

No.

IN THE
Supreme Court of the United States

HUGH MARTIN, SANDRA KNOX, KIRKLAND
JONES, PAT MALOY, and THERON AND SHERILYN
MALOY, PETITIONERS

v.

SANDOVAL COUNTY AND
PUEBLO OF COCHITI

*PETITION FOR A WRIT OF CERTIORARI
TO THE NEW MEXICO SUPREME COURT*

PETITION FOR WRIT OF CERTIORARI

A. BLAIR DUNN
Counsel of Record

*Western Agriculture
Resource and Business
Advocates, LLP
400 Gold Ave SW
Suite 1000
Albuquerque, NM 87102
abdunn@ablairdunn-esq.com
(505) 760-5060*

QUESTION(S) PRESENTED

There is a persisting trend in New Mexico, that, if the reason for taking private property is virtuous, i.e. to fight Covid or in this instance to give the land to Native Americans, that the state governments of New Mexico are excused from liability for providing just compensation. In a very real sense, the Fifth Amendment to the United States Constitution has been so thoroughly eroded in New Mexico, that it borders on unrecognizable and, certainly appears to be unavailable to citizens in that state. In this instance, the New Mexico state courts from top to bottom have refused to even examine a claim that a county government seized the dominant estate real property interest of the Petitioners through the inverse condemnation of road closure, in order to relinquish that easement to the subservient owner, merely because the subservient owner of the property was a Native American Pueblo that had taken ownership of the non-trust subservient estate subject to a express reservation of the dominant easements in place at the time.

Thus, the question presented is: Did the New Mexico Supreme Court err declining to review and rectify the decisions of the lower courts that cut Petitioner's off from obtaining just compensation from Respondent Sandoval County for its actions to inversely condemn the private property of Petitioners to relinquish that private property to Respondent Pueblo of Cochiti?

PARTIES TO THE PROCEEDING

All the parties in this proceeding are listed in the caption.

STATEMENT OF RELATED CASES

Related cases to this proceeding are:

- *Hugh Martin, Sandra Knox, Kirkland Jones, Pat Maloy and Theron and Sherilyn Maloy v. Sandoval County, Pueblo of Cochiti*, No. D-1329-CV-2021-00304, Thirteenth Judicial District Court for State of New Mexico. Order Dismissing Action With Prejudice entered July 7, 2022.
- *Hugh Martin, Sandra Knox, Kirkland Jones, Pat Maloy and Theron and Sherilyn Maloy v. Sandoval County, Pueblo of Cochiti*, Case No. A-1-CA-40604, Court of Appeals for the State of New Mexico, Opinion entered December 7, 2022.
- *Hugh Martin, Sandra Knox, Kirkland Jones, Pat Maloy and Theron and Sherilyn Maloy v. Sandoval County, Pueblo of Cochiti*, Case No. S-1-SC-39724, Supreme Court of New Mexico, Order Denying Certiorari entered Feb. 16, 2023.

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PETITION FOR WRIT OF CERTIORARI

The Courts of New Mexico have eviscerated the citizens' rights to just compensation if their private property is taken for a public benefit. They have done so on the auspice of abstaining on jurisdictional grounds if the private property touches or is even merely adjacent to a subservient estate of lands owned (not even in trust) by tribes or pueblos. But, no confusion is warranted, this a land grab for the public benefit of giving the Native Americans the private property lawfully owned by private citizens. In the present case, the Pueblo of Cochiti purchased the subservient estate under the express reservation that the dominant estate easements would be honored. The Pueblo of Cochiti, then, through the bully tactics reminiscent of a robber baron of the Old West, coerced by the threat of armed conflict to have Sandoval County inversely condemn and extinguish the easements necessary for these Petitioners to access their private property, easements for which they had their own claim of title.

The State District Court and the Court of Appeals confronted with confusing and inconsistent jurisprudence from the New Mexico Supreme Court in *Hamaatsa, Inc. v. Pueblo of San Felipe*, 388 P.3d 977 (N.M. 2016) determined that merely because the subservient estate of lands owned by the Pueblo were legally adjacent to the dominant estate easements that the Courts of New Mexico had no jurisdiction to address the theft of property by a county government for which no just compensation was provided.

OPINIONS BELOW

The Order of the New Mexico Supreme Court denying the Petition for Certiorari without explanation in *Hugh Martin, Sandra Knox, Kirkland Jones, Pat Maloy and Theron and Sherilyn Maloy v. Sandoval County, Pueblo of Cochiti*, Case No. S-1-SC-39724 dated Feb. 16, 2023 is set forth in the appendix hereto pages 1a – 2a.

The New Mexico Court of Appeals' Memorandum Opinion in *Hugh Martin, Sandra Knox, Kirkland Jones, Pat Maloy and Theron and Sherilyn Maloy v. Sandoval County, Pueblo of Cochiti*, Case No. A-1-CA-40604, affirming the District Court Dismissal with Prejudice dated December 7, 2022, is set forth in the appendix hereto pages 3a – 8a.

- The state District Court Order Dismissing the Action with Prejudice in *Hugh Martin, Sandra Knox, Kirkland Jones, Pat Maloy and Theron and Sherilyn Maloy v. Sandoval County, Pueblo of Cochiti*, No. D-1329-CV-2021-0030, dated July 7, 2022 is set forth in the appendix hereto pages 9a – 11a

JURISDICTION

The Order of the New Mexico Supreme Court denying the Petition for Certiorari was entered on February 16, 2023. This petition for writ of certiorari by Petitioners is filed within ninety (90) days from the date of the Order denying the Petition. 28 U.S.C. § 2101(c). The jurisdiction of this Court is invoked pursuant to the provisions of 28 U.S.C. § 1257.

RELEVANT PROVISIONS INVOLVED**United States Constitution, Article III, Section 1:**

The Judicial power of the United States shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish...

United States Constitution, Amendment V:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

28 U.S.C. Section 1257

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or

laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

STATEMENT

Right to Just Compensation for Private Property Taken for Public Use

Petitioners brought an action in New Mexico state court to address the taking of their private property easements that served to give them access to their private property without compensation by Sandoval County, who at the direction of the Pueblo of Cochiti forcibly closed those easements and denied Petitioners access to their private property utilizing their private property easements. The New Mexico state district court found that the subservient estate (purchased subject to express reservations for the dominant easements in place at the time) held by the Pueblo of Cochiti made them an indispensable party to the taking action against Sandoval County and that their addition as a party denied the district court jurisdiction under the New Mexico Supreme Court's decision in *Hamaasta* requiring dismissal of the case with prejudice without providing any relief to the Petitioners for their taken property.

REASONS FOR GRANTING THE PETITION

While there may be some sort of warped poetic justice that can be argued for a state government stealing property to give it back to Native Americans

who first occupied the lands pre-settlement, that is not the law. And in fact, that notion is directly contrary to the Fifth Amendment to the United States Constitution. Here, of course, if Sandoval County wants to kowtow to the bully tactics of a Native American government to seize property and relinquish it to the Pueblo, Sandoval County may, but that does not relieve them of the requirement to provide the private property owners with just compensation for the taken property. More importantly, the New Mexico state courts should not be allowed to cower behind decisions recognizing sovereign immunity to allow the taking to occur without providing for some redress.

In fact, the *Hamastaa* decision itself does not support that state government entities may steal property simply because there is a Pueblo-held estate adjacent and subservient to the private property condemned by the county government then relinquished to the bullying Pueblo entity or even that a Pueblo cannot be made to answer for its taking of private property without providing just compensation. To be clear, the New Mexico Supreme Court recognizing this principle from this Court stated in the *Hamasta* decision that:

tribal sovereign authority, the power of a tribe to exert what is necessary to protect self-governance and establish relations amongst its members to the exclusion of state regulation, is inherently distinct from the notion of tribal sovereign immunity-the plenary right to be free from having to answer a suit. As stated by the United States Supreme Court in *Kiowa*, '[t]here is a difference between the right to demand

compliance with state laws and the means available to enforce them.’ 523 U.S. at 755, 118 S.Ct. 1700 (citation omitted). That is, just because a state may, for example, tax cigarette sales by a tribe's store to nonmembers, such authority to tax or regulate has no bearing on the tribe's ultimate immunity from a suit to collect unpaid state taxes. See *Potawatomi I*, 498 U.S. at 512-14, 111 S.Ct. 905.

Hamaatsa, Inc. v. Pueblo of San Felipe, 388 P.3d 977, 984 (N.M. 2016).

Quite simply, the Pueblo of Cochiti enjoys sovereign immunity from suit for its tortious interference that motivated Sandoval County to *physically seize* or *take* the Plaintiffs real property right of way easement and to deny them access to their real property inholdings served by that road. This lawsuit is not incongruent with the New Mexico Supreme Court's holding in *Hamaasta* because Sandoval County has taken direct physical actions resulting in an inverse condemnation of the Plaintiff's private property that insulate the Pueblo of Cochiti from any claim regardless of whether or not such a claim would enjoy immunity.

Moreover, in regard to this concept that Sandoval County could simply close the road and avoid paying just compensation, Justice Clarence Thomas in his concurring opinion notably addresses the concept of Sandoval County's approach here (to take the property without compensation and give it to the Pueblo while simultaneously stating you can't sue us because we

gave to Native Americans that enjoy immunity from a suit for tort) stating:

This “sue me” approach to the Takings Clause is untenable. The Fifth Amendment does not merely provide a damages remedy to a property owner willing to “shoulder the burden of securing compensation” after the government takes property without paying for it. *Arrigoni Enterprises, LLC v. Durham*, 578 U.S. —, —, 136 S.Ct. 1409, 1409, 194 L.Ed.2d 821 (2016) (THOMAS, J., dissenting from denial of certiorari). Instead, it makes just compensation a “prerequisite” to the government’s authority to “tak[e] property for public use.” *Ibid.* A “purported exercise of the eminent-domain power” is therefore “invalid” unless the government “pays just compensation before or at the time of its taking.” *Id.*, at —, 136 S.Ct., at 1410. If this requirement makes some regulatory programs “unworkable in practice,” Supp. Brief 5, so be it—our role is to enforce the Takings Clause as written.

...

Still, “[w]hen the government repudiates [its] duty” to pay just compensation, its actions “are not only unconstitutional” but may be “tortious as well.” *Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687, 717, 119 S.Ct. 1624, 143 L.Ed.2d 882 (1999) (plurality opinion). I do not understand the Court’s opinion to foreclose the application of ordinary remedial principles to

takings claims and related common-law tort claims, such as trespass. I therefore join it in full.

Knick v. Twp. of Scott, Pennsylvania, 204 L. Ed. 2d 558, 139 S. Ct. 2162, 2180 (2019).

The New Mexico Court of Appeals' decision affirming the district court's decision to dismiss on the basis of interpreting the New Mexico Supreme Court's decision in *Hamaatsa* to mean a boundaryless blanket of sovereign immunity for all actions that touch in any way Indian ground was unjust and cannot be consistently read with the United States Constitution or the decisions of this Court. And the New Mexico Court of Appeals' decision unchecked by the New Mexico Supreme Court relies upon the New Supreme Court's decision to serve as an absolute bar to any property owner that subsequently finds that their property has been taken from them by any government action by any government if it involves ground that a Pueblo or Reservation later acquires and decides to exclude the property owners from despite their lawful rights to that property. It is unimaginable given the protections in our federal constitution and the New Mexico state constitution that this broad sweeping policy is what this Court would allow as essentially wiping out both the Fifth Amendment and Article II Section 20 of the New Mexico Constitution such that the citizens could not even pursue *just* compensation from a state government entity that either took the action constituting a taking or aided the Indian government in taking the property. This Court should grant certiorari to clarify and correct this miscarriage.

Specifically, even though the important facts noted above were not legitimately in dispute before the state District Court, the New Mexico Court of Appeals affirmed the refusal of the District Court to take these facts upon their face value and true for the purposes or Rule 12 Motion. The District Court instead found reaching beyond the allegations that because the Pueblo of Cochiti is the party that motivated Sandoval County to close the roads that it was the Pueblo of Cochiti that had *taken* Plaintiffs' private property. From there, the District Court's misapprehension of the facts (similar to the misapprehension of New Mexico Court of Appeals in the Proposed Summary Affirmance) overlooked the law regarding the fact that Sandoval County *physically taking* the property of Plaintiffs through inverse condemnation does not affect the Pueblo's subservient estate interest per the New Mexico Court of Appeal's decision in *Mayer v. Smith*, 350 P.3d 1191, 1200. (N.M. App. 2015). Equity and good conscience should have dictated to the New Mexico state courts that if the Pueblo of Cochiti's interests are not impacted by the taking of the interests of Petitioners by Sandoval County that destroying the District Court's jurisdiction leaving citizens with no remedy whatsoever, by joining them as party was **wrong**.

Quite simply, while the Pueblo of Cochiti enjoys sovereign immunity from suit for its tortious interference that motivated Sandoval County to *physically seize or take* the Petitioner's real property right of way easements and to deny them access to their real property inholdings served by those roads, *Haamasta* does not extend so broadly as to extend that sovereign immunity to Sandoval County. This lawsuit

was not and could not be so incongruent with the New Mexico Supreme Court's holding in *Hamaasta* because Sandoval County has taken direct physical actions resulting in an inverse condemnation of the Plaintiff's private property that insulate the Pueblo of Cochiti from any claim regardless of whether or not such a claim would enjoy immunity.

As stated before, it may well be that it is in the public's interest for Sandoval County to capitulate to the demands of the Pueblo of Cochiti to *take* the private property of the Plaintiffs and give that private property to the Pueblo of Cochiti here. What no law in this Country provides is that Sandoval County can take that action in the public interest to seize physical control of Plaintiffs property without providing just compensation - that would be stealing by the government. That principle has been long established in our laws before we became a nation and is clearly enunciated as the basis for the lawsuit underlying this Petition to this Court. A rush to defer to Native American interests should not result in setting aside the supreme laws of the United States and New Mexico, the interests of justice or unbalancing the scales of equity against these Petitioners.

CONCLUSION

The Court should grant the Petition.

Respectfully submitted,

WESTERN AGRICULTURE,
RESOURCE AND BUSINESS
ADVOCATES, LLP

A. Blair Dunn
400 Gold Ave SW, Suite 1000
Albuquerque, NM 87102
(505) 750-3060
abdunn@ablairdunn-esq.com
Attorney for Petitioners

APPENDIX

New Mexico Supreme Court Order 1a
Court of Appeals Memorandum Opinion 3a
District Court Decision 9a

IN THE SUPREME COURT OF THE STATE OF
NEW MEXICO

February 16, 2023

NO. S-1-SC-39724

HUGH MARTIN, SANDRA KNOX,
KIRKLAND JONES, PAT MALOY,
THERON MALOY and SHERILYN
MALOY,

Plaintiffs-Petitioners,

v.

SANDOVAL COUNTY and PUEBLO
OF COCHIT,

Defendants-Respondents.

ORDER

WHEREAS, this matter came on for consideration by the Court upon petition for writ of certiorari filed under Rule 12-502 NMRA, and the Court having considered said pleadings and being sufficiently advised, Chief Justice C. Shannon Bacon, Justice Michael E. Vigil, Justice David K. Thomson, Justice Julie J. Vargas, and Justice Briana H. Zamora concurring;

NOW, THEREFORE, IT IS ORDERED that the petition for writ of certiorari is DENIED; and

IT IS FURTHER ORDERED that the Court of Appeals may proceed in *Martin v. Sandoval County*,

Ct. App. No. A-1-CA-40604 in accordance with the Rules of Appellate Procedure.

IT IS SO ORDERED.

WITNESS, the Honorable C. Shannon Bacon, Chief Justice of the Supreme Court of the State of New Mexico, and the seal of said Court this 16th day of February, 2023.

Elizabeth A. Garcia, Clerk of Court
Supreme Court of New Mexico

By _____
Deputy Clerk

IN THE COURT OF APPEALS OF THE STATE
OF NEW MEXICO

HUGH MARTIN, SANDRA KNOX,
KIRKLAND JONES, PAT MALOY,
THERON MALOY and SHERILYN
MALOY,

Plaintiffs-Appellants,

v.

No. A-1-CA-40604

SANDOVAL COUNTY and PUEBLO
OF COCHITI,

Defendants-Appellees.

APPEAL FROM THE DISTRICT COURT OF
SANDOVAL COUNTY
Christopher Perez, District Judge

Western Agriculture, Resource and Business
Advocates, LLP

A. Blair Dunn
Jared R. Vander Dussen
Albuquerque, NM

for Appellants

VanAmberg, Rogers, Yepa, Abeita & Gomez, LLC
Carl B. Rogers
Santa Fe, NM

for Appellee Pueblo of Cochiti

Michael J. Dickman
Santa Fe, NM

for Appellee Sandoval County

APPENDIX B

MEMORANDUM OPINION

BOGARDUS, Judge.

{1} Plaintiffs appeal from the district court's orders denying Plaintiffs' motion to reconsider its order requiring the joinder of Cochiti Pueblo and granting Defendants' motion to dismiss. Unpersuaded by Plaintiffs' docketing statement, we issued a notice proposing to summarily affirm. Plaintiffs have responded to our notice with a memorandum in opposition, which we have duly considered. We remain unpersuaded and affirm.

{2} Plaintiffs' response to our notice contends that Sandoval County (the County) took Plaintiffs' private property by reerecting physical barriers on the road upon which Plaintiffs' easement was situated. Plaintiffs acknowledge that the road is within the boundaries of the Pueblo of Cochiti (the Pueblo) and that the Pueblo arrested County employees for working on the road and promised to rearrest the road maintenance workers if they did not cease work, reerect barriers, and leave the Pueblo. [MIO 3-4] The Pueblo canceled Plaintiffs' easement, declared that neither the County nor the public could enter the Pueblo lands via the easement, placed a locked gate in

front of the concrete barriers, placed barbed wire on either side of the gate, and posted a sign stating, “No trespassing, Pueblo de Cochiti Tribal Lands.” [1 RP 81-82] It is clear that the Pueblo, not the County, took actions to permanently possess the road and exercised control and dominion over the easement to the exclusion of Plaintiffs, the County, and the public. *Cf. Cnty. of Doña Ana ex rel. Bd. of Cnty. Comm’rs v. Bennett*, 1994-NMSC-005, ¶ 17, 116 N.M. 778, 867 P.2d 1160 (stating that “the date of the taking is the date on which the condemnor becomes vested with the legal right to possession, dominion and control over the real estate being condemned” (alteration, internal quotation marks, and citation omitted)); *Electro-Jet Tool Mfg. Co. v. City of Albuquerque*, 1992-NMSC-060, ¶ 9, 114 N.M. 676, 845 P.2d 770 (stating, for a governmental act to give rise to a claim for inverse condemnation, “[t]he damage [alleged] must be the result of the public entity’s deliberate taking or damaging of the property in order to accomplish the public purpose”).

{3} Plaintiffs’ claims necessarily involve the interests and actions of the Pueblo and should not proceed against the County without inclusion of the Pueblo as an indispensable party. *See Gallegos v. Pueblo of Tesuque*, 2002-NMSC-012, ¶ 39, 132 N.M. 207, 46 P.3d 668 (stating that Rule 1-019 NMRA provides a three-part test for determining whether a party is indispensable: (1) whether the party is “necessary to the litigation,” and if so, then (2) whether “joinder is possible,” and if not, then (3) whether “in equity and good conscience, that party is indispensable to the litigation” (internal quotation marks and citation omitted)); *Gallegos*, 2002-NMSC-012, ¶ 42 (explaining that an absent party should be joined when, under the

specific facts and circumstances of the case, there is a reasonable possibility that the interests of the absent party will be affected, such that its rights and obligations might be adjudicated).

{4} Plaintiffs also contend that our notice overlooks the law reflected in *Mayer v. Smith*, 2015-NMCA-060, ¶¶ 33-34, 350 P.3d 1191, that division or inverse condemnation of the dominant estate does not affect the interests of servient estate. [MIO 4] We are not persuaded that *Mayer* is relevant to the current case, because in *Mayer*, we assessed simple property interests of private parties to an easement's dominant and servient estates. In the current case, it is a sovereign Pueblo with the alleged servient estate and the action taken against the dominant estate interest is an alleged taking. Additionally, Plaintiffs' mere characterization of the Pueblo's interest in the road as a servient estate appurtenant to the easement directly conflicts with the Pueblo's view of its property interests, as evidenced by its actions canceling the easement and exercising control over the road. Plaintiffs' reliance on general easement principles to assert in state court that the Pueblo has a servient estate certainly impacts the Pueblo's interests. Thus, we are not persuaded that Plaintiffs' reliance on *Mayer* demonstrates error in the district court's ruling that the Pueblo is an indispensable party.

{5} Lastly, Plaintiffs' memorandum in opposition contends that equity and good conscience should prevent the joinder of the Pueblo, because the Pueblo's interests are not impacted by the County's taking of Plaintiffs' property interests and because Plaintiffs are left without a remedy. [MIO 4-5] As our analysis indicates, the Pueblo's interests are clearly impacted by Plaintiffs' claims and the facts do not suggest

inverse condemnation by the County. Additionally, under very similar circumstances, our Supreme Court has held that a landowner that was denied access to its land by a pueblo could not sue the pueblo in state court, except where the pueblo waives immunity or there is authorization of the suit by Congress. See *Hamaatsa, Inc. v. Pueblo of San Felipe*, 2017-NMSC-007, ¶ 16, 388 P.3d 977. Our Supreme Court rejected this Court’s reliance on equity and fairness in *Hamaatsa* and refused “to recognize an exception to the doctrine of sovereign immunity in matters pertaining to the public’s use and access to public roads located on fee-owned tribal lands without tribal interference.” *Id.* ¶ 24. Because the equity and good conscience for which Plaintiffs advocate in this case did not prevail in *Hamaatsa*, we are not persuaded that such concerns establish error here.

{6} For the reasons set forth above and in our notice, we hold that Plaintiffs have not demonstrated an abuse of discretion in the district court’s ruling that the Pueblo is an indispensable party. Accordingly, we affirm the dismissal of Plaintiffs’ claims.

{7} **IT IS SO ORDERED.**

KRISTINA BOGARDUS,
Judge

WE CONCUR:

JENNIFER L. ATTREP, Judge

MEGAN P. DUFFY, Judge

STATE OF NEW MEXICO
COUNTY OF SANDOVAL
THIRTEENTH JUDICIAL DISTRICT COURT

HUGH MARTIN, SANDRA KNOX,
KIRKLAND JONES, PAT MALOY,
THERON MALOY and SHERILYN MALOY,

Plaintiffs,

vs.

No. D-1329-CV-2021-00304

SANDOVAL COUNTY
and PUEBLO OF COCHITI,

Defendants.

**ORDER DISMISSING ACTION WITH
PREJUDICE**

THIS MATTER having come before the Court upon Sandoval County's Motion to Require Plaintiffs to Join Parties or, if Such Parties Cannot Be Joined, to Dismiss Action, filed pursuant to Rule 1-019(A)(1) and (B) NMRA on April 7, 2021, and on Sandoval County's Motion to Dismiss Based on Rule 1-019, filed April 21, 2022, and on Plaintiffs' Motion to Reconsider Joinder of Pueblo of Cochiti, filed June 3, 2022, and the Court having reviewed the motions, responses and reply briefs, and all exhibits attached thereto, and the Court having held hearings on October 19, 2021 and June 23, 2022, at which counsel for all parties appeared and were heard, and the Court previously having granted Sandoval County's motion in part, and having found

that Cochiti Pueblo was a necessary party which should be served with process and joined, and Plaintiffs having filed a Second Amended Complaint adding the Pueblo of Cochiti as a defendant, and the Pueblo of Cochiti then having moved to dismiss on grounds of sovereign immunity, which motion the Court heard and granted at the June 23, 2022 hearing, and the Court being otherwise and fully advised,

THE COURT THEREFORE FINDS, CONCLUDES AND ORDERS that Sandoval County's motions are well taken as to the Pueblo of Cochiti and should be and hereby are granted in part as to the Pueblo of Cochiti but not as to the U.S. Forest Service and/or the BIA, and that the Pueblo of Cochiti is a necessary party to this action which must be joined as a party but that such joinder is not possible due to the Pueblo's sovereign immunity, and that, in equity and good conscience, the Pueblo of Cochiti is indispensable to this litigation and that, under the circumstances, the action cannot proceed in the absence of the Pueblo of Cochiti as a party and that the action therefore should be and hereby is dismissed with prejudice under Rule 1-019, NMRA. The Court further finds, concludes and hereby orders that Plaintiffs' Motion to Reconsider Joinder of Pueblo of Cochiti should be and hereby is denied.

HONORABLE CHRISTOPHER PEREZ
DISTRICT COURT JUDGE

SUBMITTED BY:

/s/ Michael Dickman

MICHAEL DICKMAN

Attorney for Defendant Sandoval County

APPROVED AS TO FORM BY:

/s/ A. Blair Dunn

A. BLAIR DUNN

JARED VANDER DUSSEN

Attorneys for Plaintiffs

/s/ C. Bryant Rogers

CARL BRYANT ROGERS

Attorney for Defendant Pueblo de Cochiti