

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

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NORTHERN NEW MEXICANS  
PROTECTING LAND WATER  
AND RIGHTS

Plaintiff,

v.

UNITED STATES OF AMERICA, and  
SALLY JEWELL, Secretary,  
U.S. Department of Interior,  
KEVIN WASHBURN, Assistant Secretary,  
Bureau of Indian Affairs,  
WILLIAM WALKER, Regional Director,  
Bureau of Indian Affairs, Southwest Office  
RAYMOND FRY, Superintendent,  
Northern Pueblo Agency,

Defendants.

CASE NO.

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**COMPLAINT FOR JUDICIAL REVIEW UNDER THE ADMINISTRATIVE  
PROCEDURES ACT, 5 U.S.C. § 706; FOR  
DECLARATORY AND INJUNCTIVE RELIEF PURSUANT TO 28 U.S.C. § 2201;  
TO QUIET TITLE PER 28 U.S.C. § 2409a;  
AND FOR A VIOLATION OF EQUAL PROTECTION UNDER THE LAW**

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COMES NOW Northern New Mexicans Protecting Land Water and Rights, by and through its undersigned counsel, to petition this Honorable Court for review of Agency Action pursuant to the Administrative Procedures Act, 5 U.S.C. § 706; to issue a Declaratory Judgment pursuant to 28 U.S.C. § 2201; for equitable relief consisting of Injunction; to quiet title to Plaintiff's members vested right-of-way easement under the Quiet Title Act, for just compensation resulting from the taking of property within the meaning of the just compensation clause of the Fifth Amendment to the United States Constitution and for a violation of equal protection under the law.

Plaintiff alleges that the Defendants by and through its agencies and employees, have actively engaged and interfered with the quiet use and enjoyment of vested public rights of way, deprived Plaintiff's members of access to Plaintiff's members private real property and deprived Plaintiff's members of the value of their property interests. Defendants' actions were taken in an attempt to extract monies for continued access to private property or to facilitate others to extract and/or extort such funds. Defendants have arbitrarily and capriciously acted contrary to the laws of the United States to deny Plaintiff's members exercise of their property rights by denying legal and valid access to their private real property, impairing their property interests, value and ability to sell such properties.

### **PARTIES**

1. Plaintiff, Northern New Mexican Protecting Land Water and Rights (NNMPLWR) is a duly registered 501(c)(3) nonprofit corporation whose members are property owners in New Mexico that are served by the rights of way know as County Roads 84, 84A, 84B, 84C, 84D, and Sandy Way.

2. Defendant Sally Jewell is the Secretary of Interior, and has ultimate responsibility for ensuring that agencies, such as the Bureau of Indian Affairs within the U.S. Department of Interior ("DOI") comply with applicable law, regulation and policies of the Department of the Interior.

3. Defendant Kevin Washburn is the Assistant Secretary of Indian Affairs, and is responsible for overseeing the actions and activities of the Bureau of Indian Affairs (BIA), an Agency within the DOI.

4. William Walker is a Regional Director with the BIA and responsible for the management and oversight of all BIA activities, programs and employees within the Southwest Region.

5. Defendant Raymond Fry is/was the Superintendent of Northern Pueblos Agency (NPA) within BIA Southwest Region at the time of the actions described herein. Superintendent Fry is the federal employee who took the Agency action giving rise to this Complaint.

### **JURISDICTION**

6. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1361 (action to compel an officer of the United States to perform his or her duty), the Quiet Title Act, 28 U.S.C. § 2409a, the Declaratory Judgment Act, 28 U.S.C. § 2201, and 28 U.S.C. § 2202 (injunctive relief).

7. Federal question arises in this matter as a result of actions taken in contravention of the 5<sup>th</sup> Amendment of the United States Constitution and equal protection under the law.

8. This Court also has jurisdiction over this action pursuant to the Administrative Procedure Act, 5 U.S.C. § 701. This Court has jurisdiction to review agency actions pursuant to 5 U.S.C. § 704.

9. This Court has jurisdiction of this case under 28 U.S.C. § 1491 (the Tucker Act) as a “claim against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department . . . .”

10. Jurisdiction of this Court also exists to hear claims regarding violations of the protections to property conferred per the Treaty of Guadalupe Hidalgo on February 2, 1848.

11. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) and (e).

### **GENERAL ALLEGATIONS**

12. Plaintiff is a nonprofit entity whose members are individual private property owners with property rights conferred pursuant to the Treaty of Guadalupe Hidalgo.

13. The properties of Plaintiff's members are served and accessed by long-standing and vested rights-of-way easements.

14. The rights-of-way easements were created and exist per the Act of 1866, later known as RS 2477:

*Sec. 8. "And be it further enacted, that the right-of-way for the construction of highways over public lands, not reserved for public uses, is hereby granted."*  
Mining Act of July 26, 1866, § 8, 14 Stat. 253, formerly § 2477 of the Revised Statutes and later 43 U.S.C. § 932.

15. Statutory grants to States of rights-of-way easements over federal lands have not been revoked subsequent to the Mining Act of 1866 (hereinafter referred to as the Act of 1866).

16. The public County Roads in question were established prior to 1900 across lands that, at the time, were within the territory of the United States and otherwise unreserved.

17. These same roads have since that time been regarded as public rights-of-way owned by the State of Mexico and administered as either a State highway or as a County Road.

18. Neither the State, nor the County, have taken action to vacate or abandon their claims to these public rights of way.

19. Well over a hundred years after the statutory vesting of these easements in the State of New Mexico and the physical construction of these roads pursuant to the law, the Bureau of Indian Affairs (BIA) has acted arbitrarily and capriciously, seeking to extinguish these public property rights/easements that cross tribal land, and which provide the sole means of access to Plaintiff's fee simple real property.

20. BIA's action has impaired Plaintiff's members' rights and ability to continue to utilize the vested public easement along the rights-of-way commonly known as County Roads that provides direct access to the fee simple property of Plaintiff from State Highway 502, formerly State Route 4.

21. Defendants have actively denied Plaintiff's members' rights and seek to prevent Plaintiff's members from utilizing their private property.

22. Defendants have explicitly stated in writing they do not acknowledge Plaintiff's right to utilize the public road to access their private property.

23. Defendants have threatened legal action in an attempt to cajole and extort funds from Santa Fe County to purchase a temporary easement to allow State citizens continued access to their property, despite the existence of a right-of-way already possessed by the County.

**FIRST CAUSE OF ACTION – CLAIM UNDER THE  
ADMINISTRATIVE PROCEDURES ACT**

*Defendants have acted Arbitrarily and Capriciously in issuing a decision to the Derogation of Plaintiff's Statutorily Granted Public Right-of-Way Easement.*

24. Plaintiff incorporates by reference paragraphs 1 to 23.

25. Defendants are aware based on applicable law, and in possession of factual documentation that establishes that the rights-of-way roads in question have been in existence and provided access to Plaintiff's members' private property for at least 100 years.

26. Defendants, through the actions of Defendant Raymond Fry, have taken action in derogation of such public rights-of-way and called into controversy Plaintiff's members' access rights to their private property.

27. Defendants, through the actions of Defendant Fry, issued a federal memorandum dated December 6, 2013, that alleged the County and private property holders were in trespass for using the public rights-of-way identified herein. Ex. 1

28. The December 6, 2013, Memorandum also demands the County and/or rights-of-way users immediately “enter into good faith negotiations to settle the current trespass and enter into a new easement for rights-of-way.”

29. The December 6, 2013, Memorandum was issued in contravention of the laws and regulations of the United States, and demonstrates a failure of the Agency to adhere to such law and regulation.

30. Defendants, through Defendant Fry, have explicitly acted in contravention of the Treaty of Guadalupe Hidalgo by infringing upon Plaintiff’s members protected property rights and refusing to acknowledge the preexisting rights of Plaintiff members to access the private property by vested rights-of-way.

31. Defendant Fry acted arbitrarily and capriciously in issuing the December 6, 2013, Memorandum which serves to impair Plaintiff’s members’ property rights.

32. Defendants’ ongoing refusal to recognize and grant Plaintiff’s members access to its private property by way of Plaintiff’s vested easement violates the Act of 1866, and Plaintiff’s members vested property rights.

33. Accordingly, Defendants’ ongoing failure to recognize and allow Plaintiff’s members to use its access, to threaten federal litigation, and to extort and demand the payment of funds to reestablish such access rights is arbitrary, capricious, an abuse of discretion and/or otherwise not in accordance with law pursuant to the Administrative Procedure Act, 5 U.S.C. § 701 *et seq.* and Plaintiff has a clear right to judicial review of such conduct.

34. Plaintiff's members have been harmed by the actions of Defendants as their property values have diminished. Title companies have refused to provide title insurance to Plaintiff's members as a result of Defendants' actions curtailing legal ingress/egress to Plaintiff members' property.

35. Defendants' actions have prevent Plaintiff members from securing financing to purchase, sell or refinance their real property.

36. Plaintiff members have been harmed and are at imminent risk of irreparable harm from Defendants' unlawful conduct.

37. Plaintiff has no adequate remedy at law, is likely to succeed on the merits, and in such circumstances, Plaintiff's claim for preliminary and permanent injunctive relief is favored by the public interest and the balance of equities.

#### **SECOND CAUSE OF ACTION – QUIET TITLE**

38. Plaintiff incorporates herein by reference, paragraphs 1 to 37.

39. Plaintiff's members have a vested right of ingress and egress to their private property over the rights-of-way for which the County of Santa Fe holds title.

40. The rights-of-way on roads which BIA actions have impaired and are at issue in this action are commonly known as County Roads 84, 84A, 84B, 84C, 84D, and Sandy Way road.

41. Rights-of-ways for such roads were conferred pursuant to the Act of July 26, 1866, 14 Stat. 253.

42. To the extent that any right-of-way utilized by Plaintiff's members for access to its fee simple property is not an express easement pursuant to applicable statutory law, Plaintiff has prescriptively acquired a corresponding non-possessionary interest in land as an implied easement

for ingress and egress to fee title property pursuant to *Superior Oil Co. v. United States*, 353 F.2d 34 (9th Cir.).

43. Defendants' interference with Plaintiff's members vested property rights have clouded title to such property and damaged such rights.

44. The Court should quiet title to Plaintiff's vested rights-of-way property rights for ingress and egress to their fee title property as against Defendants, by declaring the existence and validity of such rights-of-way.

45. Plaintiff's members have suffered or are likely to suffer irreparable harm from the cloud of title created by Defendants' conduct, and have no adequate remedy at law to clear the clouds on their property titles; and the Plaintiff's claim for permanent injunctive relief is favored by the public interest and the balance of equities.

46. As a result of such vested rights-of-way, issuance of a permanent injunction barring Defendants from further interference with Plaintiff's members access to their property and interference with Plaintiff members' property rights and value, is warranted.

### **THIRD CAUSE OF ACTION –TAKING OF PROPERTY WITHOUT COMPENSATION**

47. Plaintiff incorporates herein by reference, paragraphs 1 to 46.

48. If Defendants' are authorized under the law to issue the December 6, 2013, Memorandum and deprive Plaintiff's members of access to members' real property and cloud title to the extent of diminution of value, such action constitutes a taking of Plaintiff's property for which compensation is due within the meaning of the Fifth Amendment to the United States Constitution.



49. Absent access across the vested public rights-of-way, Plaintiff is deprived of any financial interest associated with member property interests, as access to such property is necessary for the use and enjoyment of property.

50. Defendants' deprivation of Plaintiff's members' access along a vested public property easement to their real property has impaired such property rights without due process under the law.

51. Defendants' deprivation of Plaintiff's members' access to their real property and demands that they or the County of Santa Fe purchase an easement for access is nothing short of extortion, and falls squarely within the findings of a taking by the United States Supreme Court in *Koontz v. St. Johns River Water Management District*, 570 U.S. \_\_\_, 133 S.Ct. 2586 (2013).

52. Defendants action serves to take Plaintiff's real property by extinguishing a vested easement public property right in violation of the Fifth Amendment to the United States Constitution which provides, in part: "[n]or shall private property be taken for public use, without just compensation." U.S. Const. Amend. V.

53. Defendants' action to deprive Plaintiff of ingress and egress to real property and/or extinguish a vested easement serves to take Plaintiff's members personal property by attempting to extort fees from Plaintiff members; and is a Constitutional violation in that the taking of private property such as ingress and egress fees for public purpose is a violation of the Fifth Amendment to the Constitution. *See Horne et al. v. Department of Agriculture*, No. 14-275 (June 22, 2015).

**FOURTH CAUSE OF ACTION - VIOLATION OF  
EQUAL PROTECTION UNDER THE LAW**

54. Plaintiff incorporates herein by reference, paragraphs 1 to 53.

55. The Treaty of Guadalupe Hidalgo (Treaty) guaranteed certain protections to former citizens of Mexico electing to remain in the United States.

56. The protections afforded to former Mexican citizens included the preservation of conferred property interests and land grants. (Treaty of Guadalupe Hidalgo, Article VIII).

57. Such former Mexican citizens were also afforded the full protection of United States citizens and equal protection under the laws of the United States. (Treaty of Guadalupe Hidalgo, Article IX).

58. Plaintiff member's rights to their grant lands – necessarily including ingress and egress rights – were subsequently confirmed by the federal government during the land grant confirmation process and as part of the Pueblo Lands Board review.

59. Defendants' action in curtailing or preventing Plaintiff's members from access to their property interests conferred by the Treaty violates the terms of such Treaty.

60. Defendants' action in curtailing or preventing Plaintiff's members from accessing their property rights by the use of established rights-of-way violates Plaintiff member's rights as United States citizens to equal protection under the law as established by the United States Constitution and conferred by the Treaty.

61. Defendants' actions have resulted in a diminution of value or the complete stripping of value for Plaintiff's members' protected real property rights in violation of the United States Constitution and Treaty.

### **REQUESTED RELIEF**

**WHEREFORE**, Plaintiff requests:

1. This Court declare, adjudge, and decree under the Declaratory Judgment Act, 28 U.S.C. § 2201 and 5 U.S.C. §§ 701, *et seq.* that Defendants' interference with Plaintiff's vested

access rights under the Act of July 26, 1866, 14 Stat. 253 is arbitrary, capricious, an abuse of discretion and/or otherwise unlawful.

2. This Court declare, adjudge, and decree under the Declaratory Judgment Act, 28 U.S.C. § 2201 and the Quiet Title Act, 28 U.S.C. § 2409a, that the public holds the previously described rights-of-way as a vested property right under the Act of July 26, 1866, 14 Stat. 253.

3. That this Court preliminarily and/or permanently enjoin the Defendants, their agents, employees, successors, and all persons acting in concert or participating with them under their direction, from interfering with public's vested rights identified in this Complaint.

4. This Court declare, adjudge, and decree under the Declaratory Judgment Act, 28 U.S.C. § 2201 that Defendants' attempted legal denial of access and improper threat of trespass action to deprive Plaintiff's members of the ability to access their private property and to utilize their vested public easement is a taking of Plaintiff's members private property in violation of the 5<sup>th</sup> Amendment and Due Process Clause of the United States Constitution.

5. This Court declare, adjudge, and decree that Defendants' actions curtail or otherwise violate the rights preserved to Plaintiff's members by the Treaty of Guadalupe Hidalgo to retain the quiet enjoyment, use and full property rights to land previously granted.

6. Award attorneys' fees, litigation expenses and costs against Defendants as provided by applicable law.

7. Grant such other relief as this Court deems appropriate.

Respectfully submitted this 30<sup>th</sup> day of June, 2015.

Respectfully submitted,

WARBA, LLP

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