA decision set aside.

What San Felipe’s FAC does claim, vociferously, that it has suffered from, however, is the Tompkins Opinion, the very document that the Court specifically ordered that San Felipe could *not* challenge in an amended complaint. Memorandum Opinion and Order (Doc. 126) at 2.

¹APA cases typically name only the United States, or a cabinet-level department, as the defendant, but San Felipe named seven Interior Department officials as individual defendants, a practice that has been criticized, *see, e.g., Susinka v. Trujillo*, No. 21-CV-01837, 2021 WL 11704594, at *7 (D. Colo. Dec. 6, 2021), *report and recommendation adopted*, No. 21-CV-01837, 2022 WL 20595047 (D. Colo. Jan. 7, 2022), and it also names the Department itself. But oddly, it does not name the IBLA, or any of its officials.

Paragraphs 116 through 129 of the FAC attack virtually every sentence of that opinion, alleging that its statements and conclusions are “incorrect” or “erroneous” in multiple respects, that they “disregard” legal authority and the historical record, that the Opinion violates San Felipe’s rights, and that in numerous other ways it is wrong and unlawful.

In short, as to the one final agency action that occurred within six years of San Felipe’s suit, the IBLA decision, San Felipe makes no claim that it suffered any “legal wrong” or is “adversely affected or aggrieved” by that action. Santa Ana thus submits that San Felipe has failed to plead a valid APA claim upon which any relief can be granted. It has shown no injury by virtue of the IBLA’s decision that the resurvey complied with the requirements of the Tompkins Opinion. Its focus, instead, on the 2013 Tompkins Opinion, as the source of its alleged injury, is forbidden by the Court’s March 12, 2026, Memorandum Opinion and Order.

CONCLUSION

For all of the foregoing reasons, Intervenor-Defendant Pueblo of Santa Ana urges that the First Amended Complaint, Doc. 127, should be dismissed. Santa Ana further urges that, having failed, in three attempts, to produce a pleading that is not barred under the QTA and that states a proper APA claim, Plaintiff San Felipe should not be allowed any further attempts.

The undersigned contacted counsel for Plaintiff to inquire if Plaintiff opposed this motion, and Plaintiff’s counsel indicated that she would not agree to the dismissal of the First Amended Complaint.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of May, 2026, I caused the foregoing *Motion to Dismiss Plaintiff's First Amended Complaint* to be filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all ECF registrants in this case.

/s/ Richard W. Hughes