

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

PUEBLO OF SAN FELIPE, a federally)
recognized Indian tribe,)

Plaintiff,)

v.)

DOUGLAS BURGUM, Secretary of the)
United States Department of the)
Interior, *et al.*,)

Defendants.)

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

**FEDERAL DEFENDANTS' MOTION TO DISMISS
AMENDED COMPLAINT (DKT. NO. 127) AND MEMORANDUM IN SUPPORT**

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MOTION

Federal Defendants move to dismiss the First Amended Complaint (Dkt No. 127) under Federal Rules of Civil Procedure 41(b) and 12(b)(1). The grounds for this motion are set forth below. Plaintiff Pueblo of San Felipe opposes the Motion.

INTRODUCTION

The First Amended Complaint is Plaintiff Pueblo of San Felipe's third attempt to plead a claim against Federal Defendants within the Court's jurisdiction. The Court dismissed San Felipe's original Complaint because—though pled as claims for declaratory relief, breach of trust, and under the Administrative Procedure Act—San Felipe sought to quiet title to Indian lands. The Quiet Title Act therefore preserved the United States' immunity from suit. San Felipe tried again in seeking leave to amend the Complaint. There too—and despite again attempting to plead claims for declaratory relief, breach of trust, and under the Administrative Procedure Act—the Court largely rejected the effort. The Court again concluded the heart of San Felipe's suit was one to quiet title to Indian lands and that the Court therefore lacked jurisdiction. The Court granted San Felipe leave only to file a very narrow claim under the Administrative Procedure Act.

The amended complaint San Felipe filed, however, does not comply with the Court's orders granting leave and instead still seeks to quiet title. Though the now-operative complaint is restyled to present a single claim, it carries over San Felipe's same grievance (and many of the same requests for relief) that the Court rejected in addressing San Felipe's motion for leave to amend. The failure to comply with the Court's leave orders is reason alone to dismiss. Further, San Felipe's grievance (and many of its requests for relief) in the First Amended Complaint is the same

as that in the original Complaint the Court dismissed for lack of jurisdiction. The First Amended Complaint should similarly be dismissed.

FACTUAL BACKGROUND

I. The Former Overlap Area & Corrective Resurvey.

“The underlying facts of this case revolve around a disputed parcel of land between the Pueblo of San Felipe and the Pueblo of Santa Ana’s lands in New Mexico, between Albuquerque and Santa Fe along the Interstate 25 (‘I-25’) corridor.” Order 2, Dkt. No. 55 (“Dismissal Order”). “The heart of the dispute is which tribe owns the land.” *Id.*

Further background can be found in the memorandum supporting Federal Defendants’ motion to dismiss the original complaint. *See* Fed. Defs.’ Mot. to Dismiss and Mem. in Support 4–6, Dkt. No. 29. But in short, conflicting historical government surveys created an overlapping boundary between lands claimed by the two Pueblos since Spain ruled what is now New Mexico. We will refer to the land as the Former Overlap Area.

In 2013, the then-Solicitor of the Department of the Interior issued a legal opinion (Tompkins Opinion) “determin[ing] that . . . the Interior Department needs to exercise the authority . . . to correct Santa Ana’s patent’s survey.” Dismissal Order at 7. Interior then “conducted a corrected resurvey of the disputed area (‘Corrective Resurvey’), decided in Santa Ana’s favor the disputed area, and published notice of its intent to file[] the Corrective Resurvey.” Dismissal Order at 7. Interior recognized that Santa Ana holds title in restricted fee status to most of the approximately 695 acres of land where the two boundaries formerly overlapped.

San Felipe protested the notice of intent to file the plat for the corrective resurvey and, after that protest was dismissed, administratively appealed the dismissal to the Interior Board of Land

Appeals. Dismissal Order at 7; *see Pueblo of San Felipe*, 190 IBLA 17 (2017). The issue before the Board was limited to whether “BLM surveyors failed to adhere to the surveying requirements of the 2009 Survey Manual, or otherwise failed to accurately retrace and reestablish the lines of the original survey of the common boundary.” *Id.* at 19. The issues of “whether BLM ha[d] the authority to undertake the resurvey” or “whether [San Felipe] or [Santa Ana] holds title to the disputed lands affected by the resurvey” were not before the Board. *Id.*

On April 5, 2017, the Board concluded that San Felipe “ha[d] 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. The Board affirmed the denial of San Felipe’s protest to the plat filing. *Id.* “In 2018, the Interior Department formally filed the plats based on the Corrective Resurvey.” Dismissal Order at 7.

II. San Felipe’s Original Complaint.

San Felipe filed suit against the Secretary of the Interior and other Interior officials in April 2023. *See* Compl., Dkt. No. 1. The Complaint brought five claims for relief—two ostensibly brought under the Administrative Procedure Act (APA) (*id.* ¶¶ 197–227); two styled as claims for declaratory relief (*id.* ¶¶ 218–227); and one pled as a claim for breach of trust (*id.* ¶¶ 228–239). The Complaint sought various forms of declaratory and injunctive relief. *See id.* Prayer for Relief ¶¶ a–i. The latter included requests to “set[] aside” the Tompkins Opinion, Board decision, plat filing, and any land status alteration in agency records, and “to make all necessary and appropriate restoration to” agency records and boundary monument markings. *Id.* Prayer for Relief ¶¶ d, e.

The Court dismissed the Complaint for lack of jurisdiction. Dismissal Order 39. “The Court conclude[d] that, although not styled as an action to quiet title, San Felipe’s claims all

necessitate adjudicating its underlying assertion that it owns what are indisputably Indian Lands.” *Id.* at 2; *see also id.* at 21 (“San Felipe’s claim is at heart a quiet title action, although it, in the first instance challenges the Defendants’ Resurvey Actions.”). In reaching that conclusion, the Court specifically called out paragraphs 210, 217, 224, 227, and 239 of San Felipe’s Complaint. *See id.* at 22. They demonstrated that “San Felipe seeks ownership of the Conflict Area.” *Id.* And “San Felipe’s dispute with the Defendants is one over title, ownership, and rights to possession in land.” *Id.* “San Felipe’s complaints against the boundary’s resurveying all ultimately are complaints about ownership and property rights flowing therefrom—a quiet title action.” *Id.* at 24. As a result, “the [Quiet Title Act]’s Indian lands exception retracts the [Quiet Title Act]’s waiver otherwise of federal sovereign immunity, thereby eliminating the Court’s jurisdiction to hear San Felipe’s suit.” Dismissal Order 2.

III. San Felipe’s Motion for Leave to Amend.

San Felipe then moved for leave to amend its complaint. Dkt. No. 78. This time, the proposed amended complaint included ten claims. *See* Proposed Am. Compl. ¶¶ 164–276, Dkt. No. 78-1. Of the nine, five were styled as claims for declaratory relief (*id.* ¶¶ 164–229); three were ostensibly brought under the APA (*id.* ¶¶ 230–241, 268–276); and two alleged breaches of trust (*id.* ¶¶ 242–267). “San Felipe assert[ed] that the Interior Department boundary resurvey exceeds the Interior Department’s authority under the *ultra vires* doctrine, violates the [APA], and constitutes an unlawful taking in violation of the Fifth Amendment.” Order 2–3, Dkt. No. 101 (“Leave Order”).

The Court viewed the APA claims as challenging “the Interior Department’s land boundary resurvey actions, including filing the resurvey, the 2017 change to the disputed land’s record

ownership, the 2018 disbursement of tribal trust funds, and other ‘ongoing actions of the Defendants to deny San Felipe access to the lands and waters within the Conflict Area.” Leave Order 6 (quoting proposed amended complaint at ¶ 237).

After briefing and a hearing, the Court granted San Felipe’s motion, but only in part. The Court concluded that San Felipe “can amend the Complaint to include only a claim under the Administrative Procedure[] Act, 5 U.S.C. § 702, challenging the Solicitor of the Department of the Interior’s directive to conduct a land boundary resurvey.” Leave Order 10. The Court otherwise rejected the proposed amended complaint. *See id.*

On a motion for reconsideration by Santa Ana, however, the Court further narrowed that for which it was granting leave. *See* Memo. Op. & Order, Dkt. No. 126 (“Reconsidered Order”). The Court concluded that “San Felipe Pueblo may pursue APA claims challenging the implementation of the Tompkins Opinion—whether the BLM properly conduct[ed] the land resurvey in compliance with the Tompkins Opinion.” *Id.* at 2. But “San Felipe Pueblo may not pursue APA claims challenging the validity of the Tompkins Opinion itself.” *Id.*

In the process of granting leave, the Court recognized that the final agency action for purposes of any available challenge under the APA was the April 2017 Board decision upholding the denial of San Felipe’s protest to the filing of a plat based upon the corrective resurvey. *See* Leave Order 10.

Thus, the upshot of the Court’s two orders on the motion for leave was that San Felipe could bring an APA claim challenging the Board decision, but that such a claim would need to be limited to “whether the BLM properly conduct[ed] the land resurvey in compliance with the Tompkins Opinion.” Reconsidered Order at 2. The remaining claims in San Felipe’s proposed

amended complaint were either time-barred (Reconsidered Order 2), or claims over which the Court lacked jurisdiction because they sought to adjudicate a title claim for which the United States was immune from suit (Leave Order 2–8). The Court granted San Felipe twenty-one days after issuance of an opinion on the motion for reconsideration to file the amended complaint. *See* Tr. 13:11–14:2 (Dec. 4, 2025). The Court issued its opinion on the motion for reconsideration on March 12, 2026. *See* Dkt. No. 126. Thus, San Felipe’s amended complaint setting forth the APA claim the Court had granted it leave to file was due no later than April 2, 2026.

IV. San Felipe’s First Amended Complaint.

San Felipe filed its First Amended Complaint on April 1, 2026. *See* Dkt. No. 127. The Amended Complaint includes a single claim, styled as one for “Declaratory, Mandamus, and Injunctive Relief.” First Am. Compl. ¶¶ 152–183 (“FAC”). In short, the claim alleges Interior lacked authority to conduct the corrective resurvey because it altered the supposed patented boundaries of San Felipe’s lands. Like San Felipe’s original Complaint, the Amended Complaint seeks injunctive relief requiring Interior to: “refile previous surveys and plats or resurveying”; “restore the survey boundary monuments”; and “restore agency records.” *Id.* ¶¶ 182, 183; *see id.* Prayer for Relief ¶¶ 2, 3. The First Amended Complaint’s claim and requests for relief are described in more detail below.

ARGUMENT

The First Amended Complaint should be dismissed. San Felipe did not file the limited APA claim that the Court granted it leave to file. Instead, San Felipe has again filed a complaint that at its heart seeks to quiet title in the Former Overlap Area.

I. The First Amended Complaint Should Be Dismissed Because It Does Not Comply with the Court’s Order Granting Leave to Amend.

The First Amended Complaint should be dismissed because it does not comply with the Court’s orders granting San Felipe leave to amend. San Felipe proposed a wide-ranging amended complaint, but the Court rejected that proposal on futility grounds except for one, narrow APA claim. San Felipe had until April 2, 2026, to file an amended complaint presenting that claim. But the First Amended Complaint San Felipe filed does not do so.

Federal Rule of Civil Procedure 41(b) authorizes courts to dismiss claims “[i]f the plaintiff fails . . . to comply with these rules or a court order[.]” Fed. R. Civ. P. 41(b); *see Manygoat v. Jacobs*, 347 F. Supp. 3d 705, 706–07 (D.N.M. 2018). Rule 41(b)’s requirement that the dismissal be treated “as an adjudication on the merits” does not apply when the dismissal is “one for lack of jurisdiction.” Fed. R. Civ. P. 41(b). Here, the Court’s orders allowing leave to amend addressed jurisdictional questions. San Felipe’s failure to abide by those orders also implicates questions of jurisdiction. Any Rule 41(b) dismissal, therefore, would be without prejudice. When a Rule 41(b) dismissal is without prejudice, “a district court may, without abusing its discretion, enter such an order without attention to any particular procedures.” *Nasious v. Two Unknown B.I.C.E. Agents*, 492 F.3d 1158, 1162 (10th Cir. 2007).

In moving for leave to amend, San Felipe proposed a wide-ranging complaint. The proposed amendment presented ten claims for relief. Proposed Am. Compl. ¶¶ 164–276. Though labelled variously as claims for declaratory relief, claims under the APA, or claims for breach of trust, each claim included a request for declaratory relief. *See id.* ¶¶ 175, 187, 194, 199, 200, 205, 235, 240, 241, 257, 258, 265–67, 273–76. The proposed claims purportedly pled under the APA

were the sixth, seventh, and tenth. *See id.* ¶¶ 230–241, 268–276. For present purposes, we will focus on the APA claims.

In addition to declaratory relief, the proposed APA claims sought injunctive relief. San Felipe’s proposed sixth claim sought an order requiring boundary restoration, the refiling of previous survey plats, restoration of survey boundary monuments, and prohibiting actions taken pursuant to the Tompkins Opinion. *See id.* ¶ 235. The proposed seventh claim similarly requested injunctive relief requiring recognition of San Felipe’s view of the boundary, reversion of the Department of the Interior’s records, and refiling previous survey plats and restoring boundary monuments. *See id.* ¶ 241. And the proposed tenth claim sought injunctive relief requiring Interior, among other things, to revert its land status records. *Id.* ¶ 275.

The proposed amended complaint’s Prayer for Relief echoed these requests. *See* Proposed Am. Compl. Prayer for Relief ¶¶ 1–6. The proposed amendment sought an order “setting aside” the Tompkins Opinion, Board decision, filing of the corrective resurvey, and any alteration of Interior records “purporting to alter the boundaries of the 1864 Patent or title to any restricted fee lands located therein.” *Id.* Prayer for Relief ¶ 2. The proposed amendment then requested that the Court order Interior to restore survey monuments and agency records as they were before the resurvey. *See id.* Prayer for Relief ¶ 3(a)–(c), (g). And the proposed amended complaint sought an injunction prohibiting Interior from altering boundaries or interfering with San Felipe access and use of the Former Overlap Area. *See id.* Prayer for Relief ¶ 4.

The Court denied San Felipe leave to file its proposed amended complaint. *See* Leave Order 10. Though the Board decision represented a final agency action (Leave Order 10), the Court concluded that San Felipe’s proposal, like the Complaint that the Court had already

dismissed, required the Court to adjudicate the title dispute between San Felipe and the United States, for which the Court lacked jurisdiction. Leave Order 5, 8. Instead, the Court granted San Felipe leave to file only a very specific APA challenge to the Board decision: “whether the BLM properly conduct[ed] the land resurvey in compliance with the Tompkins Opinion.” Reconsidered Order at 2.

The First Amended Complaint San Felipe filed does not include a claim alleging that Interior violated the APA because BLM acted contrary to the Tompkins Opinion. The First Amended Complaint sets forth the necessary legal allegations that Interior has acted arbitrarily and contrary to law. FAC ¶¶ 179–181. But not one of the sole claim’s thirty-one paragraphs alleges a BLM failure to comply with the Tompkins Opinion. *See* FAC ¶¶ 152–183. The claim only mentions the Tompkins Opinion two times. *See* FAC ¶¶ 154, 159. Instead, the First Amended Complaint re-asserts San Felipe’s prior allegations that Interior has no authority to alter the boundaries of lands patented to San Felipe (*id.* ¶¶ 154–156, 159–161, 167–170, 172–176), and that Interior’s resurvey diminished San Felipe’s lands and interfered with San Felipe’s jurisdictional rights (*id.* ¶¶ 157–158, 162–166, 169, 171). Those allegations are among the primary reasons the Court denied most of San Felipe’s proposed amended complaint. *See* Leave Order 5 (“San Felipe also seeks a declaratory judgment that the Interior Department’s land boundary resurvey unlawfully alters San Felipe’s rightful ownership to the disputed land pursuant to an 1864 Patent.”); *id.* at 6 (“San Felipe asserts an APA challenge to the Interior Department’s land boundary resurvey actions, including filing the resurvey, [and] the 2017 change to the disputed land’s record ownership . . .”).

A comparison of San Felipe’s proposed and filed amended complaints reveals that San Felipe attempts in its First Amended Complaint to plead around the Court’s orders granting San Felipe leave to amend. The First Amended Complaint’s sole claim seeks relief mirroring that sought in San Felipe’s proposed APA claims that the Court previously dismissed as futile. *Compare* Proposed Am. Compl. ¶¶ 235, 240, 241, 275 *with* FAC ¶¶ 182, 183. The same is true with the prayers for relief. *Compare* Proposed Am. Compl. Prayer for Relief ¶¶ 2–4 *with* FAC Prayer for Relief ¶¶ 2–4. Indeed, the First Amended Complaint even includes requests for injunctive relief and mandamus that San Felipe had proposed as part of its breach of trust claims, which the Court did not grant San Felipe leave to file. *Compare* Proposed Am. Compl. ¶ 258 *with* FAC ¶ 183. To assist the Court, we have created a chart comparing the requests for relief in San Felipe’s proposed APA claims that the Court previously rejected (proposed counts six, seven, and ten) with the requests for relief in the First Amended Complaint. *See* Ex. 1 to Decl. of Kristofor R. Swanson (“Swanson Decl.”).

Because San Felipe “fail[ed]” “to comply with . . . court order[s],” dismissal of the First Amended Complaint is appropriate under Rule 41(b). *See, e.g., O’Kane v. Mead Johnson Nutrition Co.*, 804 Fed. Appx. 988, 990 (10th Cir. 2020) (upholding dismissal for failure to comply with the court’s order directing plaintiff to replead complaint). The Court gave San Felipe until April 2 to file an amended complaint stating an APA claim that challenged “whether the BLM properly conduct[ed] the land resurvey in compliance with the Tompkins Opinion.” Reconsidered Order at 2; Tr. 13:11–14:2 (Dec. 4, 2025). San Felipe did not meet that deadline.

II. The First Amended Complaint Seeks to Quiet Title in the Former Overlap Area and the Quiet Title Act Therefore Preserves the United States' Immunity from Suit.

Setting aside Rule 41(b), San Felipe's First Amended Complaint would require dismissal because it still seeks to quiet title in Indian lands. As the Court has already recognized, the United States is immune from such suits.

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” and “strictly construed, in terms of its scope, in favor of the sovereign.” *Dep't of the Army v. Blue Fox, Inc.*, 525 U.S. 255, 261 (1999); *United States v. Nordic Vill., Inc.*, 503 U.S. 30, 34 (1992). “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. Ltd. 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 Court, as a federal district court, is a court of limited jurisdiction and cannot accept jurisdiction where it has none.”). The defense of sovereign immunity is properly raised in Rule 12(b)(1) motion for lack of jurisdiction. *See Normandy Apartments, Ltd. v. U.S. Dep't of Housing & Urban Dev.*, 554 F.3d 1290, 1295 (10th Cir. 2009) (“The defense of sovereign immunity is jurisdictional in nature, depriving courts of subject-matter jurisdiction where applicable.”).

The First Amended Complaint asserts jurisdiction under 28 U.S.C. §§ 1331, 1361, and 1362. FAC ¶ 4. But those provisions are not waivers of sovereign immunity. *See Merida Delgado v. Gonzalez*, 428 F.3d 916, 919 (10th Cir. 2005) (§ 1331); *Longsdale v. United States*, 919 F.2d 1440, 1443–44 (10th Cir. 1990) (§§ 1331, 1361); *Paiute-Shoshone Indians of Bishop Community v. City of Los Angeles*, 637 F.3d 993, 999–1000 (9th Cir. 2011) (§ 1362).

The First Amended Complaint also references the APA. *See* FAC ¶¶ 4, 179–81. Though the First Amended Complaint never cites it, the APA contains a waiver of sovereign immunity in 5 U.S.C. § 702. But that waiver is unavailable if “any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought.” 5 U.S.C. § 702; *see also* Dismissal Order at 14 (recognizing that the APA “conditions its waiver of immunity on the proposition that no other statute removes immunity as to the plaintiff’s suit.”).

The relevant “other statute” for present purposes is the Quiet Title Act. 28 U.S.C. § 2409a(a). “Congress intended the [Quiet Title Act] to provide the *exclusive means* by which adverse claimants could challenge the United States’ title to real property.” *Block v. North Dakota*, 461 U.S. 273, 286 (1983) (emphasis added); *see United States v. Mottaz*, 476 U.S. 834, 874–48 (1986). Where implicated, the Quiet Title Act “expressly ‘forbids the relief’” sought under the APA. *Block*, 461 U.S. at 286 n.22; *see also True Oil, LLC v. Bureau of Land Mgmt.*, 154 F.4th 1236, 1238 (10th Cir. 2025) (“[I]f a claim falls within the purview of the QTA, then courts lack jurisdiction to hear it under another statute.” (citing *Block*, 461 U.S. at 286)).

Whether the Quiet Title Act is implicated depends on the nature of the claim. The Act applies to all “suit[s] by a plaintiff asserting a ‘right, title, or interest’ in real property that conflicts with a ‘right, title, or interest’ the United States claims.” *Match-E-Be-Nash-She-Wish Band of Pottawatomis Indians v. Patchak*, 567 U.S. 209, 215 (2012). Where the plaintiff himself “assert[s] a claim to property antagonistic to the Federal Government’s,” the case is one to quiet title and therefore may only be pursued under the Quiet Title Act. *Id.* at 219–20.

The Quiet Title Act, however, explicitly limits its waiver of sovereign immunity by providing that “[t]his section does not apply to trust or restricted Indian lands.” 28 U.S.C.

§ 2409a(a). In other words, Congress expressly *maintained* the United States’ immunity from suits in which the claimant is himself seeking title to Indian lands. *See* Dismissal Order at 15 (“The [Quiet Title Act] broadly waives the United States’ sovereign immunity to suit if a plaintiff seeks to quiet title in its favor federal land, unless at issue is Indian land, in which case immunity is retained.” (citing 28 U.S.C. § 2409a(a))).

Here, it is undisputed that the Former Overlap Area is Indian lands for purposes of the Quiet Title Act. Dismissal Order 15–16; *see also* Letter from San Felipe Gov. Troncosa to T. Vollman, Interior at 1-2, 24-27 (Jan. 7, 2001) (arguing that “the Indian lands exception to the Quiet Title Act . . . foreclosed title challenges to ‘restricted Indian lands,’ including the Former Overlap Area.), Dkt. No. 29-3. Thus, as was the case with the original Complaint, “the question for the Court is whether San Felipe’s claim is best characterized as a claim to quiet title in its favor in the [Former Overlap Area] or whether San Felipe’s claim challenges the Resurvey Actions merely as administrative actions.” Dismissal Order 15. If the former, the APA’s waiver of sovereign immunity does not apply and the Quiet Title Act works to maintain the United States immunity from suit.

As this Court has already recognized in this case, “*Block* and *Mottaz* stand for the essential proposition that artful pleading does not exempt from the [Quiet Title Act] any lawsuit that, at heart, seeks land from the federal government.” Dismissal Order 18 (citing *Block*, 461 U.S. at 285). “[T]he analysis looks beyond a plaintiff’s stylization of his claim; indeed, it looks not even alone to the kind of relief the plaintiff seeks—but, seemingly at the most basic level—to the substance of his or her grievances.” Dismissal Order 20; *see also High Lonesome Ranch, LLC v. Bd. Of Cnty. Commisioners for Cnty. of Garfield*, 61 F.4th 1225, 1238 (10th Cir. 2023) (even

where a plaintiff “didn’t specify that its [claims] were QTA claims, we focus on the relief requested, rather than on the party’s characterization of the claim.” (cleaned up)).

An analysis of the First Amended Complaint makes clear that San Felipe’s central grievance—and that for which it seeks judicial intervention—remains one seeking to quiet title in Indians lands. The First Amended Complaint posits that “[t]he actions of the Defendants purporting to alter the boundaries of the 1864 Patent are null and void *ab initio*.” FAC ¶ 155. It submits that Defendants have “obliterate[d] survey monuments removed from the southern and portions of the western boundary of the 1864 San Felipe Patent” (FAC ¶ 183) and that “[t]he attempted alteration of San Felipe’s Patent boundary was an arbitrary and capricious *ultra vires* action.” FAC ¶ 156. And the First Amended Complaint alleges that the corrective resurvey “reduce[d]” and “diminish[ed] the boundaries of San Felipe’s original pueblo land grant.” FAC ¶ 169; *see also* FAC ¶ 171.

The First Amended Complaint goes on to allege that “land within the boundaries of San Felipe Pueblo includes land within the [Former Overlap] Area,” FAC ¶ 165, and declares that the corrective resurvey and actions relying thereon are “void,” FAC ¶¶ 176, 177, 178. Judicial declarations to that end would establish title in San Felipe rather than Santa Ana. Much of the First Amended Complaint’s requested relief would do the same. The First Amended Complaint requests: the corrective resurvey be set aside and previous surveys and boundary monuments be restored (*id.* ¶ 182); agency records “purport[ing] to alter the boundaries of the 1864 San Felipe Patent” be reverted to remove acknowledgement of the corrective resurvey (*id.* ¶ 183); “survey monuments removed from” the boundaries of the 1864 San Felipe patent be restored (*id.*); and Interior be enjoined from limiting, and the Court “protect,” San Felipe access to “waters within

the 1864 Patent original boundaries” (*id.*). Paragraph 183 ends with a request that the Court “take such actions as are necessary and appropriate to protect and defend and not to interfere with San Felipe’s sovereign jurisdiction over all lands within the original boundaries of the 1864 Patent.” *Id.* Indeed, much of the First Amended Complaint’s requested relief is the same as that sought in the original Complaint, which the Court dismissed. To assist the Court, we have prepared a chart comparing the key Complaint allegations the Court referenced in its Dismissal Order with allegations in the First Amended Complaint, as well as the prayers for relief in the two complaints. *See* Ex. 2 to Swanson Decl.

Though ostensibly pled as something else, San Felipe is seeking title to the Former Overlap Area, and its claim is therefore one to quiet title. *Patchak*, 567 U.S. at 219–20; *see also True Oil*, 154 F.4th at 1242–45 (concluding the Quiet Title Act applied because the United States held an interest in the property and title was in dispute). Thus, under binding precedent, San Felipe’s sole remedy rests in the Quiet Title Act. *Block*, 461 U.S. at 286. But because the land in question is Indian land, the Act preserve’s the United States immunity from suit. *See* 28 U.S.C. § 2409a(a)); Dismissal Order 15–16. The First Amended Complaint should be dismissed for lack of jurisdiction.

CONCLUSION

The First Amended Complaint should be dismissed. San Felipe failed to comply with the Court’s orders granting it leave to amend the complaint. Because San Felipe did not bring the claim the Court granted it leave to bring, the First Amended Complaint should be dismissed under Rule 41(b). Alternatively, the claim and prayer for relief in the First Amended Complaint (like the original one) still seek to quite title in San Felipe in the Former Overlap Area. San Felipe’s

suit can therefore only be one under the Quiet Title Act. And Congress, in that Act, preserved the United States' immunity from such suits where, like here, Indian lands are involved. The Court therefore lacks jurisdiction over the First Amended Complaint.

May 21, 2026

ADAM R.F. GUSTAFSON
Principal Deputy Assistant Attorney General

s/ Kristofor R. Swanson
KRISTOFOR R. SWANSON
(Colo. Bar No. 39378)
Assistant Chief
DEVON LEHMAN MCCUNE
Senior Attorney
Natural Resources Section
Environment & Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611
(202) 598-1937 (Swanson)
(303) 358-8981 (McCune)
kristofor.swanson@usdoj.gov
devon.mccune@usdoj.gov

Attorneys for Federal Defendants

CERTIFICATE OF SERVICE

I hereby certify that on May 21, 2026, I electronically filed the foregoing and its attachments with the Clerk of the Court using the CM/ECF System, which will send notification of such filing to the ECF registrants in this case.

/s/ Kristofor R. Swanson
KRISTOFOR R. SWANSON