IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

PUEBLO OF SAN FELIPE, a Federally Recognized Indian Tribe,

Plaintiffs,

vs. No. CIV 23-0296 JB/LF

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

Defendants.

ORDER[1]

THIS MATTER comes before the Court on the Federal Defendants' Motion to Dismiss and Memorandum in Support, filed August 18, 2023 (Doc. 29)("MTD"). The Court held a hearing on November 16, 2023. See Clerk's Minutes, filed November 16, 2023 (Doc. 46). The primary issue is whether the Court should dismiss the Plaintiff's Complaint, filed April 5, 2023 (Doc. 1), for lack of jurisdiction pursuant to rule 12(b)(1) of the Federal Rules of Civil Procedure, because it names federal defendants in a suit that seeks, in essence, to quiet title to Indian land in favor of

[1]This Order disposes of the Federal Defendants' Motion to Dismiss and Memorandum in Support, filed August 18, 2023 (Doc. 29). The Court will issue a Memorandum Opinion at a later date, however, fully detailing its rationale for its decision.

Plaintiff Pueblo of San Felipe, such that the suit comes within the Quiet Title Act, 28 U.S.C. § 2409a ("QTA"), whose limited waiver of sovereign immunity does not extend to such claims as San Felipe's, namely those that seek to quiet title to Indian lands. See 28 U.S.C. § 2409a(a) ("The United States may be named as a party defendant in a civil action under this section to adjudicate a disputed title to real property in which the United States claims an interest. . . . This section does not apply to trust or restricted Indian lands. . . ."). The Court concludes 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, and so the QTA's Indian lands exception retracts the QTA's waiver otherwise of federal sovereign immunity, thereby eliminating the Court's jurisdiction to hear San Felipe's suit. Accordingly, the Court grants the MTD and dismisses the Complaint.

FACTUAL BACKGROUND

The Court draws its facts from the Complaint, as well as from materials beyond the pleadings in order to determine its jurisdiction. 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. See Plat of the San Felipe Pueblo Grant (dated February 1, 1907), filed April 5, 2023 (Doc. 1-1)("Hall Plat"); Map of Dispute Area (dated September 20, 2013), filed April 5, 2023 (Doc. 1-2)("BLM Resurvey"). San Felipe is Santa Ana's immediate northern neighbor; the disputed parcel lies at San Felipe's southern boundary and Santa Ana's northern boundary. The heart of the dispute is which tribe owns the land, and is thus entitled to compensation that the State highway authorities paid out in the 1980s to compensate for the construction of I-25 through the land; that compensation sat in escrow pending determination of the land's ownership until 2018, when the

Interior Department paid the money to Santa Ana. See Complaint ¶ 136-137, at 39; id. ¶¶ 187-193, at 50-52.

This dispute stretches back hundreds of years. The relevant history begins in 1689, when the King of Spain provided a land grant to San Felipe for its land in the region. See Complaint ¶ 21, at 9. In 1763, Santa Ana, displaced from the area farther North it traditionally had inhabited, purchased from a Spanish settler the El Ranchito Tract, which lies directly South of the San Felipe's land. See Complaint ¶¶ 155-157, at 43-44. San Felipe, however, claimed parts of this land and began selling parts of it off to Spanish settlers. See Pueblo of Santa Ana v. Baca, 844 F.2d 708, 709 (10th Cir. 1988)("Baca").[2]

Interested parties have litigated the land's ownership several times, under multiple statutory and regulatory schemes, over the course of more than 200 years. Parties first litigated the matter in 1813, when Santa Ana petitioned the Spanish authorities for a declaration that the sales were invalid, because San Felipe had no right in the land that San Felipe sold; Spanish authorities inspected the land, a tribunal in Santa Fe heard three days of evidence, and Spain decided in Santa Ana's favor. See Baca, 844 F.2d at 709. San Felipe appealed that decision through two layers of appellate review, both times losing, which culminated at the Real Audiencia of Guadalajara, a court of last resort for the territory in which the dispute occurred. See Baca, 844 F.2d at 710-12.

[2]San Felipe disputes certain factual conclusions that the United States District Court for the District of New Mexico reaches in Pueblo of Santa Ana v. Baca, No. CIV-81-303 (D.N.M. 1985), upon which the Tenth Circuit in Pueblo of Santa Ana v. Baca, 844 F.2d 708 (10th Cir. 1988), relies. The Court draws on facts that San Felipe does not dispute in these cases for background.

New Mexico came under the United States of America's control per the Treaty of Guadalupe Hidalgo of 1848, which obligated the United States to recognize all land titles under Spanish and Mexican law. See Complaint ¶¶ 22-23, at 9. In 1854, Congress passed a law creating the office of the Surveyor General of New Mexico, who would ascertain land titles under Spanish and Mexican law, and recommend them for congressional recognition. See Complaint ¶ 24, at 9. San Felipe submitted its 1689 Spanish grant to the Surveyor General, who determined it was valid, see Complaint ¶¶ 28-31, at 10-11; upon the Surveyor General's confirmation, Congress ordered San Felipe's land be surveyed, and that a patent[3] for it be issued based on the survey, see Complaint ¶ 32, at 11. Reuben E. Clements surveyed San Felipe's land in 1860, and in 1864 President Lincoln issued San Felipe's patent that incorporated the Clements Survey. See Complaint ¶ 35, at 12.

In 1897, under the Private Land Claims Act, 26 Stat. 854 ("PLCA"), interested parties again litigated the issue, which was decided effectively in San Felipe's favor, because the Court of Private Land Claims determined the boundary encroached into the El Ranchito Tract. See Complaint ¶¶ 36-37, at 12; id. ¶¶ 50-77, at 17-22. Santa Ana filed a petition against the United States in the Court of Private Land Claims ("PLCA Court"), pursuant to the PLCA, to establish its holdings. Complaint ¶¶ 53-59, at 17-19. The PLCA Court confirmed Santa Ana's petition and ordered a survey be made of Santa Ana's lands which subsequently should be patented, conditioned on the premise that the patent not award to Santa Ana any lands that the subsequently

[3]A land patent is a sovereign's dispensation of public lands' ownership to a person. See Patent, Black's Law Dictionary (11th ed. 2019)(defining "patent" as "[t]he governmental grant of a right, privilege, or authority. . . [or t]he official document so granting[,] . . . [a]lso termed public grant"); id. (defining "land patent" as "[a]n instrument by which the government conveys a grant of public land to a private person"); id. Letters Patent (defining "letters patent" as "[a] document granting some right or privilege, issued under governmental seal but open to public inspection . . . [or a] governmental grant of the exclusive right to use an invention or design. . . . [a]lso termed (in both senses) patent deed").

conducted resurvey determines were part of San Felipe's 1864 patent. See Complaint ¶¶ 58-62, at 18-19. Santa Ana did not appeal that decision. See Complaint ¶ 62, at 19. Subsequent surveys and resurveys confirmed largely the 1860 Clements Survey boundaries of the San Felipe Patent-El Ranchito Purchase boundaries, see Complaint ¶¶ 63-70, at 19-21; as noted above, the 1860 Clements Survey favors San Felipe. Another survey, the 1916 Joy Survey, also favors San Felipe. See Complaint ¶ 78-79, at 23.

In the 1920s and 1930s, two proceedings under the Pueblo Lands Act, 43 Stat. 636 ("PLA"), United States v. Brown and United States v. Algodones Land Co., again established the land's boundaries in San Felipe's favor based on the 1916 Joy Survey. See Complaint ¶¶ 108-109, at 31-32 (describing United States v. Brown); Complaint ¶¶ 113-124, at 32-35 (discussing United States v. Algodones Land Co.). A supplemental report that the Pueblo Lands Board issued in 1931, however, noted that earlier federal surveys which favored San Felipe over Santa Ana are contested. See Complaint ¶ 120, at 34. The Board's supplemental report recommended a "friendly suit" between Santa Ana and San Felipe to resolve the issue, but neither Tribe waived its sovereign immunity to adjudicate the matter. See Complaint ¶ 120, at 34.

Later, New Mexico highway authorities developed I-25, whose path crosses through the Conflict Area. See Complaint ¶¶ 134, at 38. Neither San Felipe nor Santa Ana objected to the highway's construction through their lands, but they disputed -- this dispute being the one up to the present day -- entitlement to compensation for that portion of I-25 crossing the Conflict Area, i.e., based on which Pueblo's land it is. See Complaint ¶¶ 136-145, at 39-41. The United States' Bureau of Indian Affairs placed in escrow the I-25 compensation, pending some final resolution of the ownership matter. See Complaint ¶¶ 136-145, at 39-41. Although not directly concerning the dispensation of the highway monies, other litigation has addressed the Conflict Area's

ownership. See Complaint ¶¶ 149-158, at 42-44 (discussing Baca, 844 F.2d 708; United States v. Thompson, 941 F.2d 1074 (10th Cir. 1991)).

Santa Ana in 1989 petitioned the Department of the Interior to correct the survey of Santa Ana's patent, based on alleged errors in the surveys that produced overlap between its El Ranchito Purchase tract and San Felipe's patent, i.e., creating the Conflict Area. See Complaint ¶ 159, at 45. In the 1988 Tarr Opinion, the Interior Department determines that it lacked the authority to correct surveys based on congressional patents. See Complaint ¶ 163, at 46. Upon an appeal by a different Pueblo of the 1988 Tarr Opinion's conclusion, the United States District Court for the District of Columbia Circuit determined that the Tarr Opinion's position is arbitrary and capricious, and so the Interior Department must reconsider whether it lacks a correction authority. See Pueblo of Sandia v. Babbitt, No. CIV 94-2624, 1996 WL 808067 (D.D.C. Dec. 10 1996)(Greene, J.). The Interior Department reconsidered the 1988 Tarr opinion, and, in 2000, issued the Leshy Opinion, determining that it possesses the authority to correct such surveys as that upon which Santa Ana's patent is based. See Complaint ¶¶ 161-165, at 45-46. The Interior Department urged San Felipe and Santa Ana to negotiate a settlement of the matter. See Memorandum from Hilary C. Tompkins, Solicitor, to Kevin K. Washburn, Assistant Secretary for Indian Affairs at 2, 3 n.9 (dated July 7, 2013), filed August 18, 2023 (Doc. 29-1)("Tompkins Opinion"). Although San Felipe and Santa Ana came close to resolution -- whereby San Felipe would relinquish its claim to the Conflict Area, and, in exchange, Santa Ana would support San Felipe's pursuit of purchasing replacement land with the federal government's assistance -- negotiations ultimately failed, and the parties reached no settlement. See Tompkins Opinion at 3 n.9.

In 2013, the Interior Department issued the Tompkins Opinion, which determines that, given the failure of negotiations between San Felipe and Santa Ana, the Interior Department needs to exercise the authority, which the 2000 Leshy Opinion determines that the Secretary possesses, to correct Santa Ana's patent's survey. See Complaint ¶ 173, at 48. After the 2013 Tompkins Opinion, the Interior Department 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 filed the Corrective Resurvey. Complaint ¶¶ 174-178, at 48-49. San Felipe appealed to the Interior Board of Land Appeals ("IBLA") the notice, but in 2017, IBLA decided against San Felipe as to the Corrective Resurvey's validity. Complaint ¶¶ 179-185, at 49-50. In 2018, the Interior Department formally filed the plats based on the Corrective Resurvey. See Complaint ¶ 186, at 50.

Based on the Corrective Resurvey's determination that the Conflict Area belongs to Santa Ana, the Interior Department disbursed to Santa Ana upon Santa Ana's formal request the I-25 compensation funds that had been held in escrow for more than thirty years. See Complaint ¶¶ 187-191, at 50-51. After disbursing the funds to Santa Ana, the Interior Department informed San Felipe that it had disbursed the escrow funds. See Complaint ¶¶ 187-191, at 50-51. San Felipe objected by letter to the Interior Department's action of disbursing to Santa Ana the escrow funds without first informing San Felipe. See Complaint ¶ 192, at 52. San Felipe contends that the Interior Department's actions violated the Interior Department's trust responsibilities to San Felipe. See Complaint ¶ 192, at 52. The Interior Department responds that the 2013 Tompkins Opinion and the 2017 IBLA decision upholding the Corrective Resurvey dictated its actions, and the Interior Department acknowledges that San Felipe may pursue any available avenues for legal relief. See Complaint ¶ 193, at 52.

PROCEDURAL BACKGROUND

On April 5, 2023, San Felipe filed its Complaint. In the Complaint, San Felipe alleges the following causes of action: (i) claims under the Administrative Procedure Act, 5 U.S.C. § 706 ("APA"), see Complaint ¶¶ 197-217, at 53-57; (ii) claims under the Declaratory Relief Act, 28 U.S.C. § 2201, see Complaint ¶¶ 218-227, at 57-60; and (iii) a Breach of Trust Responsibility, see Complaint ¶¶ 228-239, at 60-64. San Felipe's APA claims are based on the actions the Interior Department took in resurveying the San Felipe-Santa Ana boundary lines and in paying out the escrow funds based on its determination that Santa Ana is entitled to those funds:

> 206. Opinion M-37027, the April 5, 2017 IBLA decision, the April 20, 2017 filing of the resurvey, the 2017 change to the record ownership of the Conflict Area in BIA TAAMS, and the January 11, 2018 disbursement of the tribal trust funds (the Resurvey Actions) were arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, in violation of the APA. 5 U.S.C. § 706(2)(A).
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> 207. The Resurvey Actions were also contrary to constitutional right, power, privilege or immunity, in violation of the APA. 5 U.S.C. § 706(2)(B).
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> 208. The Resurvey Actions were also in excess of statutory jurisdiction, authority, or limitations, or short of statutory right, in violation of the APA. 5 U.S.C. § 706(2)(C).
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> 209. San Felipe therefore requests that the Resurvey Actions be declared unlawful and set aside.
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> 210. San Felipe further requests the Defendants be ordered to restore the boundaries and title of the San Felipe Patent, and related matters, to the status that existed before the Resurvey Actions, including restoring the record ownership in the BIA TAAMS to San Felipe, replenishing the tribal trust account, refiling previous surveys and plats or resurveying, as appropriate, and restoring the survey boundary monuments that were removed.
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> . . .
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> 215. Rather than paying such compensation to San Felipe, the Defendants caused such compensation to be disbursed to Santa Ana on January 11, 2018.

> 216. The Department and its officials have unlawfully withheld or unreasonably delayed the payment to San Felipe of such compensation, in violation of the APA. 5 U.S.C. § 706(1).
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> 217. San Felipe therefore requests that the Court compel the Defendants to take such actions as are necessary to promptly make full payment to San Felipe of the right-of-way and easement compensation mandated by law, with interest.

Complaint ¶¶ 206-210, at 55-56; id. ¶¶ 215-217, at 57. San Felipe's Declaratory Relief claims and its Breach of Trust Responsibility claims also revolve around the actions the Interior Department took around its Corrective Resurvey:

> 224. San Felipe therefore requests under 28 U.S.C. § 2201 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; that no claims adverse to San Felipe's title and right may be validly asserted, including Santa Ana's claim to the Conflict Area; and that the Department of the Interior and its officials have no authority to interfere with, and are obligated to recognize, San Felipe's title and right to sole possession and quiet enjoyment of the lands within the boundaries of the San Felipe Patent, including the Conflict Area.
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> . . .
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> 227. San Felipe requests a judicial declaration that its title and right to sole possession of the lands within the boundaries of the San Felipe Patent, including the Conflict Area, satisfies the sole condition for disbursement of the entire tribal trust account to San Felipe.
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> . . .
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> 237. The actions of the Defendants in dissipating and disbursing the tribal trust account breached Defendants' trust responsibilities to San Felipe.
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> . . .
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> 239. The actions of the Defendants as the trustee responsible for safeguarding the property of San Felipe as recorded within the BIA TAAMS, to alter the record ownership of the San Felipe Patent sometime between April 20, 2017 and November 14, 2017, without any notice to San Felipe and without any legal right to do so are egregious, and San Felipe requests that the Court order the Defendants to restore the record ownership status of the San Felipe Patent to San Felipe in the BIA TAAMS.

San Felipe's Prayer for Relief reads thus:

a. A judgment declaring that the final decision in United States v. Algodones Land Co. conclusively and finally quieted San Felipe's unextinguished title to the lands within the boundaries of the San Felipe Patent.

b. A judgment declaring that all claims adverse to San Felipe's title are now barred by the expiration of the limitations periods provided in the Pueblo Lands Act.

c. A judgment declaring the Defendants' legal obligation to recognize and to not interfere with San Felipe's title and its right to sole possession and quiet enjoyment of the lands within the boundaries of the San Felipe Patent and enjoining the Defendants from interfering with such title, right, and quiet enjoyment.

d. A judgment declaring unlawful and setting aside Solicitor's Opinion M-37027, the April 5, 2017 IBLA decision, the April 20, 2017 filing of the 2013 resurvey, the alteration of title to the San Felipe Patent in the BIA TAAMS between April 20, 2017 and November 17, 2017, and the January 11, 2018 disbursement of the tribal trust account funds.

e. A judgment ordering the Defendants to restore to their previous status San Felipe's title and right to lands within the San Felipe Patent boundaries, and to make all necessary and appropriate restoration to the BIA TAAMS, surveys and plats on file, and the monuments marking the boundaries of the San Felipe Patent.

f. A judgment declaring that San Felipe's title and right to sole possession of the lands within the boundaries of the San Felipe Patent, including the Conflict Area, satisfies the sole condition for disbursement of the entire tribal trust account to San Felipe.

g. A judgment compelling the Secretary of the Interior to provide a full accounting of the tribal trust account, to replenish the tribal trust account to the appropriate balance, with interest, as of the date of the Court's order, and to then release and pay the entire tribal trust account balance to San Felipe.

h. In the alternative to restoration of and disbursement of the tribal trust account to San Felipe, a judgment in equity compelling the Defendants to pay equitable restitution to San Felipe in the amount that should be in the tribal trust account as of the date of the Court's order.

i. An award of San Felipe's attorney fees, costs, and such other relief as may be just and equitable.

Complaint, Prayer for Relief ¶¶ (a)-(i), at 64-65.

On August 18, 2023, the Federal Defendants filed their MTD. They argue that the Court lacks jurisdiction over San Felipe's lawsuit. See MTD at 12-30. In the Defendants' view, the Complaint seeks, in effect, to have the Court adjudicate a dispute over lands in which the United States asserts an interest -- specifically, a dispute over Indian lands -- which means the suit can be brought only under the QTA's framework for waiving federal sovereign immunity. MTD at 12-20. Because, however, the QTA does not waive sovereign immunity as to disputes over Indian lands, there is no applicable sovereign immunity waiver, and, in turn, the Court lacks jurisdiction to hear the Complaint. See MTD at 20-26. The Defendants argue that all of the Complaint's theories of liability -- the APA claims, Declaratory Relief claims, and trust breach claims -- fail, because they turn on the underlying land dispute, over which the Court lacks jurisdiction. See MTD at 12-26. The Defendants offer additional arguments against the Complaint based on standing, and the unavailability of free-floating trust responsibilities untethered to specific statutory provisions. See MTD at 26-34.

San Felipe responds that the QTA does not bar its claims and that its Complaint is otherwise viable. See Plaintiff's Memorandum In Opposition to Defendants' Motion to Dismiss, filed October 13, 2023 (Doc. 40)("Response"). The Defendants reply thereto, arguing that San Felipe's Response demonstrates its Complaint is predicated upon a land dispute over which the Court lacks jurisdiction. See Federal Defendants' Reply In Support Of Their Motion To Dismiss, filed November 9, 2023 (Doc. 43)("Reply").

ANALYSIS

The Court determines that, because San Felipe seeks in effect to lay claim to title in the Conflict Area, such a claim against federally controlled land must come under the QTA. Because the land sought is indisputably Indian land, the QTA removes the Court's jurisdiction over the Complaint, because the QTA's Indian lands exception rescinds the federal sovereign immunity waiver that the QTA otherwise extends. The Court therefore will grant the Defendants' MTD and dismiss the Complaint.

I. THE APA IS THE COMPLAINT'S SOLE STATUTORY BASIS UNDER WHICH SAN FELIPE COULD PURSUE ITS LAWSUIT, BECAUSE IT IS THE ONLY SOURCE OF FEDERAL SOVEREIGNTY IMMUNITY WAIVER.

San Felipe does not demonstrate to the Court that its jurisdiction is proper. The Court, as a federal district court, has limited subject matter jurisdiction, and the burden is the plaintiff's to demonstrate jurisdiction. Among the barriers to federal court jurisdiction is the absence of a sovereign immunity waiver when a plaintiff sues the United States, a federal agency, or a federal officer in his or her official capacity. See N. New Mexicans Protecting Land Water & Rights v. United States, 161 F. Supp. 3d 1020, 1036 (D.N.M. 2016)(Browning, J.)("N. New Mexicans")("It is 'axiomatic that the United States may not be sued without its consent and that the existence of consent is a prerequisite for jurisdiction.'" (quoting United States v. Mitchell, 463 U.S. 206, 212 (1983), and citing FDIC v. Meyer, 510 U.S. 471, 475 (1994); United States v. Testan, 424 U.S. 392, 399 (1976)). Thus, when suing the United States, a plaintiff must show both a basis for jurisdiction, in the ordinary subject-matter-conferring sense, and also a statute that waives federal sovereign immunity. See Lagerstrom v. Mineta, 408 F. Supp. 2d 1207, 1209 (D. Kan. 2006)(Vratil, J.)("To sue the United States, its agencies or officers, plaintiff must allege (1) a basis for the court's jurisdiction; and (2) a specific statute that waives the government's immunity from

suit." (citing Baca v. United States, 467 F.2d 1061, 1063 (10th Cir. 1972); Thomas v. Pierce, 662 F. Supp. 519, 523 (D. Kan. 1987)(O'Connor, C.J.)). Waivers of immunity must be based on statute and be stated explicitly. See N. New Mexicans, 161 F. Supp. 3d at 1036 ("A waiver of sovereign immunity cannot be implied and must be unequivocally expressed." (citing United States v. Nordic Vill., Inc., 503 U.S. 30, 33-34 (1992); United States v. Mitchell, 445 U.S. 535, 538 (1980); United States v. Murdock Mach. & Eng'g Co. of Utah, 81 F.3d 922, 930 (10th Cir. 1996)).

Several bases for jurisdiction that San Felipe asserts fail to establish a basis for waiving federal sovereign immunity. San Felipe's asserts the Court's jurisdiction can be founded on the following statutes:

> 4. This Court has jurisdiction over the subject matter of this action pursuant to: 28 U.S.C. § 1331 (federal question), as this is a civil action arising under the Constitution, laws, or treaties of the United States; 28 U.S.C. § 1362 (federal question action by an Indian tribe), as this is a civil action brought by an Indian tribe or band with a governing body duly recognized by the Secretary of the Interior, wherein the matter in controversy arises under the Constitution, laws or treaties of the United States; and 28 U.S.C. § 1361 (mandamus against federal official), as this is an action in the nature of mandamus to compel an officer or employee of the United States or an agency thereof to perform a duty owed to Plaintiff.
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> 5. This action arises under the Constitution, laws and treaties of the United States, as hereinafter more fully appears, including but not limited to: the Commerce Clause, U.S. Const. Art. I, § 8, cl. 3; the Treaty Clause, U.S. Const. Art. II, § 2, cl. 2; the Treaty of Guadalupe Hidalgo, Feb. 2, 1848, 9 Stat. 922; the Act of Dec. 22, 1854, c. 103, 10 Stat. 308; the Act of Dec. 6, 1858, c. 5, 11 Stat. 374; the Act of March 3, 1891, c. 539, 26 Stat. 854; the Act of June 7, 1924, c. 331, 43 Stat. 636; the Act of May 31, 1933, c. 45, 48 Stat. 108; the Administrative Procedure Act, 5 U.S.C. §§ 551 et seq. and 701 et seq.; the Declaratory Judgments Act, 28 U.S.C. §§ 2201-2202; the Mandamus Act, 28 U.S.C. § 1361; the All Writs Act, 28 U.S.C. § 1651; and the federal common law.

Complaint ¶¶ 4-5, at 4-5. The general subject-matter jurisdiction statute, the mandamus statute, the Indian suit jurisdiction statute do not get San Felipe all the way across the jurisdictional threshold: they supply subject-matter jurisdiction, but do not waive sovereign immunity. See

Fostvedt v. United States, 978 F.2d 1201, 1203 (10th Cir. 1992)("Petitioner asserts that the court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 [federal question jurisdiction], 1340 [actions arising under the Internal Revenue Code], and 1361 [jurisdiction over mandamus action] . . . . These are statutes conferring general jurisdiction and '[s]overeign immunity is not waived by general jurisdictional statutes.'" (quoting Lonsdale v. United States, 919 F.2d 1440, 1444 (10th Cir. 1990)); Scholder v. United States, 428 F.2d 1123, 1125 (9th Cir. 1970)("[W]e [do not] see how 28 U.S.C. § 1362[, conferring subject-matter jurisdiction over complaints by Indian tribes,] can be read as [waiving immunity]. . . . Nothing . . . indicates an intention by Congress to waive sovereign immunity, and we know nothing in its legislative history to suggest such a purpose." (citing Quinault Tribe of Indians, etc. v. Gallagher, 368 F.2d 648 (9th Cir. 1966); H.R. Rep. No. 2040, 1966 U.S. Code & Ad. News, pp. 3145-3146)).

The APA waives sovereign immunity, however, so in conjunction with the other, general jurisdictional statue, that statute ordinarily permits San Felipe to cross the Court's jurisdictional threshold and seek an injunction against federal agency action. See 5 U.S.C. § 702 ("A person suffering legal wrong because of agency action . . . is entitled to judicial review thereof. [Such a]n action . . . shall not be dismissed . . . on the ground that it is against the United States . . . . The United States may be named as a defendant in any such action . . . ."). The APA, however, conditions its waiver of immunity on the proposition that no other statute removes immunity as to the plaintiff's suit:

> Nothing herein (1) affects other limitations on judicial review or the power or duty of the court to dismiss any action or deny relief on any other appropriate legal or equitable ground; or (2) confers authority to grant relief if any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought.

5 U.S.C. § 702. The parties dispute whether the QTA limits here the availability of the APA's federal sovereign immunity waiver.

II. THE QTA IS A STATUTE THAT LIMITS THE AVAILABILITY OF THE APA'S WAIVER OF SOVEREIGN IMMUNITY.

The parties dispute whether San Felipe's action is a quiet title action that must come under the QTA, which, in turn, provides for sovereign immunity as to claims for title in Indian land, thereby barring invocation of the APA's background sovereign immunity waiver. The QTA 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:

> (a) The United States may be named as a party defendant in a civil action under this section to adjudicate a disputed title to real property in which the United States claims an interest, other than a security interest or water rights. This section does not apply to trust or restricted Indian lands, nor does it apply to or affect actions which may be or could have been brought under sections 1346, 1347, 1491, or 2410 of this title [28 U.S.C. §§ 1346, 1347, 1491, or 2410], sections 7424, 7425, or 7426 of the Internal Revenue Code of 1954, as amended (26 U.S.C. 7424, 7425, and 7426), [26 U.S.C. §§ 7424, 7425, and 7426], or section 208 of the Act of July 10, 1952 (43 U.S.C. 666) [43 U.S.C. § 666].

28 U.S.C. § 2409a(a).

At heart, therefore, 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 Conflict Area or whether San Felipe's claim challenges the Resurvey Actions merely as administrative actions. The Court determines that San Felipe's claim, though not stylized as one, is an action to quiet title, that it must therefore be brought under the QTA, and that the QTA's Indian lands exception asserts sovereign immunity against San Felipe's claim. The Court understands it largely to be undisputed that, if San Felipe's Complaint triggers the QTA's application, then the Indian lands exception would apply, barring the Court's jurisdiction by asserting immunity: there is little dispute that the Conflict Area

constitutes Indian lands within the QTA's meaning. If, therefore, San Felipe can be understood to assert title to the Conflict Area, then the Indian land exception asserts immunity as to its Complaint. Because, moreover, as the Court will discuss, all of San Felipe's claims turn on this issue, then the QTA-Indian lands exception issue is the dispositive one on the Defendants' MTD. The question of paramount importance is, therefore, whether San Felipe's claim triggers the QTA, because what follows from concluding that the QTA's Indian lands exception applies is straightforward.

San Felipe cannot satisfy the Supreme Court of the United States of America's rule that district courts look through a plaintiff's complaint to determine whether it constitutes essentially a quiet title action that must be brought under the QTA and comply with that statute's conditions on federal sovereign immunity waiver. Three major cases bespeak this rule. First, in Block v. North Dakota ex rel. Board of University & School Lands, 461 U.S. 273 (1983)("Block"), the Supreme Court makes several key holdings. First, plaintiffs cannot circumvent the QTA framework if the plaintiff challenges the United States' title to real property, for example, by means of an officer-suit, see Block, 461 U.S. at 284-85 ("[W]e need not be detained long by North Dakota's contention that it can avoid the QTA's . . . restrictions by the device of an officer's suit. . . . We hold that Congress intended the QTA to provide the exclusive means by which adverse claimants could challenge the United States' title to real property."). Second, the States are no less bound to the QTA's strictures than other plaintiffs, see Block, 461 U.S. at 289 ("States are [not] presumed to be exempt from satisfying the conditions placed by Congress on its immunity waivers. . . . Congress had no intention of exempting the States from compliance with § 2409a(f)."). Discussing the QTA's history, the Supreme Court notes that the Indian lands exception was the first major revision offered to the statute's text as it made its way through Congress:

> The original version of S. 216, the bill that became the QTA, was short and simple. Its substantive provision provided for no qualifications whatsoever. It stated in its entirety: "The United States may be named a party in any civil action brought by any person to quiet title to lands claimed by the United States." 117 Cong. Rec. 46380 (1971). The Executive Branch opposed the original version of S. 216 and proposed . . . . limit[ing] the waiver of sovereign immunity in several important respects. First, [the Executive Branch bill] excluded Indian lands from the scope of the waiver. The Executive branch felt that a waiver of immunity in this area would not be consistent with "specific commitments" it had made to the Indians through treaties and other agreements. . . .

Block, 461 U.S. at 283 (quoting Hearing before the Subcomm. on Public Lands of the Senate Comm. on Interior and Insular Affairs on S. 216, S. 579, and S. 721, 92nd Cong., 1st Sess., at 2, 19 (1971)(M. Melich, Solicitor, Dept. of the Interior)).

The next major Supreme Court case, United States v. Mottaz, 476 U.S. 834 (1986)("Mottaz"), likewise holds that a plaintiff cannot avoid the QTA's strictures under the guise of other statutory causes of action. Mottaz, 476 U.S. at 842, 844 ("What respondent seeks is a declaration that she alone possesses valid title to her interests in the allotments and that the title asserted by the United States is defective."); Mottaz, 476 U.S. at 844 ("Respondent . . . [cannot] avoid the carefully crafted limitations of the Quiet Title Act by characterizing her suit as a claim for an allotment under the General Allotment Act of 1887."). The Indian lands exception works an assertion of sovereign immunity. See Mottaz, 476 U.S. at 843 ("[W]hen the United States claims an interest in real property based on that property's status as trust or restricted Indian lands, the Quiet Title Act does not waive the Government's immunity."). Like Block's holding that there is no State plaintiff carveout, Mottaz makes clear that there is no carve out for Indian plaintiffs under the statute. See Mottaz, 476 U.S. at 851 ("Federal law rightly provides Indians with a range of special protections. But even for Indian plaintiffs, '[a] waiver of sovereign immunity cannot be

lightly implied but must be unequivocally expressed.'" (quoting United States v. Mitchell, 445 U.S. 535, 538 (1980)).

Block and Mottaz concern primarily, upon triggering the QTA, the application of its twelve-year statute of limitations and not its Indian lands exception. See Block, 461 U.S. at 292-93 ("North Dakota's action may proceed, if at all, only under the QTA. If the State's suit was filed more than twelve years after its action accrued, the suit is barred by § 2409a(f)."). "Congress has consented to a suit challenging the Federal Government's title to real property only if the action is brought within the 12-year period set by the Quiet Title Act." Mottaz, 476 U.S. at 851. As the Court notes above, however, the major question for San Felipe is whether its Complaint triggers the QTA, because the result that follows from that proposition is straightforward; Block and Mottaz, therefore, first establish the applicable framework for the QTA's triggering question. Together, Block and Mottaz stand for the essential proposition that artful pleading does not exempt from the QTA any lawsuit that, at heart, seeks land from the federal government. See Block, 461 U.S. at 285 ("'It would require the suspension of disbelief to ascribe to Congress the design to allow its careful and thorough remedial scheme to be circumvented by artful pleading.'" (quoting Brown v. GSA, 425 U.S. 820, 833 (1976)).

The Supreme Court's most recent pronouncement on the QTA in Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak, 567 U.S. 209 (2012)("Patchak"), holds the line that what matters for triggering the QTA is about what, at bottom, a plaintiff is complaining. In Patchak, the plaintiff sued under the APA to block the Bureau of Indian Affairs from purchasing for an Indian tribe land that the tribe intended to use for a casino. See Patchak, 567 U.S. at 212-15. Patchak, whose property neighbored the land upon which the casino would be built, alleged not that he owned that land, but that the BIA lacked statutory authority to acquire it; the federal agency

asserted the QTA applied and that its Indian lands exception asserted sovereign immunity against Patchak's suit. See Patchak, 567 U.S. at 212-15. Under superficially similar circumstances, Block and Mottaz blocked the use of other statutes to circumvent the QTA, but the Supreme Court in Patchak said that Patchak's case demanded a different outcome. Cf. Block, 461 U.S. at 284-85 ("[W]e need not be detained long by North Dakota's contention that it can avoid the QTA's . . . restrictions by the device of an officer's suit. . . ."); Mottaz, 476 U.S. at 844 ("Respondent . . . [cannot] avoid the carefully crafted limitations of the Quiet Title Act by characterizing her suit as a claim for an allotment under the General Allotment Act of 1887."). Patchak was not asserting what is in actuality a quiet title action, because he did not assert his own claims to the land's ownership, and for this reason the QTA did not apply:

> In two prior cases, [Block and Mottaz,] we . . . described the QTA as addressing suits in which the plaintiff asserts an ownership interest in Government-held property. . . . Congress, we held, "intended the QTA to provide the exclusive means by which adverse claimants could challenge the United States' title to real property." [Block, 461 U.S. at 286.] We repeat: "adverse claimants," meaning plaintiffs who themselves assert a claim to property antagonistic to the Federal Government's. . . .
>
> But Patchak is not an adverse claimant -- and so the QTA (more specifically, its reservation of sovereign immunity from actions respecting Indian trust lands) cannot bar his suit. Patchak does not contend that he owns the Bradley Property, nor does he seek any relief corresponding to such a claim. He wants a court to strip the United States of title to the land, but not on the ground that it is his and not so that he can possess it. Patchak's lawsuit therefore lacks a defining feature of a QTA action. He is not trying to disguise a QTA suit as an APA action to circumvent the QTA's "Indian lands" exception. Rather, he is not bringing a QTA suit at all. He asserts merely that the Secretary's decision to take land into trust violates a federal statute -- a garden-variety APA claim. See 5 U.S.C. § 706(2)(A), (C) ("The reviewing court shall . . . hold unlawful and set aside agency action . . . not in accordance with law [or] in excess of statutory jurisdiction [or] authority"). Because that is true -- because in then-Assistant Attorney General Scalia's words, the QTA is "not addressed to the type of grievance which [Patchak] seeks to assert," H.R. Rep. 94–1656, at 28, 1976 U.S.C.C.A.N. 6121 at 6147 -- the QTA's limitation of remedies has no bearing. The APA's general waiver of sovereign immunity instead applies.

Patchak, 567 U.S. at 219-21. Significantly, in determining whether another statute like the QTA bars invocation of the APA's sovereign immunity waiver, the 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:

> [S]uppose that Patchak had sued under the APA claiming only that use of the Bradley Property was causing environmental harm, and raising no objection at all to the Secretary's title. The QTA could not bar that suit because even though involving Indian lands, it asserts a grievance altogether different from the kind the statute concerns. Justice SCALIA, in a former life as Assistant Attorney General, made this precise point in a letter to Congress about the APA's waiver of immunity. . . . When a statute "is not addressed to the type of grievance which the plaintiff seeks to assert," then the statute cannot prevent an APA suit. [H.R. Rep. No. 94–1656, p. 28 (1976), 1976 U.S.C.C.A.N. 6121, 6133] (May 10, 1976, letter of Assistant Atty. Gen. A. Scalia). . . .
>
> According to the dissent, we should look only to the kind of relief a plaintiff seeks, rather than the type of grievance he asserts, in deciding whether another statute bars an APA action. See *post,* at 2214 (opinion of SOTOMAYOR, J.). But the dissent's test is inconsistent with the one we adopted in *Block,* which asked whether Congress had particularly dealt with a "claim." *See Block v. North Dakota ex rel. Board of Univ. and School Lands,* 461 U.S. 273, 286, n. 22, 103 S.Ct. 1811, 75 L.Ed.2d 840 (1983).

Patchak, 567 U.S. at 216 & 216 n.3.

The United States Court of Appeals for the Tenth Circuit likewise has urged courts to consider what it is a plaintiff wants out of their lawsuit to know if it triggers the QTA.

> Though the County didn't specify that its crossclaims were QTA claims, we 'focus on the relief . . . request[ed], rather than on the party's characterization of the claim.' Because the County sought an R.S. 2477 right-of-way over BLM land, which can be accomplished only under the QTA, we construe the County's crossclaims as QTA claims.

High Lonesome Ranch, LLC v. Bd. of Cnty. Commissioners for Cnty. of Garfield, 61 F.4th 1225, 1238 (10th Cir. 2023)("High Lonesome Ranch")(quoting Shivwits Band of Paiute Indians v. Utah, 428 F.3d 966, 975 (10th Cir. 2005)(alterations in High Lonesome Ranch)). Moreover, a plaintiff

need not only assert actual ownership rights in federal land; it is enough to trigger the QTA that the plaintiff seeks use rights in real property, e.g., an easement over federal land. See High Lonesome Ranch, 61 F.4th at 1233 n.3 ("The parties[] . . . sometimes loosely use the terms 'owns' and 'public roads.' . . . We now simply note that '[a] right of way is not tantamount to fee simple ownership of a defined parcel of territory. Rather, it is an entitlement to use certain land in a particular way.'" (quoting S. Utah Wilderness All. v. BLM, 425 F.3d 735, 747 (10th Cir. 2005)); Lonesome Ranch, 61 F.4th at 1233 n.3 ("'An easement does not carry any title to the land over which it is exercised and the easement does not work a dispossession of the landowner.'" (quoting Barnard v. Gaumer, 361 P.2d 778, 780 (Colo. 1961)). Such assertions, although not of title, are claims for property rights in the United States' real property holdings.

III. SAN FELIPE'S COMPLAINT ASSERTS A REAL PROPERTY ADVERSE TO THE UNITED STATES AND SO TRIGGERS THE QTA'S APPLICATION.

Under these principles, San Felipe's claim is at heart a quiet title action, although it, in the first instance challenges the Defendants' Resurvey Actions. The thrust of San Felipe's Complaint is that San Felipe, not Santa Ana, owns the Conflict Area; because of its ownership, San Felipe asserts it is entitled to the disbursement of the I-25 escrow funds. On its face, the heart of San Felipe's grievance, under Patchak, is an ownership dispute over land in which the United States has an interest, i.e., as Santa Ana's trustee. Cf. Patchak, 567 U.S. at 220 ("Patchak does not contend that he owns the Bradley Property, nor does he seek any relief corresponding to such a claim. . . . He is not trying to disguise a QTA suit as an APA action to circumvent the QTA's 'Indian lands' exception."). Although the Court can look through a party's characterization of their legal claims to determine if they in reality assert a quiet title action, the Court does not have to look too hard to see as much in San Felipe's Complaint:

> 210. San Felipe . . . requests the Defendants be ordered to restore the boundaries and title of the San Felipe Patent . . . to the status that existed before the Resurvey Actions . . . .
>
> 217. San Felipe . . . requests that the Court compel the Defendants to . . . make full payment to San Felipe of the right-of-way and easement compensation . . . .
>
> 224. San Felipe . . . requests . . . 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; that no claims adverse to San Felipe's title and right may be validly asserted, including Santa Ana's claim to the Conflict Area; and that the Department of the Interior and its officials have no authority to interfere with, and are obligated to recognize, San Felipe's title and right to sole possession and quiet enjoyment of the lands within the boundaries of the San Felipe Patent, including the Conflict Area. . . .
>
> 227. San Felipe requests a judicial declaration that its title and right to sole possession of . . . lands . . . including the Conflict Area, satisfies the sole condition for disbursement of the entire tribal trust account to San Felipe.
>
> 239. The actions of the Defendants . . . to alter the record ownership of the San Felipe Patent . . . without any notice to San Felipe and without any legal right to do so are egregious, and San Felipe requests that the Court order the Defendants to restore the record ownership status of the San Felipe Patent to San Felipe in the BIA TAAMS.

Complaint ¶¶ 210-239, at 56-64.

San Felipe seeks ownership of the Conflict Area. The word "title" appears sixteen times alone in San Felipe's claims for relief, seven times in San Felipe's Prayer for Relief, and 194 times in the Complaint overall. See generally Complaint. The word "ownership" appears in the Complaint twenty-one times, and the word "possession" appears eighteen times. See generally Complaint. San Felipe's dispute with the Defendants is one over title, ownership, and rights to possession in land. On its face, therefore, it must come under the QTA. Cf. Patchak, 567 U.S. at 220-21 ("Patchak does not contend that he owns the Bradley Property, nor does he seek any relief corresponding to such a claim. . . . [H]e is not bringing a QTA suit at all."); Mottaz, 476 U.S. at

842, 844 ("What respondent seeks is a declaration that she alone possesses valid title . . . and that the title asserted by the United States is defective. . . . Respondent . . . [cannot] avoid the carefully crafted limitations of the Quiet Title Act by characterizing her suit as a claim [under another statute]."); Block, 461 U.S. at 284-85 ("Congress intended the QTA to provide the exclusive means by which adverse claimants could challenge the United States' title to real property."); Action, Black's Law Dictionary (11th ed. 2019)(defining "action to quiet title" as "[a] proceeding to establish a plaintiff's title to land by compelling the adverse claimant to establish a claim or be forever estopped from asserting it."); Title, Black's Law Dictionary (11th ed. 2019)("The union of all elements (as ownership, possession, and custody) constituting the legal right to control and dispose of property; the legal link between a person who owns property and the property itself. . . .").

Although, as San Felipe notes, the Tompkins Opinion and the IBLA decision purport not to transfer title, the Resurvey Actions evidently contemplate a change in ownership status of the Conflict Area and changes in record of title in the Trust Asset and Accounting Management System ("TAAMS"), the Interior Department's Indian land management system, indicate changes in legal ownership. Compare Pueblo of San Felipe, IBLA 2014-256 at 19 ("IBLA Decision"), filed with Supplemental Filings at 53, filed February 9, 2014 (Doc. 49-7)("[San Felipe] principally focuses on [an] issue[] not on appeal in this case[, namely] . . . whether [San Felipe] or [Santa Ana] holds title to the disputed lands affected by the resurvey, an issue which the State Director and BLM, in the underlying corrective dependent resurvey, did not adjudicate."), with Tompkins Opinion at 11 ("[W]e conclude that the boundaries of the lands patented to the respective Pueblos conflict [and] resolution of the resulting overlap would favor Santa Ana. . . ."), and Memorandum from John E. Antonio, S. Pueblos Agency, to Peter J. Fredericks, Off. of the Special Trustee for

Am. Indians at 2 (dated Nov. 14, 2017), filed August 18, 2023 (Doc. 29-2)("Antonio Memo.")("The BIA's update of TAAMS noted ownership of the majority of the former overlap area to the Pueblo of Santa Ana, with the exception of three parcels. . . . [T]itles to [those parcels] were not transferred to the Pueblo of Santa Ana as part of BIA's TAAMS update."). Although on its face the Resurvey Actions merely redraw a line, all parties understood that the effect of that redrawing also would be to effect a change in the land's ownership and to rights flowing therefrom. The Tompkins Opinion indeed concludes that the QTA bars any litigation to resolve the Conflict Area, implying that the Tompkins Opinion views resolving the issue of the Conflict Area as a matter of change in title. Cf. Tompkins Opinion at 14 ("The lands at issue . . . are held in restricted fee in which the United States has a discernible interest, i.e., restriction on alienation. The Act's express exclusion of 'trust or restricted Indian lands' is applicable here, and thus, would not have provided Santa Ana a remedy." (quoting 28 U.S.C. § 2409a(a)). San Felipe's complaints against the boundary's resurveying all ultimately are complaints about ownership and property rights flowing therefrom -- a quiet title action.

On similar facts to the present circumstances, Mesa Grande Band of Mission Indians v. Salazar, 657 F. Supp. 2d 1169 (S.D. Cal. 2009)(Burn, J.)("Mesa Grande"), holds that the QTA's Indian lands exception asserts federal sovereign immunity against an Indian Tribe's suit against the United States agencies to place in the Tribe's possession land held in trust on behalf of another, neighboring Indian Tribe. The Honorable Larry Alan Burns, United States District Judge for the United States District Court for the Southern District of California, explains that the absence of a judicial forum for Mesa Grande's relief is not sufficient reason to hold that the QTA's Indian lands exception does not apply to assert federal sovereign immunity:

> Plaintiff has argued some type of review should be implied, because otherwise the government's trust responsibility will be avoided. This argument cannot stand, however, because "Congress's unambiguous retention of sovereign immunity against quiet-title actions affecting trust and restricted Indian lands applies without regard to the availability of alternative means of review." 38 F.3d at 1077. Furthermore, the FAC's allegations make clear Plaintiff *has* attempted to seek redress directly from the Executive branch. *See also Block,* 461 U.S. at 280, (noting that parties claiming title to land claimed by the United States could petition Congress or the Executive for discretionary relief). The fact that these efforts proved unsuccessful does not mean they were unavailable, or that future efforts at petitioning the Executive and Congress would be futile.
>
> The fact that Plaintiff wants to have the current patents -- under which the United States is trustee and Santa Ysabel the beneficiary -- canceled and reissued to name the United States as trustee and Plaintiff as beneficiary does not change the analysis. The QTA's Indian lands exception was intended to allow the United States to carry out its commitments to Indian tribes. *Block,* 461 U.S. at 283 []; *Mottaz,* 476 U.S. at 842-43 and n. 6 []. . . . While issuing a land patent in favor of Plaintiff might promote this goal, it would have the effect of taking land from Santa Ysabel. Plaintiff may be tacitly viewing this action as essentially a dispute between it and Santa Ysabel, with the United States as a disinterested stakeholder. Because Plaintiff cannot proceed against Santa Ysabel, it is therefore left to proceed against the United States. Yet allowing Plaintiff or any other litigant to sue the United States to cancel a land patent issued in favor of an Indian tribe would interfere with the United States' trust commitment to that tribe, which is the very reason the United States has retained its immunity in such matters.

Mesa Grande, 657 F. Supp. 2d at 1175. Like the Tribal plaintiffs in Mesa Grande, San Felipe cannot rely upon the absence of judicial relief in the event sovereign immunity applies to argue that sovereign immunity should not apply: that no judicial forum can hear San Felipe's suit is the purpose of asserting sovereign immunity and not a reason to conclude immunity is waived. San Felipe may seek out from Congress or from the Executive the relief that its Complaint seeks, but San Felipe cannot seek that aid from the Court.

IV. SAN FELIPE'S TWO STRONGEST PRECEDENTS ARE DISTINGUISHABLE AND SO FAIL TO SUPPORT ITS POSITION THAT THE QTA DOES NOT BAR AN APA ACTION AGAINST THE RESURVEYING ACTIONS.

Two cases, Pueblo of Taos v. Adrus, 475 F. Supp. 359 (D.D.C. 1979)(Gasch, J.)("Taos"), and Pueblo of Sandia v. Babbitt, No. CIV 94-2624, 1996 WL 808067 (D.D.C. December 10, 1996)(Greene, J.)("Sandia"), represent San Felipe's strongest support, but ultimately are distinguishable which, on similar facts, determined that the QTA did not bar APA challenges to allegedly wrongful resurveys of Indian land boundaries. Those two cases both involved New Mexican Pueblos' challenges to force the federal government to resurvey what they alleged were inaccurate surveys of their patented land holdings. (Ironically, both of those surveys, which the district courts agreed were so suspect as to necessitate resurveying, were produced by Clements and Hall, respectively -- the same government surveyors in support of whose work San Felipe now marshals Taos and Sandia.) These cases suggest strongly why the QTA applies in San Felipe's case, and not in their own.

A. TAOS AND SANDIA HOLD, ON SIMILAR FACTS, THAT THE QTA DOES NOT BAR AN APA CHALLENGE TO RESURVEYING INDIAN LANDS' BOUNDARIES ADJACET TO OTHER, FEDERALLY CONTROLLED LAND.

In Taos, the Honorable Oliver Gasch, United States District Judge for the United States District Court for the District of Columbia, held that the QTA did not bar Taos Pueblo's suit to gain control of federally controlled land adjacent to its trust land, which was managed by the United States Forest Service ("USFS"). The Department of the Interior had agreed with the Pueblo that the line should be redrawn, but the Attorney General of the United States of America disagreed with the Interior Department's conclusion and suspended its resurveying effort; specifically it is the Attorney General's decision at issue. See Taos, 475 F. Supp. at 364-65 ("Defendant Andrus

corrected the boundary line between two parcels of public land, which correction was suspended by the opinion of the Attorney General. Plaintiff challenges that legal interpretation of the Attorney General. This is a classic case seeking review of administrative action, and sovereign immunity is thus no bar to the action."). In addressing that ultimate issue, Judge Gasch concluded that sovereign immunity, such as that the QTA can impose, did not foreclose the suit. Taos Pueblo's suit did not sound in quiet title, because, although it sought USFS land, its own land was federally controlled; reasoning that the United States' claim on behalf of the Pueblo could not be adverse to the United States' interests in the USFS land, the court held there was no QTA impediment to Taos Pueblo's APA claim:

> Cases cited by defendants for the proposition that actions which affect government ownership of land are barred by sovereign immunity are inapposite. . . . The relief requested in this case affects no ownership interest; it would merely adjust the boundaries between two parcels of government-owned land, one of which is held for the benefit of the Taos Pueblo.
>
> Similarly, defendants' related argument that this action is barred by the APA provision which precludes relief "if any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought . . .," 5 U.S.C. s 706 (1976), is misplaced. Defendants maintain that this case is covered by 28 U.S.C. s 2409a (1976). Section 2409a waives sovereign immunity in quiet title actions against the United States, but specifically excludes quiet title actions respecting Indian lands. Therefore, defendants argue, the relief sought is expressly forbidden. This action, as suggested above, however, is not a quiet title action; title to both parcels of land involved rests with the United States, and has since the lands were acquired from private parties several decades ago. This is an action seeking review of administrative action, and therefore defendants' reliance on section 2409a is erroneous.

Taos, 475 F. Supp. at 365. Both parcels of land, notably, were purchased initially by the United States from private landowners, and later dedicated to Taos Pueblo's use and the USFS' use. See Taos, 475 F. Supp. at 367 ("[A]lthough at one time private parties owned both parcels of land, the government has administered the parcels for several decades.").

Sandia represents similarly the principle that the QTA does not bar an APA complaint about allegedly wrongful resurveying action, where on one side of the allegedly incorrect boundary line is federally controlled Indian land and on the other side is federal agency land. Here, again, a Pueblo plaintiff sought ultimately to compel the federal government to correct the boundary between Sandia's land and neighboring USFS land; specifically, the Pueblo challenged the Department of the Interior's refusal to issue a corrective resurvey, on the basis that it lacked authority to do so. See Sandia, 1996 WL 808067, at *3 ("The administrative actions under review in this case are the refusal by Secretary Hodel to order a corrected survey of the boundary and the subsequent decision of Secretary Babbitt to adhere to Hodel's decision."). The Honorable Harold H. Greene, United States District Judge for the United States District Court for the District of Columbia, holds, like in Taos, that the federal-on-federal boundary dispute did not sound in quiet title, because the interests at play effectively were not adverse to one another:

> [T]he action before the Court is not one contesting the government's ownership of the land in question, and it therefore should not be judged under the Quiet Title Act. . . . [T]his is not a suit to quiet title. As indicated by the relief sought in the amended complaint,[] the Pueblo does not seek title to the disputed claim area; title would remain in the United States government. The Pueblo seeks merely to have the property at issue transferred from the control of one federal agency, the Department of Agriculture, to another, the Department of Interior, which, unlike Agriculture, would manage the property in trust for the Pueblo Indians. . . . The Pueblo's amended complaint . . . seek[s] a corrected survey and a declaration that the corrected boundary is the true boundary[, and] . . . the Pueblo does not seek any rights to the property held by private landowners within the disputed claim area.

Sandia, 1996 WL 808067, at *4. The court considered but rejected the proposition that the suit was more like one for quiet title, because New Mexican Pueblos' land, such as that of Sandia Pueblo's, often is held by the tribe in fee title. See Sandia, 1996 WL 808067, at *4 ("The government notes that title to the land is currently held by the Pueblo, not by the federal

government in trust for the tribe, but while this is true it is also misleading."). Pueblo land ownership status functionally is equivalent to other forms of Indian land, where reservation land title is held by the federal government in trust for Indian tribes. See Sandia, 1996 WL 808067, at *4-5 ("'[T]he precise title granted to the tribe makes little difference. . . .' [Sandia] does not hold 'title' in the traditional sense of fee simple absolute. . . . Pueblos may not convey property without [federal] consent[, and] . . . the special trust responsibility applies . . . with equal validity as to reservation Indians." (quoting Felix S. Cohen's Handbook of Federal Indian Law 480 n. 73 (1982 ed.)). Sandia, significantly, distinguishes the Supreme Court's Block and Mottaz cases on the ground that Sandia sought from the United States no title or ownership rights otherwise in the land at issue:

> In *Block,* the Supreme Court held North Dakota's attempt to prevent the United States from "develop[ing] or otherwise exercising privileges of ownership upon the bed of the Little Missouri River," 461 U.S. at 278 (quoting complaint), subject to the Quiet Title Act. Had this attempt succeeded, North Dakota would have had the right to bar the United States from every valuable right of ownership in the riverbed, such as dredging and development. By contrast, as explained above, the Pueblo of Sandia has not sought to prevent the Department of Interior from developing the land, or exercising other property rights in the Sandia Peak region. In fact, the correction of the Pueblo's eastern boundary does not challenge the government's title to the disputed lands and "any challenge to a non-ownership interest in real property is not precluded by the QTA." *Durbar Corp. v. Lindsey,* 905 F.2d 754, 759 (4th Cir.1990).
>
> Similarly in *Mottaz,* a private individual sought to divest the United States of title. Plaintiff's claim arose from the government's 1905 allotment of Indian reservation land pursuant to the General Allotment Act of 1887, 24 Star. 388, as amended 25 U.S.C. § 331 (1982). Mottaz challenged the government's sale of her ancestor's allotted land to the United States Forest Service. As the Court noted: "What respondent seeks is a declaration that she alone possesses valid title to her interests in the allotments and that the title asserted by the United States is defective . . . ." 476 U.S. at 842. Unlike in *Mottaz,* the Pueblo of Sandia has not sought title in its amended complaint, nor has it any time asserted that the United States' title is defective.

Sandia, 1996 WL 808067, at *5. In the Court's reading, central to Judge Greene's holding, particularly based on his reading of Block, is the proposition that Sandia did not seek rights of ownership, like rights to exclude or exploit the land at issue; Judge Greene's conclusion appears to rest on the proposition that Sandia Pueblo did not assert a claim to the proverbial "bundle of sticks" constituting property rights in the land sought.

B. TAOS AND SANDIA ULIMTATELY ARE DISTINGUISHABLE AND SUGGEST THAT THE SAN FELIPE'S COMPLAINT SOUNDS IN QUIET TITLE AND SO COMES UNDER THE QTA.

The United States is correct to note that these cases predate the Supreme Court's most recent exposition of the QTA in Patchak, but, to the extent that the United States suggests they cannot guide the Court's analysis, the United States is incorrect: on the Court's reading, these cases presage the key Patchak holding that, to raise a QTA bar, the party seeking land from the United States must be adverse to it. Cf. Patchak, 567 U.S. at 220 ("Congress . . . 'intended the QTA to provide the exclusive means by which adverse claimants could challenge the United States' title to real property.' We repeat: 'adverse claimants,' meaning plaintiffs who themselves assert a claim to property antagonistic to the Federal Government's." (quoting Block, 461 U.S. at 286)). Understood through Patchak's lens, Taos and Sandia stand for the proposition that an Indian tribe is not an "adverse claimant" when seeking federal agency land adjacent to the Indians' land; in such circumstances these cases provide that a boundary-line dispute raises only an APA claim, and not a QTA bar. Taos, 475 F. Supp at 365 ("This action . . . is not a quiet title action; title to both parcels of land involved rests with the United States, and has since the lands were acquired from private parties several decades ago."); Sandia, 1996 WL 808067, at *4 ("[T]he Pueblo does not seek title to the disputed claim area; title would remain in the United States government. The Pueblo seeks merely to have the property at issue transferred from the control of one federal

agency . . . to another."). In this sense, under the rubric of Patchak, Taos and Sandia both are holdings about who constitutes an "adverse claimant": they hold that the Pueblos before them did not.

The Court, however, agrees with the United States' suggestion, that it makes a difference that here, on either side of the Conflict Area's boundary line, are two Pueblos, not one Pueblo and an unrelated federal agency. Whereas in Taos and Sandia, the Indian claims to land were deemed not adverse to the federal agency's interests on the other side, here, San Felipe's interest in the land and right thereto is antagonistic to Santa Ana's. Although both interests exist under the United States' overarching control of the land, the interests still are adverse to one another. Stated within the Patchak framework, and taking into consideration the nature of the Pueblos' trust relationship with the United States, the rule can be stated thus: the trust beneficiary's property claims in Taos and Sandia (i.e., Taos Pueblo's and Sandia Pueblo's claims), are not adverse to the trustee's property claims (i.e., the United States' claims on behalf of USFS), to the same extent as, here, one trust beneficiary's property claims (i.e., San Felipe's claims), are adverse to those of another (i.e., Santa Ana's claims). A trustee's highest obligations are to its beneficiaries, see Pegram v. Herdrich, 530 U.S. 211, 224 (2000)("'The most fundamental duty owed by the trustee to the beneficiaries of the trust is the duty of loyalty.'" (quoting 2A A. Scott & W. Fratcher, Trusts § 170, p. 311 (4th ed. 1987)), so the trustee's obligations to a beneficiary are triggered when a co-beneficiary asserts, putatively against the trustee, an interest at heart antagonistic to the other beneficiary; such antagonism is of a greater degree than when the beneficiary asserts against the trustee interests that are adverse to those of the trustee alone. Vis-à-vis Santa Ana, San Felipe is an "adverse claimant." Patchak, 567 U.S. at 220 (quoting Block, 461 U.S. at 286). In turn, insofar as the United States stands in Santa Ana's shoes as Santa Ana's trustee and adopts as its own Santa

Ana's property interests, then San Felipe "assert[s] a claim to property antagonistic to the Federal Government's." Patchak, 567 U.S. at 220. In this way, one beneficiary versus another beneficiary (i.e., the present circumstances) raises a set of adverse property interests in a way not raised when it is one beneficiary versus the trustee alone (i.e., the circumstances in Taos and Sandia).

Two other distinctions between the present case and Taos and Sandia are worth noting that lead to the conclusion that San Felipe's claim against the Defendants is, at its core, a quiet title action. First, as noted above, part of Sandia's conclusion rests on the proposition that the Pueblo there did not, in substantial part, seek ownership rights in the land, i.e., Sandia Pueblo was not asserting its right to any of the "bundle of sticks" concomitant with property; this fact led Judge Greene to say that, under Block, Sandia Pueblo was not asserting a quiet title action:

> In *Block,* . . . North Dakota[, if its lawsuit succeeded,] would have had the right to bar the United States from every valuable right of ownership in the riverbed, such as dredging and development. By contrast . . . the Pueblo of Sandia has not sought to prevent the Department of Interior from developing the land, or exercising other property rights in the Sandia Peak region. In fact, the correction of the Pueblo's eastern boundary does not challenge the government's title to the disputed lands and "any challenge to a non-ownership interest in real property is not precluded by the QTA." *Durbar Corp. v. Lindsey,* 905 F.2d 754, 759 (4th Cir.1990).

Sandia, 1996 WL 808067, at *5. Here, by contrast, San Felipe seeks to exercise ownership rights in the Conflict Area. Specifically, it seeks as the Conflict Area's owner a right to the funds at the heart of the dispute: compensation for the construction of the I-25 right-of-way through the Conflict Area. San Felipe's asserted right to this money can only be predicated on San Felipe's ownership of the land over which the highway was constructed and for which the money was compensation. San Felipe seeks a "right to bar [Santa Ana] from [a] valuable right of ownership in the [Conflict Area]." Sandia, 1996 WL 808067, at *5. Unlike the facts in Sandia, San Felipe does not seek a merely non-ownership right in the land in question. Cf. Sandia, 1996 WL 808067,

at *5 ("'[A]ny challenge to a non-ownership interest in real property is not precluded by the QTA.'" (quoting Durbar Corp. v. Lindsey, 905 F.2d 754, 759 (4th Cir. 1990)). This too suggests San Felipe's suit properly is characterized as a quiet title action.

A last distinction between these case, suggestive of the quiet title nature of San Felipe's suit, lies in the emphasis that Judge Gasch in Taos places, in finding a lack of adversity, on the proposition that the United States had acquired initially both tracts of land at issue. It is of some importance to that decision that the United States always owned both sets of property there; the dedication of one area for Taos Pueblo and the other for the USFS is, to some extent, a matter of land use rather than land ownership.

> Pursuant to congressional mandate in the 1930's, Taos Pueblo received an allocation of funds to restore lost lands. Taos Pueblo requested the Department of the Interior to purchase the unoccupied eastern portion of the Martinez grant[, which the Department did in 1941.] . . . In 1950, the United States acquired what was known as the Leroux grant to add to Carson National Forest. The Leroux grant is north of and adjacent to the Martinez grant. . . . This action . . . is not a quiet title action; title to both parcels of land involved rests with the United States, and has since the lands were acquired from private parties several decades ago. . . . [A]lthough at one time private parties owned both parcels of land, the government has administered the parcels for several decades.

Taos, 475 F. Supp. at 362, 365, 367. In the Court's reading, part of why Judge Gasch concludes that Taos Pueblo's claim is not a quiet title action, is that the United States had always owned both sets of land, and Taos merely sought to have the United States rededicate the use of part of the land to Taos' benefit. Here, however, the pertinent rights predate the United States' involvement: San Felipe's and Santa Ana's claims each are predicated on rights to land that the Spanish and Mexican governments conferred on them, which the United States recognized by virtue of the Treaty of Guadalupe Hidalgo. Unlike Taos, where the boundary dispute could be theorized simply as a matter of differing uses to which the United States put its own land, here, the United States is

better characterized as administering particular land for San Felipe's and Santa Ana's benefit, because San Felipe and Santa Ana already possessed ownership rights in that land. Although the Court recognizes the functional similarity between Pueblo fee land, and orindary Indian reservation land, see Sandia, 1996 WL 808067, at *4-5 ("[T]he precise title granted to the tribe makes little difference." (quoting Felix S. Cohen's Handbook of Federal Indian Law 480 n.73), San Felipe's claim for having the Conflict Area administrated for its benefit is based on San Felipe's contention that it already had owned the Conflict Area for centuries prior, i.e., that it possessed title thereto. This feature makes, unlike in Taos, San Felipe's claim more like one to quiet title.

For the above reasons, the Court concludes that Taos and Sandia, although very similar to the present circumstances, do not upset the conclusion that San Felipe's lawsuit is one to quiet title, and so subject to the QTA, instead of a simple agency action challenge under the APA. San Felipe asserts an interest in property adverse to the United States' insofar as the United States stands in Santa Ana's shoes as its trustee . Cf. Patchak, 567 U.S. at 220 ("Congress . . . 'intended the QTA to provide the exclusive means by which adverse claimants could challenge the United States' title to real property.' We repeat: 'adverse claimants,' meaning plaintiffs who themselves assert a claim to property antagonistic to the Federal Government's." (quoting Block, 461 U.S. at 286)); Sandia, 1996 WL 808067, at *4 ("The Pueblo seeks merely to have the property at issue transferred from the control of one federal agency, the Department of Agriculture, to another, the Department of Interior, which, unlike Agriculture, would manage the property in trust for the Pueblo Indians."). San Felipe does not merely seek non-ownership rights in land, but seeks rights predicated on its ownership of the land in question. Cf. Sandia, 1996 WL 808067, at *5 ("Sandia has not sought to prevent the Department of Interior from developing the land, or exercising other

property rights in the Sandia Peak region. . . . '[A]ny challenge to a non-ownership interest in real property is not precluded by the QTA.'" (quoting Durbar Corp. v. Lindsey, 905 F.2d at 759)). Moreover, San Felipe's contentions about the land are predicated on its alleged longstanding ownership and possession to the Conflict Area. Cf. Taos, 475 F. Supp. at 365 ("[T]itle to both parcels of land involved rests with the United States, and has since the lands were acquired from private parties several decades ago."). San Felipe's action is one to quiet title to the Conflict Area in its name and so comes under the QTA. See Block, 461 U.S. at 285 ("'It would require the suspension of disbelief to ascribe to Congress the design to allow its careful and thorough remedial scheme to be circumvented by artful pleading.'" (quoting Brown v. GSA, 425 U.S. at 833)).

V. CASELAW HOLDING THAT BOUNDARY DISPUTES STATE APA CLAIMS, NOT QTA CLAIMS, FOR PURPOSES OF DETERMING LAND STATUS ARE DISTINGUISHABLE, BECAUSE SAN FELIPE'S CONTENTIONS DO NOT CONCERN LAND STATUS.

Another set of cases upon which San Felipe draws, and are distinguishable, hold that the QTA does not bar a boundary line dispute which concerns land status rather than land title. San Felipe adduces Comanche Nation, Okl. v. United States, 393 F. Supp. 2d 1196, 1207 (W.D. Okla. 2005)(Friot, J.)("Comanche Nation"), which holds that the QTA does not prohibit an APA action to adjudicate allegedly wrongful redrawing of a boundary line for purposes of determining land status under Indian gaming laws:

> Only disputes pertaining to the United States' ownership of real property fall within the parameters of the QTA. *Kansas v. United States,* 249 F.3d 1213, 1224 (10th Cir.2001). The Comanche Nation is not challenging the United States' right, title or ownership interest in the land, nor does it seek to disturb any possessory interest of the United States in the property. Even if the Comanche Nation succeeds in this action, title to the subject property will remain with the United States. At most, beneficial title will be affected -- a matter in which the United States and its officers have no interest in their own right. The Comanche Nation is simply seeking review of an administrative agency decision to hold the property in trust for the FSA Tribe for gaming and other commercial activities.

Comanche Nation, 393 F. Supp. 2d at 1207. That case, and others like it, make clear that land status -- e.g., for purposes of determining the applicability of Indian gaming regulations, or for determining what constitutes Indian country for purposes of federal criminal jurisdiction -- is a concept distinct from land title and ownership. The Tenth Circuit explains:

> In *Navajo Tribe of Indians v. New Mexico,* 809 F.2d 1455, 1475 (10th Cir.1987), we explained that "adjudicating reservation boundaries is conceptually quite distinct from adjudicating title to the same lands." Similarly, adjudicating the question of whether a tract of land constitutes "Indian lands" for Indian gaming purposes is "conceptually quite distinct" from adjudicating title to that land. One inquiry has little to do with the other as land status and land title "'are not congruent concepts' in Indian law." *Id.* (quoting *Ute Indian Tribe v. Utah,* 773 F.2d 1087, 1097 (10th Cir.1985) (en banc) (Seymour, J., concurring)). A determination that a tract of land does or does not qualify as "Indian lands" within the meaning of IGRA in no way affects title to the land. Such a determination "would merely clarify sovereignty over the land in question." *Navajo Tribe,* 809 F.2d at 1475 n. 29.
>
> Defendants in this case fail to appreciate the discrete concepts of land status and land title. *See id.* The "interest" which the State seeks to protect in this case is not an interest in the title to real property contemplated by the QTA. *See Kickapoo Tribe of Indians v. Deer,* No. 00–3095, 2001 WL 193810, at *1 n. 4 (10th Cir.2001) (unpublished) (stating "it is apparent" the QTA would not bar the Kickapoo Tribe's challenge to an agency determination that certain land constituted a "reservation" of the Wyandotte Tribe for purposes of IGRA). This is a dispute between federal, tribal, and state officials as to which sovereign has authority over the tract. *See Solem v. Bartlett,* 465 U.S. 463, 467 . . . (1984). The tract's owners are not even a party to this suit.

Kansas v. United States, 249 F.3d 1213, 1224–25 (10th Cir. 2001).

In United States v. Smith, 482 F. Supp. 3d 1164 (D.N.M. 2020)(Herrera, J.), the Honorable Judith C. Herrera, United States District Judge for the United States District Court for the District of New Mexico, explains that Indian land status and Indian land ownership are distinct concepts. In that case, Judge Herrera adjudicated a claim that, because a criminal defendant's offense occurred on property that, while it sat within the boundaries of an Indian Pueblo's borders, yet title

was non-Indian, having been determined as much during Pueblo Lands Act proceedings in the 1920s:

> The events surrounding the passage of the PLA give some, albeit not definitive, support that the PLA was merely to quiet title and did not have a purpose of diminishing tribal and federal authority and jurisdiction over the privately owned lands within the Pueblo. . . . The history of the federal government asserting jurisdiction over the private non-Indian lands within the Pueblo boundaries suggests that the understanding of the PLA was that it did not divest federal authority over the private lands therein. . . . "Whether a reservation has been disestablished or diminished depends on whether its boundaries were erased or constricted, not on who owns title to land inside the lines." [Murphy v. Royal, 875 F.3d 896, 952 (10th Cir. 2017)]. Adjudicating title is distinct from adjudicating reservation or pueblo status. *See id.* Based on the [Solem v. Bartlett, 465 U.S. 463 (1984)] factors, the Tenth Circuit's decision in [United States v. Antonio, 936 F.3d 1117 (10th Cir. 2019)], and that the Executive, not Congress, quieted title to the Property at issue, Defendant has not overcome the presumption against diminishment.

Smith, 482 F. Supp. 3d at 1175-76. Judge Herrera explains that, while, as to title and ownership, the defendant's property may be a non-Indian island within Indian country, still it counted as Indian country for federal jurisdictional purposes, because land status and land title are distinct concepts. See Smith, 482 F. Supp. 3d at 1175-76.

Although San Felipe is correct that the QTA does not bar a boundary dispute when at issue is Indian land status and not land title, San Felipe does not demonstrate that its own contentions concern land status rather than land title, so as to escape the QTA's reach. As discussed above, San Felipe's assertions all concern its land ownership -- significantly, its pursuit and entitlement to the highway escrow funds are predicated on its alleged land ownership. Indeed, much of San Felipe's contentions rest on the proposition that the Pueblo Lands Act proceedings have decided effectively its control over the Conflict Area -- a matter that Smith concludes is a matter of land title and not land status. That it looks to the Pueblo Lands Act proceedings, including Algodones, suggests that San Felipe's concerns are about title and ownership, and not about land status. Thus,

San Felipe cannot draw upon the Comanche Nation line of cases for the conclusion that its resurveying dispute does not come under the QTA. Because its contentions concern land title and not land status, San Felipe is subject to the QTA.

VI. SAN FELIPE'S CITATIONS TO CASELAW ON THE FIFTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES OF AMERICA'S TAKINGS CLAUSE ARE INAPPOSITE, BECAUSE SAN FELIPE HAS NOT ASSERTED A FIFTH AMENDMENT TAKINGS CLAIM.

Finally, the Court notes that some of the cases upon which San Felipe relies are Fifth Amendment Takings Clause cases, but, as the Defendants note, San Felipe has not asserted Takings case in its Complaint. See Bobbitt v. Youpee, 519 U.S. 234, 237 (1997)(We . . . hold that amended § 207 does not cure the constitutional deficiency [under the Fifth Amendment] this Court [in Hodel v. Irving, 481 U.S. 704, 706 (1987)] identified in the original version of § 207."); Hodel v. Irving, 481 U.S. at 706 ("The question presented is whether the original version of the "escheat" provision of the Indian Land Consolidation Act of 1983, Pub.L. 97-459, Tit. II, 96 Stat. 2519, effected a "taking" of appellees' decedents' property without just compensation."). The Court offers no opinion here whether a Fifth Amendment Takings Clause claim may be available under this case's facts. Nonetheless, these cases do not undermine the conclusion that San Felipe's claims are ones about title and ownership subject to the QTA.

In conclusion, the Court determines that it lacks jurisdiction to hear San Felipe's Complaint. Although styled as an APA case, the Complaint asserts, at heart, a claim for title in Indian land that the QTA bars on the basis of sovereign immunity. Accordingly, the Court grants the Defendants' MTD and dismisses the Complaint.

IT IS ORDERED that: (i) the Federal Defendants' Motion to Dismiss and Memorandum in Support, filed August 18, 2023 (Doc. 29)("MTD"), is granted; and (ii) the Plaintiff's Complaint, filed April 5, 2023 (Doc. 1), is dismissed without prejudice.

UNITED STATES DISTRICT JUDGE

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