

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

PUEBLO OF SAN FELIPE, a federally
recognized Indian tribe,

Plaintiff,

v.

DOUGLAS BURGUM, Secretary of the
Interior, *et al.*,

Defendants,

PUEBLO OF SANTA ANA,

Intervenor-Defendant.

No. 1:23-cv-296-JB-LF

**PLAINTIFF PUEBLO OF SAN FELIPE'S RESPONSE IN OPPOSITION TO FEDERAL
DEFENDANTS' AND DEFENDANT INTERVENOR'S MOTIONS TO DISMISS THE
FIRST AMENDED COMPLAINT (ECF 127)**

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Plaintiff Pueblo of San Felipe (“San Felipe”) respectfully files this Response Brief to Federal Defendant’s and Defendant-Intervenor’s Motions to Dismiss Plaintiff’s the First Amended Complaint.

I. INTRODUCTION.

This litigation has never been a quiet title action. San Felipe filed suit to challenge the BLM's execution of a corrective resurvey, the IBLA's affirmance of that resurvey, and the BIA's subsequent alteration of agency records—actions taken without statutory authority and in violation of governing law. The defendants' own documents confirm that San Felipe's challenge is not about title: both the Tompkins Opinion and the IBLA decision define the authorized resurvey as a resurvey of the original southern boundary of the San Felipe Patent—not, as BIA and BLM actually executed it, a resurvey of the northern boundary of the alleged El Ranchito purchases substituted in place of San Felipe's established patent boundary. That unauthorized substitution is what the FAC challenges, and it is an APA claim—not a quiet title action.

A. Federal Defendants’ Motion to Dismiss

Federal Defendants' Motion to Dismiss advances two independent arguments: first, that the First Amended Complaint ("FAC") should be dismissed under Federal Rule of Civil Procedure 41(b) for failure to comply with the Court's leave orders; and second, that the FAC is jurisdictionally barred as a de facto quiet title action. Both arguments fail.

The Rule 41(b) argument rests on a fundamental misreading of the Court's orders and an impermissibly narrow construction of the APA claim the Court authorized San Felipe to pursue. The Court granted San Felipe leave to file an APA claim challenging "the implementation of the Tompkins Opinion—whether the BLM properly conducts the resurvey in compliance with the Tompkins Opinion." Memorandum Opinion and Order at 2 (ECF 126) ("Reconsidered Order").

The FAC does exactly that, it challenges the resurvey BLM conducted pursuant to the Tompkins Opinion as arbitrary, capricious, and in excess of statutory authority, invoking the same statutory limitations the Opinion itself cited as the outer boundaries of BLM's resurvey power. ECF. 127-5 at 2; FAC ¶ 117.

The 12(b)(6) motion repeats the same mischaracterization the Court has already engaged twice: that San Felipe's claims are "at heart" a quiet title action. Fed. Def. Brief in Support of Motion to Dismiss ("FD MTD"), ECF. 133 at 8. But the FAC, read carefully and as a whole, does not ask this Court to adjudicate who owns title to the lands in the Conflict Area. It asks the Court to determine whether federal officials had lawful authority under applicable laws and regulations to permanently obliterate the existing boundary monuments marking the southern and western limits of San Felipe's congressionally confirmed Patent and substitute in their place a resurvey of the El Ranchito Grant. FAC ¶¶ 156–161; ECF 127-6; ECF 127-7. The FAC alleges that Federal Defendant official's actions did not conduct a corrective resurvey "to correct the 1909 General Land Office (GLO) resurvey of the south boundary of the Pueblo of San Felipe (San Felipe) in Sandoval County, New Mexico" in accordance with the applicable laws and regulations referenced in the Tompkins Opinion. ECF 127-5 at 2, 3, fn. 5; *See also*, FAC, ECF 127 at ¶¶ 117, 178. Instead, BIA officials ordered BLM to remove portions of the western and southern San Felipe Pueblo Patent Boundary, obliterate congressionally confirmed boundary markers, and "Resurvey that portion of north boundary of the El Ranchito Grant, running from the northeast corner of the El Ranchito Grant, westerly to the intersection with the west boundary of the San Felipe Pueblo Grant." in a Cadastral Survey Request and a Supplemental Cadastral Survey Request. ECF 127-6; ECF 127-7; FAC ¶¶ 130, 133. BLM then issued its Survey special instructions and supplemental Special Instruction to its surveyor, who executed the survey in accordance therewith. ECF 127-8;

ECF 127-9; ECF 127, FAC ¶¶134-137. This action diminished San Felipe's jurisdiction over the lands removed from the San Felipe Pueblo external boundary established in the 1864 Patent and under the 2005 Amendment to the Pueblo Lands Act. ECF 127, FAC ¶¶ 149, 162-166. These actions, taken after the issuance of the Tompkins opinion by federal officials to execute a resurvey were reviewable agency action under 5 U.S.C. § 706. *See also*, 43 C.F.R. § 4.450-2; 43 C.F.R. § 4.400; ECF 114 at 5-7. Determining that BIA and BLM officials who issued survey instructions and conducted the resurvey lacked authority to act in the manner they did, and ordering the reinstatement of the prior survey plats, is not a title adjudication. It is the core remedy for ultra vires agency action on a survey. The IBLA agreed in its Opinion that the BLM filing of the plat did not alter title to land within the boundaries because BLM “did not purport to adjudicate title ...” *Pueblo of San Felipe*, No. IBLA 2014-256, 190 IBLA 17 (Apr. 5, 2017), ECF 49-7 at 54; *See also*, ECF 78, Proposed FAC at 36, ¶ 149; ECF 114 at 9.

B. Santa Ann’s Motion to Dismiss

Santa Ana’s 12(b)(6) motion joins in the Federal Defendants 12(b)(6) motion to dismiss for lack of jurisdiction asserting the FAC is barred by the Quiet Title Act. Albeit not stating as such, Santa Ana’s brief in support of its Motion also asserts that the FAC attacks the Tompkins Opinion, offering support to Federal Defendant’s F.R.C.P. 41(b) motion. *See* ECF 132, SAP MTD at 7-9, 10. Santa Ana's Motion to Dismiss mischaracterizes the FAC and asks this Court to dismiss a properly pleaded Administrative Procedure Act ("APA") claim on the basis of pleading rules that are far more demanding than Rule 12(b)(6) requires.

In addition, Santa Ana’s motion asserts the FAC should be dismissed under F.R.C.P. 12(b)(1) for failure to state a claim, because the FAC does not assert any “legal wrong” or that San Felipe Pueblo is “adversely affected or aggrieved” by the IBLA opinion issued. ECF 132 at 13.

Santa Ana asserts that the FAC cannot assert any claim to ownership of lands as the basis for a harm under the APA, and that there is no other harm asserted in the FAC from the “resurvey” filed. ECF 132 at 10, 11. This ignores the harms enunciated in the FAC to the territorial jurisdiction of the Pueblo of San Felipe clearly articulated in the FAC. ECF 127, FAC ¶¶ 130, 162-166, 172.

Santa Ana also asserts that San Felipe Pueblo can only challenge the IBLA decision under the Court’s Orders and appears to assert that the FAC must allege the harm to San Felipe Pueblo arises from the IBLA decision and not the resurvey conducted that was appealed to the IBLA. ECF 132, SAP MTD at 12. This assertion is nonsense. Essentially, Defendant-Intervenor seeks to deny the due process rights of San Felipe to protest the BLM New Mexico State Director’s resurvey and plat filing actions, by limiting the Court’s review of the record that forms the basis for the agency’s action. In *Getty Oil Co. v. Andrus*, the Ninth Circuit held that where a plaintiff has filed a protest under 43 C.F.R. § 4.450-2 that includes issues “sufficiently raised in the administrative proceeding, they are entitled to judicial review of the decision made.” 607 F.2d 253, 256 (9th Cir. 1979). Pueblo of San Felipe did include noncompliance with applicable law and the BLM 2009 Survey Manual in the required Statement of Reasons for filing the appeal. *Declaration of Rebecca Kidder, Exhibit A, San Felipe Pueblo IBLA Statement of Reasons filed on September 29, 2014* at 5-6, ¶¶ 4, 6 and *Exhibit B, BLM 2009 Survey Manual*.

Finally Santa Ana challenges the facts set forth in the FAC substantively, and improperly, in a 12(b)(6) motion, asserting that Santa Ana Pueblo has “owned and exclusively occupied by Santa Ana for 263 years;” the San Felipe Patent was “subject to adverse rights;” Santa Ana patented lands did not overlap with the San Felipe patent; and San Felipe Pueblo’s claim was based on “an inept survey.” See ECF 132 at 3 4, 7,8. For all of the reasons set forth in previous briefs filed, these factual assertions in the Brief are improper, and are grounds to deny the 12(b)(6) and

12(b)(1) motion. *See*, ECF 92, *SFP Reply to Defendant-Intervenor's Response to Plaintiff's Motion to Amend the Complaint* at 26-27, n. 12.

C. The First Amended Complaint

The FAC asserts proper facts necessary to establish the actions of the BIA and BLM following the issuance of the Tompkins Opinion did not comply with applicable law or the BLM 2009 Survey Manual Instructions governing surveys. *Declaration of Rebecca Kidder, Exhibit B, BUREAU OF LAND MANAGEMENT, U.S. DEPT OF THE INTERIOR, MANUAL OF SURVEYING INSTRUCTIONS 129-145 (2009) (hereinafter BLM 2009 Survey Manual)*”).

Because the Court denied the Motion for Leave to Amend in part, claims to land ownership within the San Felipe Patent boundaries were removed from the Proposed FAC. *Order*, ECF 101 *and Opinion*, ECF 120. Defendant-Intervenor's attempts to bait Plaintiff into a debate about land ownership within the boundaries of the survey do not convert the FAC into a claim to title to land barred by the QTA. The Complaint properly alleges the historical record supported by reference to actual record documents, necessary to establish where the boundary of the San Felipe Patent was located, and how it came to be located there. Scrubbing the FAC of the history of prior actions is unnecessary to comply with this Court's Order on the Motion for Leave to Amend the Complaint and the Motion to Reconsider, wherein the Court ordered that the FAC cannot include “claims challenging Intervenor-Defendant Pueblo of Santa Ana's title.” ECF 120, Leave Order at 40. There is only one Claim for Relief in the FAC and it does not challenge title to land. ECF 127, FAC at 37-42, ¶¶ 152-183.

The historical and documentary allegations that Santa Ana criticizes as impermissible attacks on the 2013 Solicitor's Opinion M-37027 ("Tompkins Opinion") are background allegations necessary to explain why the IBLA's decision and BIA and BLM's implementation of

a “resurvey” ordered by the M-Opinion—was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. 5 U.S.C. § 706(2).

The FAC does precisely what this Court authorized: it challenges the resurvey conducted following the issuance of the Tompkins Opinion, which directed that “the Bureau of Land Management (BLM), in coordination with the Bureau of Indian Affairs (BIA), needs to address this overlap and undertake a resurvey of the disputed boundary based on this Opinion.” ECF 127-5 at 2. The Tompkins Opinion was crystal clear that the resurvey conducted had to comply with applicable law and the BLM 2009 Survey Manual. *Id.* at 2, n. 5. The FAC challenges whether the “resurvey” including the instructions issued by BIA to BLM (ECF 127-6, 127-7); the BLM assignment instructions to the BLM surveyor (ECF 127-9); the plat created by BLM based on those instruction (ECF 127-10); and the Interior Board of Land Appeals' ("IBLA") affirmance of the BLM “resurvey” is arbitrary, capricious, and in excess of statutory authority and the limitations imposed by applicable laws and the BLM 2009 Survey Manual cited in the Tompkins Opinion. ECF 127, FAC at ¶¶ 117, 130, 133, 135-138, 144-145, 156-161.

For the reasons set forth herein, the Motions to Dismiss should be denied.¹ In the

¹ This Court issued its opinion and Order on Santa Ana’s Motion to Intervene on November 24, 2025. ECF 119. In that Order, the Court granted that Motion in part and denied it in part and Ordered that “the Pueblo of Santa Ana may not file its own motion to dismiss.” ECF 119 at 28. The Court has issued no further written orders in this matter amending the November 24, 2025 Order. Under the Court’s present Order, Santa Ana Pueblo has not been granted authority to file its own Motions. For the reasons set forth in San Felipe Pueblo’s Brief in Opposition to Santa Ana Pueblo’s Motion to Reconsider, Santa Ana’s Motion to Dismiss the Amended Complaint should be denied and stricken, because Defendant-Intervenor’s filing of a separate Motion to Dismiss instead of a brief in support of Federal Defendant’s Motion is a violation of F.R.C.P. 41(b). *See* ECF 114 at 2-4; *Manygoat v. Jacobs*, 347 F. Supp. 3d 705, 706-07 (D.N.M. 2018); *Olsen v. Mapes*,

alternative, if the Court finds that any portion of the FAC exceeds the permitted scope of pleading, San Felipe respectfully requests leave to file a Second Amended Complaint.

D. Relevant Procedural Background

San Felipe Pueblo filed suit on April 5, 2023. ECF 1. The Court dismissed the original Complaint because it found the claims were "at heart a quiet title action" disputing ownership of Indian lands barred by the Quiet Title Act's ("QTA") Indian Lands Exception. Order at 21 (ECF 55) ("Dismissal Order"). San Felipe moved for leave to file an amended complaint presenting ten claims, including three under the APA. Motion for Leave to File Amended Complaint (ECF 78) ("FAC Leave Motion"). The Court granted leave in part, finding that "the IBLA's decision is the final agency action that triggers the six-year statute of limitations to run until April 5, 2023" and that "San Felipe's claims challenging the initial boundary resurvey are timely under the APA's statute of limitations." Order at 10 (ECF 101) ("Leave Order").

On Santa Ana's motion for reconsideration, the Court narrowed the authorized APA claim, holding that "San Felipe Pueblo may pursue APA claims challenging the implementation of the Tompkins Opinion—whether the BLM properly conducts the land resurvey in compliance with the Tompkins Opinion," but may not challenge "the Tompkins Opinion itself." Reconsidered Order at 2 (ECF 126). The Court issued the Reconsidered Order on March 12, 2026, and granted San Felipe twenty-one days to file its amended complaint. *Id.* at 2. The FAC was filed on April 1, 2026—one day before the April 2 deadline. ECF 127, 127-1 through 10.

333 F.3d 1199, 1204, fn. 3 (10th Cir. 2003) (dismissal *sua sponte* is permitted under F.R.C.P. 41(b) for failure to comply with court's orders).

The IBLA's April 5, 2017, decision framed its scope as whether "BLM surveyors failed to adhere to the surveying requirements of the BLM 2009 Survey Manual or otherwise failed to accurately retrace and reestablish the lines of the original survey of the common boundary." *Pueblo of San Felipe*, 190 IBLA 17, 19 (2017) (ECF 49-7, p. 54-55). The IBLA decision concluded that "In the resurvey, BLM determined that the common boundary properly coincides with PSA's northern boundary, as originally surveyed in 1900, rather than PSF's southern boundary as originally surveyed in 1860." *Id.* at 56. BLM did no such thing—BLM followed the BIA's directives improperly issued in a "Request for Cadastral Survey" to remove San Felipe Pueblo's southern and portions of its western boundary and resurvey the northern boundary the El Ranchito Tract. ECF 127-6, 127-7. Although the IBLA disclaimed authority to review BLM's resurvey authority or adjudicate title, the record of what was resurveyed and how it was executed was squarely before it. The IBLA affirmed the resurvey on survey-mechanics grounds while failing to accurately identify the most basic facts about what was resurveyed—which was not the San Felipe Pueblo Patent southern and western boundary—and failed to consider the limitations on the use of a resurvey contained within applicable law and the BLM 2009 Survey Manual Instructions. 190 IBLA 19.

II. STANDARD OF REVIEW

A dismissal under Rule 41(b) for failure to comply with a court order is reviewed for abuse of discretion. *Nasious v. Two Unknown B.I.C.E. Agents*, 492 F.3d 1158, 1161 (10th Cir. 2007). Because the Court's leave orders addressed jurisdictional questions, any dismissal under Rule 41(b) would be without prejudice. Fed. R. Civ. P. 41(b). In reviewing the scope of compliance with a leave order, the Court must determine what the order actually authorized—not what defendants now wish it had authorized.

A motion to dismiss for lack of subject-matter jurisdiction under Rule 12(b)(1) requires the Court to accept well-pleaded factual allegations as true and draw all reasonable inferences in favor of the plaintiff. *Holt v. United States*, 46 F.3d 1000, 1002 (10th Cir. 1995). The Court must also construe the complaint as a whole rather than isolating individual paragraphs. The plaintiff bears the burden of establishing jurisdiction, but the Court must not confuse the merits of the plaintiff's claim with the jurisdictional question. *Match-E-Be-Nash-She-Wish Band of Pottawatomí Indians v. Patchak*, 567 U.S. 209, 215–16 (2012).

A motion to dismiss under Rule 12(b)(6) tests the legal sufficiency of the complaint. The Court must accept all well-pleaded factual allegations as true and construe them in the light most favorable to the plaintiff. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Dismissal is appropriate only when the complaint fails to state a claim that is "plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Federal Defendants and Santa Ana's 12(b)(6) motions must satisfy this standard—and because the FAC's well-pleaded allegations must be accepted as true at this stage, Santa Ana's contrary factual assertions about the history of the Conflict Area. ECF 132 at 4, 7–8, are not a proper basis for dismissal.

III. ARGUMENT

A. THE FAC COMPLIES WITH THE COURT'S LEAVE ORDERS AND SHOULD NOT BE DISMISSED UNDER F.R.C.P. 41(b).

Federal Defendants' Rule 41(b) argument proceeds from a highly restrictive reading of the Reconsidered Order that is not supported by the Order's text. They contend the FAC was required to allege, and only to allege, that "Interior violated the APA because BIA and BLM acted contrary to the Tompkins Opinion" and must allege "a BLM failure to comply with the Tompkins Opinion." ECF 133, FD MTD at 13. That reading is not what the Court ordered, and even if it were, the

Tompkins Opinion did not order the BIA and BLM to ignore the requirements to the BLM 2009 Survey Manual, or the limitations imposed under applicable law which the Tompkins Opinion explicitly determined were applicable to the resurvey in the Tompkins Opinion itself. ECF 127, FAC at ¶ 117; ECF 127-5 at 2, n. 5.

1. The Court Authorized a Challenge to Whether the Resurvey Was Conducted in a Lawful Manner under the APA—Not Merely Whether BLM Complied with the Tompkins Opinion’s.

The Reconsidered Order states that San Felipe may challenge "the implementation of the Tompkins Opinion—whether the BLM properly conducts the land resurvey in compliance with the Tompkins Opinion." Reconsidered Order at 2 (ECF 126). Federal Defendants read "in compliance with the Tompkins Opinion" to mean only: did BLM execute the resurvey in a manner that achieved the result the Tompkins Opinion sought to achieve? Under Federal Defendants’ reading, the only cognizable claim would be that BLM's surveyors failed to achieve Solicitor Tompkin’s desired result.

But that reading is directly contradicted by the Court's own earlier reasoning. In its Leave Order, the Court identified the IBLA's April 2017 decision as the "final agency action for purposes of any available challenge under the APA. ECF 101 at 10. The IBLA's decision addressed 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." *Id.* at 19. The IBLA specifically stated that, “PSF must demonstrate, by a preponderance of the evidence, that the 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...” 190 IBLA at 19, ECF 49-7 at 56.

That is precisely what the FAC alleges—the action taken was not a corrective resurvey of

the original San Felipe Patent boundary conducted in accordance with applicable law and regulation, including the BLM 2009 Survey Manual. ECF 127. Instead, it was conducted in accordance with the BIA Special Instructions—which ordered obliteration of the San Felipe Patent boundary, which is the exterior southern boundary of the San Felipe Pueblo, and resurvey of the El Ranchito Tract boundary—which is not the resurvey authorized in the Tompkins Opinion, and one which did not comply with BLM 2009 Survey Manual requirements Chapters 1, 5 and 6 applicable to resurveys of original survey boundaries. ECF 127-6, *Exhibit F to the First Amended Complaint*, 127-7, *Exhibit G to the First Amended Complaint*; ECF 127 at ¶¶ 130, 133, 135, 138, 156 160. The FAC alleges that, consistent with the Tompkins Opinion, and as recognized in the IBLA decision, BIA and BLM's resurvey authority, if it existed at all, was confined to correcting a demonstrated clear error in the original Clements survey, the 1909 Hall survey, or the subsequent Joy survey. ECF 127, FAC ¶¶ 156, 157. Because no such error existed, as evidenced by the 2009 Olver resurvey, obliterating the southern and portions of the western boundary of the 1864 Patent exceeded that authority entirely. The FAC further alleges that BLM's resurvey was not based on any evidence of where the southern boundary actually fell under the 1689 Spanish Land Grant description underlying the Patent. *Id.*

If the Court had intended to limit San Felipe to the narrow technical-compliance question of whether the BLM resurvey complied with the BIA special instructions, there would not be a claim left to litigate. But that is not what the Court ordered. The Court ordered the filing of the First Amended Complaint to include “APA claims challenging the implementation of the Tompkins Opinion—whether the BLM properly conducts the land resurvey in compliance with the Tompkins Opinion.” Reconsideration Order at 2, ECF 126.

Federal Defendants rely on *O’Kane v. Mead Johnson Nutrition Co.*, 804 Fed. Appx. 988,

990 (10th Cir. 2020), for the proposition that dismissal under Rule 41(b) is appropriate when a plaintiff fails to replead as directed. But *O'Kane* is distinguishable on its facts. There, the plaintiff failed to correct specific pleading deficiencies the court had identified and instructed her to fix on refiling. The plaintiff simply did not do what the court told her to do. Here, San Felipe filed the Amended Complaint within the court's deadline and the Amended Complaint advances an APA claim challenging the BIA and BLM's execution of the resurvey ordered by the Tompkins Opinion—precisely what the Court authorized. The dispute is not whether San Felipe complied with the Court's deadline or ignored an identified deficiency. It is whether the APA claim San Felipe pled falls within the scope of the Court's authorization. That is a question of legal interpretation, not non-compliance. Rule 41(b) is a sanction for a plaintiff who fails to follow court orders—not a mechanism to dismiss a timely-filed complaint because a defendant disagrees with how the plaintiff construed the scope of leave granted.

The phrase "in compliance with the Tompkins Opinion" is most naturally read to mean: did BIA and BLM's implementation of the resurvey conform to applicable law—including the legal authority constraints that the Tompkins Opinion itself acknowledged applied? The Tompkins Opinion itself identified the statutory sources of BLM's authority—25 U.S.C. § 176, 43 U.S.C. § 772, and related statutes—and acknowledged limitations on that authority included the BLM 2009 Survey Manual. ECF 127-5 at 2, n. 5; FAC, ECF 127 at ¶ 117. Whether BIA and BLM's execution of the resurvey actually stayed within those statutory limits and the BLM 2009 Survey Manual limitations is a question of implementation, not a direct challenge to the Opinion's validity.

2. The FAC Directly Challenges the BLM's Execution of the Requested Cadastral Resurvey as Arbitrary, Capricious, and in Excess of Statutory Authority.

Federal Defendants claim the FAC never alleges a BLM failure to comply with the

Tompkins Opinion and references the Opinion only twice. ECF 133, *Fed. Defs.' Mot.* at 9. This is substantively misleading. The FAC's claim for relief is directed at the BIA Special Survey Instructions and the subsequent BLM requested cadastral survey and the agency actions implementing it. The FAC alleges that:

(1) BIA and BLM lacked statutory and regulatory authority to direct the BLM to conduct a cadastral or corrective resurvey that was not a resurvey of the original San Felipe Pueblo boundary and lacked authority to obliterate the boundaries of a congressionally confirmed patent, ECF 127, FAC ¶¶ 154–161, 167–170;

(2) BIA and BLM's special survey instructions directing Surveyor Olver to remove existing boundary monuments and to “resurvey” the El Ranchito Tract Northern boundary is conduct that does not qualify as either a “dependent resurvey” or a “corrective resurvey” of the San Felipe southern boundary under the BLM's own 2009 Survey Manual, *Id.* at ¶¶ 130, 156–158;

(3) BLM's execution of the “resurvey” and removal of the monuments violated 43 U.S.C. § 772, 25 U.S.C. § 176, and the BLM 2009 Survey Manual by purporting to alter the rights of a patentee under the guise of a resurvey, *Id.* at ¶¶ 158–160; and

(4) The BIA and BLM's actions, and the IBLA's affirmance of them, were arbitrary, capricious, and in excess of statutory authority in violation of 5 U.S.C. § 706(2)(A), (B), and (C). *Id.* at ¶¶ 179–181.

These are precisely the kind of allegations the Court contemplated when it authorized a challenge to “whether the BLM properly conducts the land resurvey in compliance with the Tompkins Opinion.” The Tompkins Opinion itself acknowledged BLM's resurvey authority was limited to correcting survey errors—it could not “adjudicate the rights taken by the patentee.” Solicitor's Opinion M-37000 at 8 (Dec. 5, 2000) (incorporated by reference in Tompkins Opinion).

ECF 1 and ECF 127-5; *see also* ECF 49-6 at 28. Whether BIA and BLM stayed within those limits in executing the resurvey is a challenge to the implementation of the Opinion, not a challenge to the Opinion itself. The BLM 2009 Survey Manual makes clear that the boundaries of lands previously surveyed “the physical evidence of which survey consists of monuments established upon the ground, and the record evidence of which consists of field notes and plats duly approved by the authorities constituted by law, are unchangeable after the passing of title by the United States.” RLK Dec. Exhibit B, *BLM 2009 Survey Manual Instructions, Section 1-29* at 13. Most importantly, the BLM 2009 Survey Manual makes clear at Section 5-10 that “A dependent resurvey is a retracement and reestablishment of the lines of the original survey or of a prior survey in their original position according to the best available evidence of the positions of the original corners.” FAC, ECF 127 at ¶ 144.

What BIA and BLM did here was not a resurvey of the San Felipe Patent boundaries at all. It was the execution of an invalid BIA directive—embedded in its original and supplemental “Cadastral Survey Request” to obliterate the boundaries that surveyors Clements, Hall, and Joy had each independently established and verified. That history matters. In 1900, Special Examiner Hurlbert reported that the Walker survey of the San Felipe Patent did not conform to the Patent's geographically described boundary—specifically, it failed to locate the Culebra hill called for in the 1689 Spanish Land Grant. On that basis, the Walker survey was never approved or filed. ECF 127, FAC ¶ 56; *See also* ECF 92, SFP Reply to Defendants’ Response to Motion for Leave to Amend Complaint at 26, n. 12. The Surveyor General instead directed Hall to conduct a new resurvey, which was accepted in 1909. *Id.* ¶ 61. In 1916, Perkins and Joy performed yet another dependent resurvey, which was recorded, relied upon by Congress in the Pueblo Lands Act proceedings, and adopted by the United States District Court for the District of New Mexico. *Id.*

at ¶¶ 66, 67, 71, 85. Each successive resurvey confirmed the same San Felipe Pueblo's exterior southern boundary. The Walker survey—the one the IBLA resurvey effectively reinstated—was the only survey of the San Felipe Patent that was examined and rejected.

Rather than correctly conducting a resurvey of the San Felipe Pueblo exterior southern boundary by retracing any of those BLM accepted surveys, BIA directed, and BLM executed the removal of the monuments and markers that gave those surveys physical existence on the ground, in violation of federal law. ECF 127, FAC ¶ 131; ECF 127-6; ECF 127-7; ECF 127-8; ECF 127-9. This is a critical distinction. The Tompkins Opinion ordered a "resurvey", defined in its own text as an exercise to "define more accurately the location of the original boundaries" and to "correct the boundary" of the San Felipe Pueblo exterior southern boundary. ECF 127-5 at 14, 4. The Tompkins Opinion did not order the destruction of existing survey monuments or the obliteration of previously established and accepted boundary lines or the resurvey of the El Ranchito purchases. Nor could it. The authority to locate a resurvey boundary lies exclusively with BLM, and that authority must be exercised in accordance with the requirements of the BLM 2009 Survey Manual, not by following BIA directives specifying where the new boundary must fall embedded in a Cadastral Survey Request. ECF 127-5 at 2 n.5. The BIA and BLM had no authority to ignore the restrictions on resurveys imposed by applicable laws and regulations including the BLM 2009 Survey Manual, just as BIA and BLM had no authority to rely on the Solicitor's Opinion to issue and execute orders to erase the San Felipe southern and portions of the western boundary based on the Tompkins Opinion. *See, Mandan, Hidatsa & Arikara Nation v. United States Dep't of the Interior*, 66 F.4th 282, 285 (D.C. Cir. 2023), *on remand* No. CV 20-1918 (ABJ), 2026 WL 35570, at *1 (D.D.C. Jan. 6, 2026) (denying motions for summary judgment and judgment on the pleadings).

What BIA ordered, and what BLM executed, was not a resurvey within the meaning of the Tompkins Opinion or the BLM 2009 Survey Manual, or generally accepted survey practice. It was a directive to eliminate the southern and portions of the western boundary of three accepted surveys, accomplished by destroying the physical evidence that the accepted surveys ever existed, and to replace it with a survey of the El Ranchito Tract northern boundary that does not even coincide with the rejected Walker resurvey of the San Felipe Patent boundary. By definition, the destruction of a prior confirmed BLM survey boundary, is not a resurvey—it is an unwarranted destruction of San Felipe Pueblo's exterior boundary. There is no provision under any United States survey law or any provision of the BLM 2009 Survey Manual that authorizes what BIA and BLM did.

3. Federal Defendants' Paragraph Comparison Charts Prove Too Much.

Federal Defendants submit two charts comparing paragraphs from the FAC to paragraphs from prior pleadings. ECF 133-1, Swanson Decl. Exs. 1–2. They argue these comparisons demonstrate that the FAC improperly replicates claims the Court rejected. But the charts actually illustrate that San Felipe has narrowed—not duplicated—the prior proposed complaint. The most significant omissions are telling:

From the proposed amended complaint's Prayer for Relief ¶ 2, San Felipe had sought to set aside "Solicitor's Opinion M-37027" along with the IBLA decision and the corrective resurvey filing. ECF 127, Prayer for Relief ¶ 2. The FAC's Prayer for Relief ¶ 2 drops the Tompkins Opinion from the list of actions to be set aside. *Id.* FAC Prayer for Relief ¶ 2. *Id.* The FAC does not ask the Court to vacate the Tompkins Opinion.

From the original Complaint, paragraph 224 expressly requested a "judicial declaration that San Felipe's title and right to sole possession of the lands within the boundaries of the San Felipe

Patent has been previously and conclusively determined" and that "no claims adverse to San Felipe's title and right may be validly asserted, including Santa Ana's claim to the Conflict Area." ECF 1 at ¶ 224. The FAC contains no comparable declaration of title. The closest analog—FAC ¶ 177—requests a declaration that Defendants had no legal authority to interfere with San Felipe's jurisdictional territory. ECF 127 at ¶ 177. That is a challenge to agency authority, not an adjudication of title. Jurisdictional authority is established under the Pueblo Lands Act amendment.

What the charts actually show is that San Felipe has amended the proposed FAC of the title claims, complied with the Court's Order to file a single APA claim, and limited its request for relief to relief from the "resurvey" completed and the IBLA decision. There is no request for relief from the Tompkins Opinion. The fact that some relief requests are functionally similar to the relief requested in the proposed FAC—such as asking for restoration of survey monuments—does not mean the FAC violates the leave orders. Restoration of unlawfully obliterated survey monuments is the only remedy for an APA claim challenging an ultra vires and arbitrary "resurvey". The Court's leave orders did not prohibit San Felipe from requesting that remedy; they prohibited San Felipe from grounding that request in a title adjudication. ECF 101. The FAC grounds it in an APA challenge to administrative authority. ECF 127.

a. Exhibit 1 to the Swanson Declaration Is Incomplete and Omits Numerous Changed Paragraphs That Demonstrate the FAC's Compliance with the Court's Orders.

Federal Defendants present Exhibit 1 to the Swanson Declaration as a comprehensive accounting of the differences between the proposed First Amended Complaint and the filed FAC. ECF 133-1. It is not. The chart selectively identifies only four paragraphs from the filed FAC—¶¶ 177, 178, 182, and 183—as the purported analogs to the relief-seeking provisions of the proposed

amended complaint’s Claims Six, Seven, and Ten. *Id.* This selective presentation is misleading because the FAC contains numerous additional paragraphs that were substantially modified from any prior pleading, and whose content reflects San Felipe’s careful compliance with the Court’s narrowed leave authorization. Among the paragraphs changed in the FAC that appear nowhere in Exhibit 1 are the following:

1. FAC ¶ 155, which states that Defendants’ actions purporting to alter the 1864 Patent boundaries “are null and void ab initio,” is a new formulation not present in the proposed complaint and reflects the APA’s standard remedy for ultra vires agency action; ECF 127 at ¶ 155;
2. FAC ¶ 160, which alleges that the BLM’s resurvey violated 43 U.S.C. § 772, 25 U.S.C. § 176, and the BLM 2009 Survey Manual, is a revised and focused allegation that did not appear in the proposed complaint in this form and is squarely directed at whether the BLM’s implementation of the resurvey conformed to applicable statutory authority; *Id.* at ¶ 160;
3. FAC ¶¶ 179–181, which plead the APA violations under 5 U.S.C. § 706(2)(A), (B), and (C), are new paragraphs that were not included in the proposed amended complaint and confirm that the FAC rests on a single, authorized APA claim rather than on the multi-claim structure the Court did not permit; *Id.* at ¶¶ 179–181;
4. FAC ¶ 165, which alleges that “land within the boundaries of San Felipe Pueblo includes land within the Conflict Area,” is reframed from the original Complaint’s title-claim language into a jurisdictional allegation grounded in the 2005 amendment to the Pueblo Lands Act, a distinction the Declaration’s chart entirely ignores; *Id.* ¶ 165;
5. FAC Prayer for Relief ¶ 1(d), which declares that “Defendants lacked any legal authority

to take any subsequent action based wholly or in part upon an alteration of the San Felipe Patent boundary by ‘resurvey’”, is a materially revised formulation from the proposed complaint’s Prayer ¶ 1(f), which also challenged actions taken in reliance on “an unauthorized determination of ownership or title” language that the FAC deliberately omits to remove any suggestion of a title adjudication; *Id.* at Prayer for Relief ¶ 1 and;

6. FAC Prayer for Relief ¶ 2, which omits Solicitor’s Opinion M-37027 from the list of actions to be set aside—a significant change from both the proposed complaint’s Prayer ¶ 2 and the original Complaint’s Prayer ¶ (d) is entirely absent from Exhibit 1’s comparison, even though Federal Defendants elsewhere in their Motion rely on the presence of Opinion M-37027-related language to argue non-compliance. *Id.* Prayer for Relief ¶ 2.

These omissions are not trivial. By presenting only the paragraphs that Federal Defendants find convenient, Exhibit 1 creates a distorted picture of the relationship between the proposed complaint and the FAC. A complete comparison—one that includes the paragraphs listed above—demonstrates precisely the opposite of what Federal Defendants argue: the FAC is a narrower, more focused document than its predecessor, which is void of any title-claim language that previously caused the Court concern.

b. The Swanson Declaration Is Improper Because It Renders the Drafting Attorney a Witness and Should Be Disregarded.

Kristofor R. Swanson submitted a Declaration and identifies himself as co-counsel of record for the Federal Defendants in this action. ECF 133-1, Swanson Decl. ¶ 1. Mr. Swanson states that he personally “prepared” the two comparison charts attached as Exhibits 1 and 2, and that those charts reflect his own analytical choices about which paragraphs to compare and how to characterize their relationship. *Id.* at ¶¶ 2–4. By submitting a declaration that goes beyond

authenticating documents in the record and instead offers a substantive characterization of the pleadings, characterizations that Federal Defendants then rely on as the evidentiary basis for their Rule 41(b) argument, Federal Defendants have effectively made their trial counsel a witness in this proceeding.

The attorney-witness rule, codified in Rule 16-307 of the New Mexico Rules of Professional Conduct and its federal counterparts, reflects a bedrock principle: “A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness...” N.M. R. Prof. Conduct 16-307(A). While Rule 16-307 is directed primarily at trial, its underlying rationale—that combining the roles of advocate and witness creates a risk of jury confusion and undermines the integrity of the factfinding process—applies with equal force where counsel submits a declaration that constitutes substantive evidence in support of his client’s motion. *See United States v. Morris*, 714 F.2d 669, 671 (7th Cir. 1983) (the rule against advocate-as-witness exists to protect the integrity of the adjudicatory process). *See also, United States v. Birdman*, 602 F.2d 547 (3d Cir.1979), *cert. denied*, 444 U.S. 1032, 100 S.Ct. 703, 62 L.Ed.2d 668 (1980); *Lowe v. Experian*, 328 F. Supp. 2d 1122, 1126 (D. Kan. 2004) (prohibiting an attorney witness from acting as trial counsel).

A declaration is not rendered proper simply because it is submitted at the motion stage rather than trial. Swanson’s Declaration does not merely authenticate that certain documents exist in the docket, documents this Court can review for itself. Instead, it interprets those documents, makes editorial selections about which paragraphs to juxtapose, and constructs a narrative about the intent and effect of the amendments. These are quintessentially adversarial characterizations that belong in a brief, not in sworn testimony. By embedding those characterizations in a declaration, Federal Defendants create the appearance that the comparative analysis carries the

weight of neutral factual attestation, when in reality it reflects one advocate’s litigation strategy. This Court should disregard the Swanson Declaration as improper and evaluate the relationship between the pleadings—all of which are in the Court’s own record—independently and without reference to counsel’s self-serving characterizations.

c. Exhibit 2 to the Swanson Declaration Is Irrelevant Because the Original Complaint Is Not and Has Not Been the Operative Pleading Since the Court Granted Leave to Amend.

Exhibit 2 to Swanson’s Declaration compares paragraphs in the original Complaint (ECF 1) with paragraphs in the FAC. ECF 133-1. This comparison is legally irrelevant. The original Complaint was dismissed by the Court’s Order at ECF 55. It is not, and has not been, the operative pleading in this case since that dismissal. When the Court subsequently granted San Felipe’s Motion for Leave to Amend in part (ECF 101), the relevant baseline for any compliance analysis became the Court’s leave orders—not the original Complaint.

It is well-established that once a court grants leave to file an amended complaint it “supercedes an original complaint and renders the original complaint without legal effect,” *In re Atlas Van Lines, Inc.*, 209 F.3d 1064, 1067 (8th Cir.2000); 3 Moore’s Federal Practice, § 15.17[3] (Matthew Bender 3d ed.)” *Mink v. Suthers*, 482 F.3d 1244, 1254 (10th Cir. 2007). *See also, Davis v. TXO Production Corp.*, 929 F.2d 1515, 1517 (10th Cir. 1991). The motion for leave to amend was granted—in part—by the Leave Order (ECF 101) and further refined by the Reconsidered Order (ECF 126). The operative question under Rule 41(b) is whether the FAC complies with those orders. The original Complaint—a document the Court has already dismissed and that has been superseded—provides no relevant baseline for that inquiry.

Federal Defendants’ evident purpose in submitting Swanson’s Declaration Exhibit 2 is to suggest that the FAC replicates the language that caused the Court to dismiss the original

Complaint in the first place. But this argument improperly conflates two distinct inquiries: (1) whether the original Complaint was properly dismissed (a question long since resolved) and (2) whether the FAC complies with the Court's leave orders. The fact that some paragraphs of the FAC bear a family resemblance to paragraphs in the original Complaint is legally immaterial. What matters is whether the FAC stays within the scope of the APA claim the Court permitted. As demonstrated above, it does. Exhibit 2 adds nothing to that analysis and should be disregarded.

4. Santa Ana Pueblo's Assertion that the FAC Challenges the Tompkins Opinion is Unfounded.

While Santa Ana's Motion to Dismiss does not assert that it is a F.R.C.P. 41(b) Motion, it does assert that the FAC impermissibly attacks the Tompkins Opinion. ECF 133. This argument is addressed in Section III.A.1, *infra*. The challenged paragraphs are background factual allegations necessary to contextualize why the IBLA's Order and the BIA and BLM's implementation of it—was arbitrary and not "in accordance with law." 5 U.S.C. § 706(2). *See*, ECF 133, SAP MTD at 11-14.

Accordingly, dismissal under Rule 41(b) is unwarranted. The FAC filed by San Felipe complies with the Court's narrowed leave authorization, and it falls within the scope of the APA claim the Court permitted.

B. THE FAC IS NOT BARRED BY THE QTA'S INDIAN LANDS EXCEPTION BECAUSE IT CHALLENGES AGENCY AUTHORITY TO ACT IN AN ARBITRARY AND CAPRICIOUS MANNER NOT AUTHORIZED BY LAW, NOT TITLE TO INDIAN LANDS.

Federal Defendants' second argument—that the FAC is still "at heart" a quiet title action—repeats the QTA analysis the Court applied to San Felipe's prior pleadings. ECF 133. But those prior pleadings are not before the Court. The question is whether the FAC, as filed, crosses the line

from a permissible APA challenge to an impermissible quiet title claim. It does not.²

1. The *Patchak* Framework Permits APA Challenges to Land-Management Agency Actions Even Where Indian Land Is Involved.

San Felipe does not dispute the foundational principles of federal sovereign immunity that Federal Defendants and Santa Ana invoke. The United States may not be sued without its consent, *United States v. Sherwood*, 312 U.S. 584, 586 (1941), that consent must be unequivocally expressed and strictly construed, *United States v. Nordic Vill., Inc.*, 503 U.S. 30, 34 (1992); *Dep't of the Army v. Blue Fox, Inc.*, 525 U.S. 255, 261 (1999), and the principle applies equally to suits against federal officers in their official capacities. *Dugan v. Rank*, 372 U.S. 609, 620 (1963); *United States v. Mitchell*, 463 U.S. 206, 212 (1983). What Federal Defendants and Santa Ana fail to acknowledge is that the APA contains an express, broad waiver of sovereign immunity for suits challenging agency action, 5 U.S.C. § 702, and that waiver applies here. The only question is whether the QTA's Indian Lands Exception retracts that waiver, and as shown below, it does not, because San Felipe's claim is not one to quiet title.

Defendants rely on this Court's decision in *Northern New Mexicans v. United States*, 161 F.Supp.3d 1020 (D.N.M. 2016), but they fail to acknowledge that the Tenth Circuit expressly declined to affirm dismissal on QTA/sovereign immunity grounds. *N. New Mexicans v. United States*, 704 Fed.Appx. 723, 726 (10th Cir. 2017). *See*, ECF 132, FD MTD at 4. In addition, Federal Defendant's argument is contradicted by *Pueblo of Taos v. Andrus*, 475 F.Supp. 359 (D.D.C. 1979), holding that the pueblo had a right to challenge a survey of its own patent boundary and

² Federal Defendants make much to do about the fact that the FAC never specifically cites 5 U.S.C. § 702. FD MTD, ECF 133 at 12. The FAC specifically cites the entire Administrative Procedure Act, which includes § 702. ECF 127, FAC at § 5.

Pueblo of Sandia v. Babbitt, No. CIV 94-2624, 1996 WL 808067 (D.D.C. Dec. 10, 1996), holding that a pueblo challenge to federal official's decision not to correct clearly erroneous survey of public land was proper under the APA—not the QTA.

Federal Defendants cite *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak*, 567 U.S. 209 (2012), but do not fully engage with its holding. ECF 133. In *Patchak*, the Supreme Court held that a neighboring landowner could challenge the Department of the Interior's decision to take land into trust for an Indian tribe under the APA's general waiver of sovereign immunity, 5 U.S.C. § 702, even though the dispute involved Indian land. *Id.* at 215–22. The Court rejected the argument that any claim implicating the United States' interest in Indian land is automatically a QTA claim. *Id.* at 216. The relevant question is whether the plaintiff asserts “a claim to property antagonistic to the Federal Government's”—not whether the land involved is Indian land. *Id.* at 219–20.

San Felipe does not assert a claim to property antagonistic to the Federal Government's interest. It challenges the lawfulness of the administrative process by which the Government took action that affected San Felipe's land. There is a meaningful difference between (a) claiming that you own land the Government says you do not own—a quiet title action—and (b) claiming that the Government lacked authority to redraw the boundary of your congressionally confirmed patent—an APA ultra vires challenge. The FAC is the latter. As this Court explained in its original Leave to Amend Opinion,

the only permissible APA challenge here is a procedural one—like the plaintiffs one in Iowa Tribe—alleging a procedural defect in the United States' action, such as the use of improper authority or process, rather than ownership of the land. In short, San Felipe Pueblo may challenge how the United States acts, but not who owns the land.

ECF 120 at 30-31, citing *Iowa Tribe of Kansas & Nebraska v. Salazar*, 607 F.3d 1225

(10th Cir. 2010) (“Iowa Tribe”). The FAC presents exactly the challenge the Court authorized, further narrowed by the Amended Leave Opinion to challenge only the actions taken subsequent to the issuance of the Tompkins Opinion by the BIA and BLM as procedurally defective and not in accordance with governing laws and regulations including the limitations imposed by the BLM 2009 Survey Manual. *See*, Section III.A.1, *infra*.

Federal Defendants also cite *True Oil, LLC v. Bureau of Land Management*, 154 F.4th 1236 (10th Cir. 2025). In *True Oil*, the Tenth Circuit applied the QTA because the plaintiff's claim required a finding that the plaintiff, not the United States, held title to specific oil and gas interests—a direct title dispute. *Id.* at 1242–45. The FAC presents a fundamentally different posture: San Felipe is not disputing the United States' title to anything. It is disputing whether BIA and BLM conducted a corrective resurvey in accordance with the governing laws and BLM 2009 Survey Manual. The FAC alleges that the actions taken by BIA and BLM were not in fact a resurvey under applicable law and did not comply with applicable law and regulations, so the resulting survey plat is invalid. That is a challenge to administrative authority and the implementation of administrative authority following the issuance of the Tompkins Opinion, not a title dispute.

Federal Defendants also cite *High Lonesome Ranch, LLC v. Bd. of Cnty. Commissioners for Cnty. of Garfield*, 61 F.4th 1225, 1238 (10th Cir. 2023), for the proposition that courts focus on the relief requested rather than the plaintiff's characterization of its claim to determine whether the QTA applies. That principle does not help Federal Defendants here. Rather, it confirms San Felipe's position. *High Lonesome Ranch* directs courts to look at what the plaintiff is actually asking for. What San Felipe is actually asking for is reinstatement of survey monuments and plats that existed before BIA and BLM conducted an unauthorized and arbitrary action that was not a

resurvey conducted in accordance with applicable law and regulation including the BLM 2009 Survey Manual, and a declaration that the agency actions taken by BIA and BLM accomplishing that “resurvey” was void. ECF 127, Prayer for Relief ¶¶ 1–3. That is not a request for a declaration of title. It is the standard APA remedy for ultra vires agency action—setting aside what the agency did and restoring the prior legal status. *High Lonesome Ranch* itself drew the line at claims seeking land from the federal government. *Id.* at 1238. San Felipe is not seeking land from the federal government. It is seeking to undo an unlawful administrative action that altered the official federal survey records of its own congressionally confirmed patent boundary.

2. The FAC's Relief Requests Are Remedies for Ultra Vires Agency Action, Not Adjudications of Title.

Federal Defendants argue that FAC paragraphs 155, 156, 165, 169, 171, 176, 177, 178, 182, and 183 demonstrate that the FAC seeks to quiet title. ECF 133. *Fed. Defs.' Mot.* at 14–15. But reading these paragraphs carefully against the actual text of the FAC reveals that none of them ask the Court to adjudicate who owns the Conflict Area.

FAC ¶ 155 states that “[t]he actions of the Defendants purporting to alter the boundaries of the 1864 Patent are null and void ab initio.” ECF 127 at ¶ 155. This is not a declaration of title—it is the standard APA remedy for ultra vires agency action. When an agency acts without statutory authority, its action is set aside. See, e.g., *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 391–92 (2024) (courts must determine whether agency action conforms to applicable law), 5 U.S.C.A. § 706. Declaring an agency action null and void ab initio does not adjudicate title; it restores the legal status quo that existed before the unlawful action.

FAC ¶ 165 states that “land within the boundaries of San Felipe Pueblo includes land within the Conflict Area.” ECF 127 at ¶ 165. Federal Defendants characterize this as a title claim. But the

FAC's context makes clear this paragraph refers to the jurisdictional boundary established by Congress through the 1864 Patent and the 2005 amendment to the Pueblo Lands Act—not to a disputed title claim. The 2005 amendment specifically confirmed that pueblo criminal jurisdiction runs to "the exterior boundaries of any grant from a prior sovereign, as confirmed by Congress or the Court of Private Land Claims." Pub. L. 109-133, 119 Stat. 2573 (2005), 25 U.S.C. § 331 Note, § 20(a). ECF 127 at ¶ 81. Whether a resurvey can alter that congressionally defined jurisdictional boundary without congressional authorization is a legal question about agency authority—not title. In addition, it is a necessary allegation to establish the harm to San Felipe Pueblo—the loss of jurisdictional authority resulting from the agency action.

FAC ¶ 182 requests that the resurvey, purporting to represent the San Felipe Pueblo exterior southern boundary, be declared unlawful, previous surveys refiled, and survey monuments restored. ECF 127 at ¶ 182. FAC ¶ 183 requests restoration of agency records and rescission of the resurvey plat. ECF 127 at ¶ 183. Federal Defendants argue these requests mirror those in the original Complaint the Court dismissed. But the Court dismissed the original Complaint because those requests were accompanied by explicit claims of title and demands that the Court adjudicate ownership. *See* ECF 55. Dismissal Order at 22 (citing ECF 1, Compl. ¶¶ 210, 224, 239). The FAC contains no equivalent. It does not request that the Court declare that "San Felipe's title and right to sole possession of the lands within the boundaries of the San Felipe Patent has been previously and conclusively determined." ECF 1, Compl. ¶ 224. It does not request that the Court rule that "no claims adverse to San Felipe's title and right may be validly asserted, including Santa Ana's claim." *Id.* Those title-determination requests are absent from the FAC.

The relief San Felipe requests—setting aside the IBLA decision and the corrective resurvey, restoring survey monuments, and reverting agency records—is the standard APA remedy

when an agency acts without authority. 5 U.S.C. § 706 ("the reviewing court shall . . . set aside agency action . . . found to be . . . in excess of statutory jurisdiction, authority, or limitations"). This relief does not adjudicate who owns the Conflict Area. It determines only whether BIA and BLM conducted an actual resurvey in accordance with governing law and regulation. If BIA and BLM lacked that authority to do what they did, the pre-resurvey boundary markers must be restored—not because San Felipe holds title to the Conflict Area, but because the agency action that changed them was void.

3. The Court's Own Analysis Confirms That the Permitted APA Claim Is Not a Title Claim.

The Court's repeated engagement with San Felipe's pleadings in this case confirms that a line exists between permissible APA challenge and impermissible title claim—and that the Court authorized San Felipe to file a complaint on the permissible side of that line. The Court expressly held that San Felipe "can amend the Complaint to include only a claim under the Administrative Procedure Act . . . challenging the Solicitor of the Department of the Interior's directive to conduct a land boundary resurvey." ECF 101, Leave Order at 10. On reconsideration, the Court refined the authorization to focus on the BIA and BLM's implementation of the survey. ECF 126, Reconsidered Order at 2. In both orders, the Court recognized that such a claim was not barred by the QTA—otherwise no amendment would have been authorized at all.

Federal Defendants' position, taken to its logical conclusion, is that any APA claim that could result in restoration of the pre-resurvey boundary is a quiet title action barred by the QTA. But that would mean the Court's leave authorization was a nullity—any successful APA challenge would by definition restore the prior boundary, yet Federal Defendants argue that requesting restoration of the prior boundary is itself a quiet title claim. That circular argument cannot be right.

If the Court authorized the APA claim, it necessarily recognized the corresponding APA remedy, which includes setting aside the challenged agency action and restoring the prior legal status. Further, if this were the case, then the Department of Interior should never have considered Santa Ana Pueblo's original petition to reexamine the survey of the San Felipe Pueblo southern and western boundary—it was petitioned in 1980 as a challenge to a survey—not a title claim. Any title claim filed by Santa Ana Pueblo was barred from the outset as a Quiet Title Act claim.

4. Santa Ana's 12(b)(6) Motion Should be Dismissed.

Santa Ana's motion conflates San Felipe's APA challenge to the IBLA's administrative decision with a quiet title action barred by the Quiet Title Act ("QTA"). These are categorically distinct claims. The FAC filed does not ask this Court to adjudicate title. It asks this Court to review whether a federal agency acted lawfully in approving the obliteration of congressionally confirmed survey boundary monuments and resulting in diminishment of San Felipe's jurisdictional territory—without adequate legal authority and in a manner arbitrary and capricious under the APA. ECF 127, FAC ¶¶ 147, 154–156, 162–166, 169–171, 179–181. Santa Ana's jurisdictional argument depends on the premise that any complaint touching Indian lands must be a quiet title action barred by the QTA's Indian Lands Exception. That premise was squarely rejected by the Supreme Court in *Patchak*. There, the Court held that a plaintiff challenging a federal agency's land-management decision under the APA's general waiver of sovereign immunity, 5 U.S.C. § 702, may do so even if the challenge relates to land held in trust for an Indian tribe. *Patchak*, 567 U.S. at 215–22. The relevant question is whether the plaintiff seeks to "divest the United States of title" to land—not whether the underlying controversy involves Indian land. *Id.* at 216.

San Felipe does not seek to divest the United States of title to anything. What San Felipe

challenges is the administrative process by which federal officials—acting through BLM's resurvey and the IBLA's affirmance thereof—obliterated boundary monuments and altered official survey records that for over a century had reflected the exterior boundary of San Felipe's congressionally confirmed 1864 Patent. That is an APA claim, not a quiet title claim.

This Court itself recognized the distinction when it authorized San Felipe to pursue an APA claim after holding that the prior complaints were barred as quiet title actions. ECF 101 at 3; ECF 120 at 40. Santa Ana's attempt to collapse that distinction and argue that any APA claim touching land ownership is automatically a quiet title action would render the Court's own authorization meaningless—a result this Court plainly did not intend.

Nor does the QTA's Indian Lands Exception apply merely because the United States has "an interest" in the Conflict Area. The Supreme Court has made clear that the QTA "provide[s] 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), and that this exclusivity extends to any suit that is in substance a title dispute regardless of how it is labeled. *United States v. Mottaz*, 476 U.S. 834, 841–42 (1986). But neither *Block* nor *Mottaz* involved a plaintiff challenging the lawfulness of an administrative resurvey of its own pueblo exterior boundary. Both cases addressed plaintiffs asserting an affirmative interest in land owned by the United States—the paradigm quiet title claim. San Felipe asserts no such interest in the FAC. It challenges the procedural and legal validity of a federal agency action that did not comply with the statutory and regulatory limitations on resurveys acknowledged in the Tompkins Opinion as applicable to this case. ECF 127-5 at 2, n.5. That is an APA claim, not a quiet title action, and neither *Block* nor *Mottaz* forecloses it. San Felipe seeks no such adjudication. The FAC's Prayer for Relief requests that unlawful agency actions be set aside, that survey monuments be restored, and that agency

records be corrected—relief available under 5 U.S.C. § 706 and the Declaratory Judgment Act, 28 U.S.C. §§ 2201–2202, without any Title adjudication whatsoever.

Santa Ana points to the FAC's historical background allegations—particularly paragraphs 17 through 104—as evidence that the FAC is "at heart" a quiet title action. ECF 132 at 2, 5. But background allegations establishing the legal context for an administrative decision do not transform an APA claim into a quiet title claim. As this Court noted in its November 24, 2025, Memorandum Opinion, San Felipe may pursue an APA challenge "as long as its challenge 'does not rest on the assertion that Plaintiff owns the disputed land.'" ECF 120 at 40. The FAC's operative claim for relief does not rest on that assertion. It rests on the assertion that BLM and the IBLA acted without adequate legal authority, in an arbitrary and capricious manner, in breach of governing survey law and BLM's own 2009 Survey Manual—all cognizable APA grounds under 5 U.S.C. § 706(2)(A), (B), and (C). ECF 127, FAC ¶¶ 152–183.

Santa Ana characterizes paragraphs 17 through 104 of the FAC as impermissible quiet-title allegations. ECF 132 at 7-9. They are not. These paragraphs establish the legal and historical context necessary to evaluate whether the IBLA's affirmance of the resurvey was arbitrary and capricious. APA review of agency action routinely requires examination of the underlying legal framework the agency was applying. *See Camp v. Pitts*, 411 U.S. 138, 142 (1973) (judicial review of agency action focuses on the agency's stated rationale against the legal backdrop governing its authority). The history of the 1864 Patent, the Court of Private Land Claims proceedings, and the Pueblo Lands Act proceedings is precisely the "relevant matter" in the administrative record, 5 U.S.C. § 706, against which the IBLA's affirmance must be evaluated.

C. DEFENDANT-INTERVENOR'S 12(B)(1) MOTION SHOULD BE DENIED—THE FAC STATES A COGNIZABLE APA CLAIM AGAINST THE "RESURVEY" ACTION AND IBLA'S FINAL AGENCY ACTION DECISION THEREON.

Santa Ana argues that the FAC fails to state a proper APA claim because it focuses on the Tompkins Opinion rather than the IBLA's decision, and because no harm resulted from the “resurvey.” ECF 132 at 13. This characterization is inaccurate, and in any event, overstates what Rule 12(b)(6) requires. Read as a whole—as it must be—the FAC challenges the IBLA's affirmance of the BIA survey instructions and BLM's actions resulting therefrom including destruction of San Felipe Pueblo's southern and portions of the western exterior boundaries, and a “resurvey” of the boundary of the E; Ranchito Purchases on multiple independent grounds, each of which is sufficient to state a cognizable APA claim. The harm to San Felipe Pueblo is plainly stated—loss of jurisdiction and the right to apply its laws within the Congressionally confirmed pueblo boundaries.

1. The FAC Identifies the IBLA Decision as the Final Agency Action and Alleges Concrete Injury Therefrom.

Contrary to Santa Ana's assertion, the FAC expressly identifies the IBLA's April 5, 2017, decision as the final agency action subject to judicial review. ECF 127, FAC ¶ 143 (“The IBLA decision was a final agency action and was effective on the date it was issued.”). The FAC further alleges that San Felipe “exhausted its administrative remedies”. *Id.* The Prayer for Relief expressly requests that the Court enter “[a]n Order setting aside the Defendants' actions, including the April 5, 2017, IBLA decision.” *Id.* at Prayer ¶ 2.

The FAC also identifies concrete injuries flowing from the IBLA's decision to uphold the BIA and BLM survey actions following the issuance of the Tompkins Opinion upheld: the obliteration of survey monuments on the southern and western boundaries of the 1864 Patent; the official filing of a survey plat on April 20, 2017, that eliminated those boundaries from federal records; the alteration of BLM and BIA records to reflect those actions; and the consequent

impairment of San Felipe's criminal and civil regulatory jurisdiction over the Conflict Area. ECF 127, FAC ¶¶ 147–151, 162–171. Each of these actions forms a part of the “resurvey” actions challenged properly in the FAC.

Santa Ana's argument that the FAC never alleges San Felipe "suffered any 'legal wrong' from that decision" is belied by FAC paragraphs 147-151 and 162-171. ECF 132 at 13. In support thereof, Santa Ana cites to *Lujan v. National Wildlife Federation*, 497 U.S. 871 (1990). *Id.* at 10. This argument ignores what the FAC asserts is the harm suffered—the loss of San Felipe Pueblo jurisdiction over lands within the original San Felipe Patent boundary, including lands within Private Claims 4-6 lands it still owns in restricted fee title as a result of a Warranty Deed issued to San Felipe Pueblo.³ ECF 127, FAC, ECF 127 at ¶¶ 83, 147-149, 162-171.

The loss of jurisdiction to make its own laws and to be governed by them, and to make laws governing land use within the exterior boundaries is a real and concrete harm recognized repeatedly by the United States Supreme Court. *United States v. Montana*, 450 U.S. 544, 566-567 (1981); *Dollar General Corp. v. Mississippi Band of Choctaw Indians*, 579 U.S. 545 (2016).

National Wildlife Federation is inapplicable for another reason—that was a Rule 56 Motion for Summary Judgment not a 12(b)(1) motion. As the District of New Mexico Court explained in *Silvery Minnow v. Martinez* “In *National Wildlife Federation*, the Supreme Court found the plaintiffs' complaint, challenging an entire federal program, to be too sweeping to withstand a motion for summary judgment. As the Supreme Court took great pains to point out, the issue before it concerned the district court’s consideration of a motion for summary judgment,

³ Notably, the Federal Defendants acknowledge that not all the lands within the Conflict Area are “owned” by Santa Ana after the resurvey was filed, and in fact BIA records continue to reflect that Private Claims 4-6 are restricted fee lands owned by San Felipe Pueblo. *See*, FD MTD at 2; ECF

not a motion made under Rule 12(b). Where, as here, the motion is one under Rule 12(b), general allegations are presumed to “embrace those specific facts that are necessary to support the claim.” *Silvery Minnow v. Martinez*, *Not Reported in Fed. Supp.* (2000), (D.N.M. 2000) 2000 WL 36739784 at 3, (citing *Lujan v. National Wildlife Federation*, 497 U.S. 871, 889 (1990)).

2. The IBLA's Decision Was Arbitrary and Capricious Because it Did Not Conduct an Independent Review of Whether the BIA and BLM Complied with the Statutory and Regulatory Limitations on Resurveys.

San Felipe's APA challenge focuses on a structural defect in the IBLA's decision that is fully consistent with this Court's March 12, 2026, ruling. This Court held that San Felipe may not directly challenge the validity of the Tompkins Opinion, because it was a final agency action issued more than six years before this suit was filed. ECF 126 at 2. But the challenge to the IBLA's 2017 decision regarding the resurvey is timely, and the IBLA's decision incorporated the Tompkins Opinion's legal-authority determination by reference—declaring itself “barred” from questioning it. 190 IBLA at 67. That reflexive deference, applied to a legal authority question, is itself reviewable as arbitrary and capricious.

Under *Motor Vehicle Manufacturers Ass'n v. State Farm Mutual Automobile Insurance Co.*, agency action is arbitrary and capricious when the agency “entirely fail[s] to consider an important aspect of the problem.” 463 U.S. 29, 43 (1983). The IBLA refused to consider whether BIA and BLM had statutory and regulatory authority to conduct a corrective resurvey of a congressionally confirmed pueblo patent by eliminating the survey boundary of that Patent instead of resurveying that boundary—a threshold legal question. Refusal to consider whether such an action constituted a resurvey at all—on the ground that a prior Solicitor's Opinion had resolved it missed the mark of what was challenged on appeal by San Felipe Pueblo.

The APA requires this Court to determine “all relevant questions of law” and “interpret

constitutional and statutory provisions" independently. 5 U.S.C. § 706. An agency's self-imposed restriction on its own review authority without examining the limitations on resurveys does not foreclose judicial review of the legal questions the agency refused to reach.

The IBLA's decision presents a compound problem that the FAC properly identifies: the Board declined to review the Tompkins Opinion's legal authority conclusion, yet the IBLA also mischaracterized the Appeal San Felipe filed to conclude that San Felipe “expressly eschew[ed] any arguments regarding BLM’s ‘technical conformance’ with the BLM Survey Manual.” ECF 49-7 at 66, 190 IBLA at 29. The result is that no administrative tribunal has ever reviewed, on the merits, whether BIA and BLM possessed the statutory or regulatory authority to conduct a corrective resurvey that diminished a congressionally confirmed pueblo patent boundary without actually complying with the resurvey limitations imposed under governing law and the BLM 2009 Survey Manual limitations. The IBLA's affirmance of the resurvey, without any merits review of the authority of BIA to issue the special instructions it did and BLM’s implementation of those instructions, was arbitrary and capricious, or alternatively, in excess of statutory authority under 5 U.S.C. § 706(2)(C).

Santa Ana reads the Court's leave authorization to mean that San Felipe may challenge only whether BLM followed the Tompkins Opinion's desired result—not whether the resurvey satisfied the requirements of applicable federal law or the BLM 2009 Survey Manual, and that San Felipe is further restricted from challenging the IBLA’s conclusion that the actions taken by BIA and BLM were in fact a proper resurvey conducted in accordance with the BLM 2009 Survey Manual and the limitations of applicable federal law cited in the Tompkins Opinion. ECF 132 at 10–11. That narrow reading is without support in the Court's orders and would reduce the authorized APA claim to less than a challenge to the IBLA’s decision. ECF 101 and 126.

3. The FAC's Historical Background Allegations Are Proper and Do Not Exceed This Court's Authorized Scope.

Santa Ana objects to paragraphs 116 through 129, which critically analyze the Tompkins Opinion, as evidence that San Felipe is impermissibly challenging that Opinion. ECF 132 at 13. But those paragraphs identify the respects in which the IBLA's uncritical deference to the Tompkins Opinion was legally infirm—not an independent challenge to the Opinion's validity on the merits. The legal errors in the Tompkins Opinion are relevant to the APA question of whether the IBLA acted reasonably in treating them as binding without further review. This Court limited San Felipe to APA claims challenging the "implementation" of the Tompkins Opinion. ECF 126. Challenging the legal adequacy of the IBLA's refusal to consider whether the BIA special survey instructions and BLM's implementation of them were a proper resurvey is a challenge to the *implementation* of the Tompkins Opinion, not to the Opinion itself. Put simply, neither the statutes cited in the Tompkins Opinion, nor the BLM 2009 Survey Manual, authorize BIA or BLM to obliterate a survey boundary of a congressionally confirmed patent and call that a "resurvey" authorized under governing law.

Even setting aside the deference question, the FAC states a cognizable APA claim that the BIA request for cadastral survey and the resulting BLM resurvey was in excess of statutory and regulatory authority under 5 U.S.C. § 706(2)(C). ECF 127. Federal law authorizes BLM to conduct dependent resurveys to "reestablish" original survey lines—not to correct the substantive land-ownership determination embedded in a congressional patent. *See* 43 U.S.C. § 772; *Lane v. Darlington*, 249 U.S. 331, 333 (1919) (the government may "survey and resurvey what it owns," but "what it thus does for its own information cannot affect the rights of owners on the other side of the line"). The 1864 San Felipe Patent issued to San Felipe in fee status. ECF 127, FAC ¶ 29.

“[O]nce patent has issued,” the land ceased to be public land of the United States subject to the Secretary's general resurvey authority over public lands. *United States v. Reimann*, 504 F.2d 135, 138 (10th Cir. 1974).

The BLM's own BLM 2009 Survey Manual confirms this limitation. The Manual defines a dependent resurvey as a "retracement and reestablishment of the lines of the **original** survey . . . in their true original positions according to the best available evidence." Kidder Dec. Exhibit B, BLM Manual of Surveying Instructions § 5-10, at 130 (2009). The 2013 resurvey did not retrace the original survey—it replaced it. The BLM's special instruction directed Surveyor Olver to "remove all monuments marking the south and west boundaries of the San Felipe Pueblo Grant that fall within the exterior boundaries of the El Ranchito Grant" and to resurvey those boundaries based on the Walker Survey that the Court of Private Land Claims had expressly rejected. ECF 127, FAC ¶ 130, Exhibit F. The destruction of existing survey monuments and their replacement with a different boundary system is not a "dependent resurvey" under the Manual—it is an unauthorized alteration of a congressional patent boundary.

These are APA claims that the Court authorized San Felipe to pursue, and the FAC states them with sufficient factual particularity to satisfy Rule 12(b)(6).

Santa Ana's attempts to assert facts that contradict the allegations in the FAC, as a method to bait a discussion about ownership of lands within the exterior boundary of the San Felipe Pueblo, as determined by Congress in 1864, confirmed by United States surveyors Hall (1909), Joy (1916) and Olver (2009) (ECF 49-6 at 75 through 94), and the Hickey Report (2012) (ECF 49-6 at 97 through 102), and as confirmed by Congress to be as immovable as the exterior boundaries of all other Indian reservations for purposes of jurisdiction in the 2005 Pueblo Lands Act Amendment, does not convert the FAC into a QTA challenge. *See*, ECF 127, FAC at ¶¶ 80, 81, 115, 117, 123,

145, 168.

None of the allegations contained in the Santa Ana’s Motion that it exclusively owned and possessed all lands within the Conflict Area prior to the filing of the survey plat in April 2017, are supported by the historical record. *See*, ECF 127, FAC at ¶¶ 83, 90, 92-97. More importantly, those arguments do not convert the FAC into a title dispute. Any dispute about title to lands within the Conflict Area are not before the Court in this FAC, although they may be before the Tenth Circuit on appeal of the Court’s Order denying the proposed FAC in part.

Santa Ana’s argument that “in *Baca* the Tenth Circuit held that Santa Ana’s title to the former overlap was clearly valid” misrepresents what the Tenth Circuit held. *Pueblo of Santa Ana v. Baca*, 844 F.2d 708 (10th Cir. 1988) addressed only Private Claim 101—a tract the *Algodones* court had already quieted against San Felipe in favor of the community of Algodones—and ruled solely on Santa Ana’s adverse possession claim against non-Indian private landholders. “We therefore affirm the trial court’s finding that even if Santa Ana did not have good title to the disputed parcel, it acquired this title by adversely possessing this land since the early 1930’s.” *Id.* at 713. It had no effect on San Felipe Pueblo’s exterior boundaries as established in the 1864 Patent. *See*, ECF 79 at 32-34; ECF 127, FAC at ¶¶ 100-103. Critically, San Felipe was not a party to *Baca*, and the United States was not present to defend San Felipe’s interests as its trustee—a deficiency that renders *Baca* ineffective as against San Felipe’s rights in the Patent boundaries. *Id.*; *See also*, *United States v. Candelaria*, 271 U.S. 432, 444 (1926). *Baca* resolved a private adverse possession dispute over land already outside San Felipe’s legal interest, and it cannot be read as a determination that Santa Ana holds superior title to lands within the 1864 Patent boundary that were never at issue in that litigation. San Felipe’s full argument on this point is set forth in ECF 79 at 32–34, which is incorporated herein by reference. The Tompkins Opinion explicitly disclaimed

Baca as having preclusive effect in this case. ECF 127, FAC at ¶ 120; ECF 127-5 at 2.

D. IN THE ALTERNATIVE, LEAVE TO AMEND SHOULD BE GRANTED.

If the Court concludes that any portion of the FAC exceeds the permitted scope of APA pleading, San Felipe respectfully requests leave to file a Second Amended Complaint. Leave to amend "shall be freely given when justice so requires." Fed. R. Civ. P. 15(a)(2). Under *Foman v. Davis*, 371 U.S. 178, 182 (1962), denial of leave to amend is appropriate only upon a showing of undue delay, bad faith, dilatory motive, repeated failure to cure deficiencies, undue prejudice to the opposing party, or futility.

None of those factors is present here. The March 12, 2026, Memorandum Opinion and Order defined the final scope of permissible APA pleading only weeks before the FAC was filed on April 1, 2026. If the Court finds that the FAC's historical background allegations or its discussion of the Tompkins Opinion oversteps that scope, San Felipe can file a streamlined Second Amended Complaint that focuses exclusively on the IBLA's decision, the legal authority question the IBLA declined to review, and the BLM's execution of the resurvey—all within the scope this Court has authorized.

Santa Ana urges that San Felipe "should not be allowed any further attempts." Mot. at 13. But the procedural posture belies that request. San Felipe has not previously had the opportunity to file a complaint tested against the Court's final, definitive scope ruling. The March 12, 2026, Order granting Santa Ana's Motion for Reconsideration and limiting San Felipe to a challenge of the IBLA decision was entered before the FAC was filed. This is, effectively, the first filing under the Court's final governing framework—not a third bite at the apple as Santa Ana implies.

IV. CONCLUSION

For all of the foregoing reasons, Plaintiff Pueblo of San Felipe respectfully requests that

the Court deny Federal Defendants’ and Intervenor-Defendant Pueblo of Santa Ana's Motions to Dismiss Plaintiff's First Amended Complaint. The FAC complies with the Court's leave orders by challenging the BIA and BLM's execution of the corrective resurvey—including whether BIA and BLM complied with the applicable laws and regulations governing a resurvey—as an APA challenge to the “resurvey” conducted and the IBLA's final agency decision thereon. In the alternative, San Felipe requests that the Court grant it leave to file a Second Amended Complaint further narrowed to address any deficiencies the Court identifies.

Respectfully submitted this 22nd day of June 2026.

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