No. 22-1133

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

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

## BRIEF FOR PUEBLO OF COCHITI IN OPPOSITION

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## QUESTION(S) PRESENTED

The question presented by the Petition is whether there exist any basis in federal law or under this Court's jurisdiction to overturn the State Court's rulings rejecting Petitioners' State law inverse condemnation claim based solely on State law grounds?

## PARTIES TO THE PROCEEDING

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

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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 Petitioners' appendix at 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 of Petitioners' State law claims based solely on State law grounds, dated December 7, 2022, is set forth in Petitioners' appendix at pages 3a-8a.

The state District Court Order Dismissing the Action (which pled only State law claims based solely on State law grounds) 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 Petitioners' appendix at pages 9a-11a.

## JURISDICTION

This Court does not have jurisdiction over this case per 28 U.S.C. § 1257 because Petitioners failed to present their inverse condemnation claim in the State Courts as a claim arising under federal law, and never sought any ruling there on any federal Constitutional claim

Instead, that claim was presented as arising only under Art, II, § 20 of the New Mexico Constitution and § 12-10A-15, N.M.S.A. 1978, a State statute creating a cause of action for takings by State officials in public health emergencies. (*See,* Amended Compl. (3/4/2021), p. 1 and ¶s 33-36 and Second Amended Compl. (4/12/2022), p. 1 and ¶s 33-36).

## STATEMENT OF THE CASE

Petitioners claim to own land holdings (based on federal mining or homestead claims) within the Santa Fe National Forest located north of, and adjacent to, the Pueblo's Canada de Cochiti grant land, located in Sandoval County, New Mexico. The Pueblo is a federally-recognized Indian Tribe. "Indian Entities Recognized by and Eligible To Receive Services From the United States Bureau of Indian Affairs" 88 F.R. 2112, 2114 (January 12, 2023). The Pueblo reacquired this Canada de Cochiti Spanish land grant tract from the New Mexico State Land Office in 2016. That tract is located north of, and adjacent to, the Pueblo's own Spanish grant land confirmed by the Congress in 1858. (Amended Complaint (3/4/2021), ¶s 1-11, 16-21).[1] *See*

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[1] Pleadings and orders from the State Court proceedings here at issue which were not included in Petitioners' appendix are here identified by reference to the name or heading of those pleadings and orders as filed in the State Court proceedings and the date each was filed. Those State Court pleadings and orders may be accessed after registration on the following website: https://researchnm.tylerhost.net/CourtRecordsSearch/Home#!/howToGetAccess.

Official transcripts of the State District Court hearings of October 19, 2021, and June 23, 2022, are not accessible per the above, but

*also*, Act of December 22, 1858, 911 Stat. at L 374. Chap. 5). *United States v. Conway*, 175 U.S. 60 (1999).

The two roads involved in the dispute giving rise to this case (Forest Roads 268 and 89 a/k/a County Roads 268 and 89) run across the Canada de Cochiti tract from the Pueblo's north boundary across the south boundary of, and into, the adjacent National Forest land. (Amended Complaint, ¶s 16-21).

Petitioners' Complaint alleged that they own private or public easements arising from historic use of those roads per R.S. 2477, enacted in 1866 (the "1866 Act") later codified at 43 U.S.C. § 932, § 8 of the Act of July 26, 1866, 14 Stat. 253 (and later repealed)[2] (Amended Compl., ¶s 1-21), by which they claim they have historically accessed their mining or homestead claims within the Santa Fe National Forest. The 1866 Act allowed for creation by use of "rights of way for the construction of highways over public lands, not reserved for public uses ... ." *Martin v. U.S.*, 894 F.3d 1356, 1362 (Fed. Cir. 2018). However, the Canada de Cochiti land has never been federal public land within the meaning of the 1866 Act. Instead, that land was contained in a Spanish land grant which the United States was required to confirm and did later confirm

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are in the possession of the undersigned counsel and can be shared if requested.

[2] R.S. 2477 was formerly codified at 43 U.S.C. § 932. It was repealed in 1976 by the Federal Land Policy Management Act (FLPMA), Pub. L. 94-579, § 706(a), 90 Stat. 2743, 2793. Highways that had already come into existence under R.S. 2477 retained their status as public highways, even after FLPMA was passed. 43 U.S.C. § 1769(a).

per the Treaty of Guadalupe Hidalgo of February 2, 1848, 9 Stat. at 1922. *Lockhart v. Johnson,* 181 U.S. 516 (1901) (adjudicating competing mining claim rights in the Canada de Cochiti grant); *Whitney v. United States,* 167 U.S. 529 (1897) (addressing the boundaries of the Canada de Cochiti grant).

From 1854 to 1891, lands encompassed in Spanish land grants—like the Canada de Cochiti grant—for which the land grant claimant sought confirmation under the Treaty of Guadalupe Hidalgo, were not subject to federal land laws (such as R.S. 2477) otherwise applicable to federal public lands. *Id.* at 520-521.

Even though public land laws such as R.S. 2477 were later made applicable in March 3, 1891 (26 Stat at L 864, Chap. 539, the "1891 Act") to lands encompassed in such Spanish land grants before they were confirmed by the Congress per the Treaty, no rights in or across such lands which private parties might have claimed after the 1891 Act or under any otherwise applicable federal public land laws survived confirmation of such Spanish land grants under that Treaty, as occurred with the Canada de Cochiti grant in 1892. This Court held in *Id.* at 525-526 that rights asserted under federal land laws respecting territory contained within a Spanish land grant claimed per the Treaty of Guadalupe Hidalgo do not survive the grant's confirmation, and the 1866 Act was otherwise statutorily barred from application to such lands from 1866-1891, even prior to such confirmation. Since the Canada de Cochiti grant land acquired by the Pueblo in 2016 was confirmed as a Spanish land grant under the same Treaty, R.S. 2477 never gave rise to any

surviving easements or access rights to cross that Spanish grant land as claimed by Petitioners. *Id.* Thus, Petitioners' claims that they have access rights based on R.S. 2477 for the use of these roads to cross the Canada de Cochiti land are simply wrong no matter when they acquired their mining claims or homestead claims in the adjacent Santa Fe National Forest.

Moreover, large parts of these roads (both on the National Forest land and on the Canada land) were destroyed by flooding following the Las Conchas fire in 2011. (Amended Complaint, ¶ 22). The U. S. Forest Service then blocked (and now still blocks) all vehicular access from the Canada de Cochiti land into the National Forest Service lands within which Petitioners' claimed mining or homestead claims are located. Petitioners acknowledged this in their prior failed lawsuit seeking inverse condemnation damages against the U.S. Forest Service. *Martin v. U.S.*, 894 F.3d 1356 (Fed. Cir. 2018). Thus, even if Petitioners possessed any kind of valid easements for these roads to cross the Pueblo's Canada de Cochiti land (they do not), they still would not have vehicular access to their mining claims or homesteads within the Santa Fe National Forest.

Petitioners' Amended Complaint (3/4/2021) alleged the County had deprived them of road access rights across the Canada which they claimed were based on R.S. 2477 road easements (Count II) and in the alternative sought damages for a taking of those alleged road access rights under Article II, § 20 of the New Mexico Constitution (Count I) and applicable state law. (Amended Compl., p. 1, ¶s 30-36). The Pueblo de Cochiti which holds title to the Canada de Cochiti land in fee was not named as a party in Petitioners' original

or First Amended Complaint, even though the disputed road easements are located on that Pueblo-owned land. Petitioners later argued at ¶ 5 of their Response to a County Motion seeking dismissal Rule 1-019 N.M.R.Civ.P. (hereinafter, "Rule 1-019") that "Sandoval County is the holder of a public right of way easement that has never been vacated ...:" and argued at pp. 8-9 of that Response and in their Docketing Statement filed with the N.M. Court of Appeals (9/6/22) that their Amended Complaint also sought relief against the County on a State law inverse condemnation theory. That claim (repeated in Petitioners' Second Amended Complaint (4/12/22)) is based on the County's failure to challenge the Pueblo's cancellation of separate easements for these same roads granted to the County by the State Land Office in 2013 (copy appended as Exhibit D to the County's Rule 0-019 Motion (4/7/21)), prior to the transfer of the Canada de Cochiti land to the Pueblo in 2016. Specifically, Petitioners' claimed that the County's failure to protect Petitioners' alleged historic R.S. 2477- based access rights and the cancelled road easements granted to the County in 2013 had caused an inverse condemnation of those (alleged) rights under the State Constitution.

The Pueblo's action, as the successor in interest to the State Land Office, to cancel those separate easements was based on the County's material failure (over a six (6) year period) to satisfy express road construction covenants imposed on the County in the grant of those easements by the State Land Office, and an express term in that grant reserving to the grantor the right to cancel the easement for violation of those covenants ("11. Notwithstanding anything contained herein, Grantor may cancel this grant for violation of

any of the covenants of this agreement ... [after] a 30-day notice of intention to cancel ..."). The County failed to cure its breach of those covenants after due notice from the Pueblo per the easement and the Pueblo formally cancelled those easements in 2019 (County's Rule 1-019 Motion, Exhibit F (4/7/21)). *See, SNF Railway Co. v. Mercer*, 2010 WL 11595111, p.5 (10th Cir. 2010) (a grant of easement is a contract between the grantor and the grantee); *United States v. Cross*, 477 F.2d 1317, 1318 (10th Cir. 1973) (grant of easement is to be interpreted under the general law of contracts and conditions in the grant are to be enforced by their terms); *Vincent v. Gurley*, 27 S.W.2d 260, 261-262 (App.Tx. 1930) (grant of easement for road may be cancelled by grantor for grantee's breach of express covenants in the grant); *Hohman v. Rochester Swiss Laundry Co.*, 125 Misc. 584 (NY 1925) (upholding cancellation of road easement grant for violation of covenants); *Pruitt v. Shafer*, 137 Va. 658 (Va. 1923) (grant of road easement was properly cancelled for breach of covenant).

As referenced *supra*, when Petitioners initially sued the County, the County moved to dismiss that suit per Rule 1-019 for Petitioners' failure to join the Pueblo as a party defendant. The County argued that the Pueblo was an indispensable party since the roads were located on the Pueblo's land and alleged that it was the Pueblo, not the County that was continuing to block access across that land via the subject roads.[3] The

[3] Contrary to the County's position, Petitioners stated at p. 1, ¶ 2 of their Response to the County's Rule 19 Motion that "The Pueblo has never erected barriers or is responsible for the action to close the road at any point." Petitioners counsel also admitted at the

County also argued that the Pueblo could not be joined unless it waived its sovereign immunity, based on *Hamaatsa, Inc. v. Pueblo of San Felipe*, 388 P.3d 977 (N.M. 2016)("Hamaatsa, Inc."), and that all this compelled dismissal under Rule 1-019. (County's Rule 19 Motion (4/7/21)). The District Court agreed, but ordered Petitioners to attempt joinder of the Pueblo via an Amended Complaint to see if its immunity defense would in fact be raised before granting any dismissal based on the County's Rule 1-019 Motion. (Order Requiring Petitioners' to join party (3/22/33)).

Petitioners then filed their Second Amended Complaint, for the first time pleading tort claims against the Pueblo, and the Pueblo moved to dismiss those claims based on the Pueblo's unwaived sovereign immunity and *Hamaatsa, Inc.* Petitioners also re-alleged in Count II of that Second Amended Complaint that the County's failure to force open the roads worked an inverse condemnation of Petitioners' claimed

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October 19, 2019 hearing on the County's initial Rule 1-019 Motion that Petitioner Pat Maloy ... is the one that put the barriers there" blocking access to these roads. (Tr. of October 19, 2021 Hearing, p. 21, LL 10-13). Petitioners' counsel also (inconsistently) insisted at the same hearing that the barriers which block access to these roads belong to the County, were placed there by the County and are under the control of the County. Petitioners' counsel then asserted that the "barriers were taken down ... [but] the County came back and put those barriers on the road." *Id.* at p. 21, LL 14-22. The County's attorney stated that the barriers were originally placed on the easement by the County due to flood damage to the roads. *Id.* at p. 18, L 25 and p. 19, LL 1-15. (Tr. *supra* at p. 13, p. 24). However, the County also asserted that it is the Pueblo which now maintains those barriers and bars access to the road by that means. (Tr. *supra* at pp. 7-8, LL 3-20 and p. 24, LL 9-25 and p. 25, LL 1-25).

access rights. Petitioners did not oppose dismissal of their tort claims against the Pueblo. See, Petitioners' "Response to Pueblo of Cochiti's Second Motion to Dismiss," filed 5/17/2022:

> An important distinction should first be raised for the Court's benefit, Cochiti is alleged to have committed a prima facie tort, or committed tortious interference to coerce without lawful justification the taking of Plaintiffs' private property by Defendant Sandoval County. That is the basis of Count III and it is correct that Pueblo of Cochiti enjoys immunity from suit for that tort. The private property interest (the right of way easement) that was taken by the County however, does not belong to Cochiti, it belongs to the Plaintiffs. (Emphasis added).

The County then filed a separate motion seeking dismissal per Rule 1-019 (4/21/2022), and in response (pp. 1-2 of "Response to County's Second Motion to Dismiss," filed 5/9/2022), Petitioners reiterated that "the Pueblo itself did not close the road, the County did" and "the undisputed facts at this juncture are that the Pueblo has never taken any direct action against these Petitioners to deprive them of their property, only the County has." The County then argued ("Reply in Support of County's Motion to Dismiss" 5/11/2022) to the contrary—asserting that it was the Pueblo, not the County that closed the roads, quoting *inter alia* Petitioner Sandra Knox's prior statement referencing "Cochiti Pueblo's illegal closure of the roads." *Id.* at p. 2. The State Courts never made a merits ruling binding

on all parties on how these roads came to be closed or who closed them.[4]

After the District Court granted the County's Rule 1-019 dismissal motion, Petitioners filed a "Motion to Reconsider Joinder of the Pueblo of Cochiti" (6/3/22) again asserting (pp. 1-2) that it was the County not the Pueblo that closed the road and arguing that the Pueblo was in any event not an indispensable party as to Petitioners' inverse condemnation claim against the County. (*Id.* at p. 2). The County then made the same counterarguments as before (County's "Response in Opposition to Motion to Reconsider Joinder of Pueblo," 6/7/22), the Pueblo agreed it was an indispensable party as to Petitioners' equitable relief claims against the County ("Pueblo de Cochiti's Response to Plaintiffs' Motion to Reconsider," 6/10/22), and showed that Petitioners' R.S. 2477- based road access claims were invalid for the statutory reasons set out *supra*.

Finally, Petitioners filed a "Consolidated Reply to the County and Pueblo's Responses to Petitioners' Motion for Reconsideration" (6/22/22) arguing that the Pueblo was not an indispensable party respecting

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[4] The Court of Appeals ruled (at 5a, Petitioners' Appendix) that "[i]t 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 Petitioners, the County and the public," but the Pueblo was not a party to that appellate proceeding, and was not in privity with any party to that proceeding, the only other parties being the County and Petitioners; hence, the Pueblo is not bound by that ruling. *Silva v. State*, 745 P.2d 380, 382 (N.M. 1987); *Pelt v. Utah*, 539 F.3d 1271 (10th Cir. 2008).

Petitioners' State law inverse condemnation claim against the County.[5] *Id.* at pp. 2-3. After hearing all of this, the District Court granted the Pueblo's Motion to Dismiss the tort claims pled against it based on its unwaived sovereign immunity, in an Order entered 7/7/2022. The Court then issued a separate order of 7/7/2022 "Dismissing Petitioners' Action With Prejudice," granting the County's Motion to Dismiss. (Pet. App., pp. 9a-11a).

Petitioners then appealed the Order dismissing their claims against the County, but did not appeal the separate Order dismissing the Pueblo as a party defendant based on its sovereign immunity.

Consequently, the Pueblo was not a party to any of the State Court appellate proceedings, and Petitioners acknowledged in their Docketing Statement in the New Mexico Court of Appeals that the District Court "correctly dismissed the Pueblo de Cochiti for lack of subject matter jurisdiction due to the sovereign

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[5] The Pueblo agrees that if Petitioners had formally limited their claim against the County in their Second Amended Complaint to one only seeking monetary relief (compensation) from the County on their inverse condemnation claim, the District Court's Rule 1-019 rational for dismissal would not have been appropriate since no interest of the Pueblo would be affected by any such inverse condemnation ruling. *Sims v. Sims*, 930 P.2d 153 (N.M. 1996) (party whose legal interests would not be affected by the outcome in a suit is not an indispensable party required to be joined in that suit per Rule 1-019). But, at the time that Rule 1-019 dismissal order was issued, Petitioners were still (in Count II of their Second Amended Complaint) seeking equitable relief against the County to force the County to unblock these roads located on the Pueblo's land, in addition to seeking inverse condemnation damages against the County (Count I).

immunity of the Pueblo de Cochiti" (Petitioners' Docketing Statement, N.M. Court of Appeals, p. 3 (9/6/22)), mirroring the position Petitioners took on this issue in the District Court as quoted *supra*. Petitioners took the same position at the June 23, 2022 Hearing on the Pueblo's and the County's Motions to Dismiss. (Tr. of 6/23/22 hearing in which Petitions' counsel, Mr. Dunn stated *inter alia* at Tr. 4, Ll 8-11 " ... I don't think your getting any quibble from—from my---my clients as to whether or not the Pueblo needs to be dismissed under sovereign immunity; I don't think that's been in question;" and, at Tr. 11, l. 21: "So I agree that the Pueblo should be dismissed.")

The New Mexico Court of Appeals affirmed the District Court's dismissal order (Petitioners Appendix, pp. 3a-8a), but made no ruling respecting the District Court's separate order dismissing Petitioners' claims against the Pueblo, as Petitioners did not appeal that order.

The New Mexico Supreme Court then denied Petitioners' petition for *certiorari* seeking review in that Court. (Petitioners Appendix, pp. 1a-2a).

## REASONS FOR DENYING THE WRIT

### I. Since No Federal Claim was Presented to the State Courts, This Court has no Jurisdiction to Review the State Court Rulings Below

The most fundamental reason this Court should deny the Petition is that Petitioners did not plead or argue any federal Constitutional taking claim in the State Court proceedings. Instead, their inverse

condemnation claim was based solely on Art. II, § 20 of the New Mexico Constitution ("Private property shall not be taken or damaged for public use without just compensation") and a State statute, § 12-10A-15 N.M.S.A 1978 (establishing a State law cause of action for takings by State officials occurring in public health emergencies). (*See,* Amended Compl., p. 1 and ¶s 33-36 and Second Amended Compl., p. 1, and ¶s 33-36).

Nowhere did Petitioners present a taking claim to the State Courts founded upon the U.S. Constitution or arising under federal law. Thus, this Court is without jurisdiction to adjudicate Petitioners' federal inverse condemnation claim as that federal claim was never presented to the State Courts; or, in the alternative, for the same reason (if this ground is deemed non-jurisdictional), this Court should exercise its discretion to deny *certiorari* in this case. *Howell v. Mississippi,* 543 U.S. 440 (2005) (court dismissed writ of *certiorari* as improvidently granted where petitioner never presented the federal claim on which review was sought to the state courts as a claim arising under federal law).

The State Court rulings here clearly rest upon independent and adequate State law grounds since no federal law based grounds for relief were ever presented to, or ruled upon, by those Courts. This is a further ground for denying this Petition. *Berry v. Mississippi,* 552 U.S. 1007 (2007 (denying petition for *certiorari* because "[t]he judgment of the Mississippi Court relies upon an adequate and independent state ground and deprives the court of jurisdiction."); *Michigan v. Long,* 463 U.S. 1032 (1983); *Zacchini v. Scripps-Howard Broad Co.,* 433 U.S. 562, 566 (1977).

## II. No Party Challenged Dismissal of the Tort Claims Pled Against the Pueblo in the State Court Proceedings and There Remain Core Unresolved Factual Disputes

This is a complex state law case involving unresolved disputes regarding key material facts (whether Petitioners' possess any road access rights across the Canada de Cochiti (*see,* Statement of the Case, pp. 2-9, *supra*), and who closed these roads and when) (*see,* fn. 4, *supra*). Further, despite references to tribal sovereign immunity in the *cert* petition, pp. 5-10, this case is not a proper vehicle for addressing any of the tribal sovereign immunity issues left unaddressed in *Upper Skagit Indian Tribe v. Lundgren,* __ U.S. __, 138 S.Ct. 1649 (2018). No party in the State Court proceedings ever challenged the propriety of the Pueblo's dismissal on sovereign immunity grounds at any stage of the State Court proceedings (*see,* pp. 8-11, *supra*); nor does the *cert* petition make any such challenge. Instead, Petitioners here argue that the Pueblo's immunity was in effect wrongfully "extended" to bar Petitioners from securing monetary relief against the County on their State law inverse condemnation claim. (*Cert* Pet., pp. 8-10).

This is why—despite the various swipes against tribal sovereign immunity in the Petition—the question presented only addresses the propriety of the State Court's dismissal of Petitioners' State law inverse condemnation claim against the County.

## III. There is no Split in the Circuits Re the Question Presented by Petitioners and The State Court Rulings for Which They Seek Review Were Based on Independent and Adequate State Law Grounds

Petitioners do not identify any split in the Circuits or any conflict between any State and Federal Courts on the inverse condemnation question for which they seek review. And, the State court orders Petitioners' seek to have this Court overturn were based on two separate and independent State law grounds: (1) the Court of Appeals' ruling that Petitioners had failed to plead a valid inverse condemnation claim under the State Constitution; and, (2) that Court's ruling that dismissal was warranted under New Mexico's Rule 1-019 regarding Petitioners' equitable relief claims, since the roads in question were located on the Pueblo's lands, and any order requiring the County to take action to open them would affect the Pueblo's interests as the underlying landowner.

These New Mexico Court of Appeals rulings rejecting Petitioners' State law inverse condemnation claim against the County were based on well-settled state law holding that no claim for inverse condemnation will lie against a New Mexico public entity unless the Petitioner alleges that the property damage suffered was the result "of the public entity's deliberate taking or damaging of the property in order to accomplish [a] public purpose." (Pet. App., p. 5a), quoting from *Electro-Jet Tool Mfg. Co. v. City of Albuquerque*, 845 P.2d 770 (N.M. 1992) *and citing County of Dona Ana ex rel Bd. Of County Commissioners v. Bennett*, 867 P.2d 1160 (N.M. 1994) ruling that a taking occurs when a governmental entity

"becomes vested with the legal right to possession, dominion and control over the real estate being condemned."

Under this case law, no taking or inverse condemnation of property occurs under the New Mexico Constitution based on inaction by a public entity. *Id.* Thus, despite Petitioners' statement in the question presented that the County by its inaction took or relinquished Petitioners' private property to the Pueblo, the County actually took no action to acquire or transfer to itself (or to the Pueblo) any property (or access rights) belonging to Petitioners, and the State Court of Appeals properly ruled that the County's alleged failure to take action to preserve or protect Petitioners' claimed property interests (access rights across the Pueblo's Canada de Cochiti land) does not constitute a taking under the New Mexico Constitution or give Petitioners any basis for securing recovery against the County on their State law inverse condemnation claim.

The New Mexico Court of Appeals ruling was appropriate under New Mexico's "right for any reason" doctrine. *Freeman v. Fairchild*, 416 P.3d 264 (N.M. 2018) (summarizing that doctrine and when it can be applied); *Board of County Commissioners, County of Bernalillo v. Chavez*, 143 N.M. 543 (App. NM 2007) ("It is well-established that an appellate court 'will affirm the district court if it is right for any reason and if affirmance is not unfair to the appellant.'").

Since the Court of Appeals' ruling to affirm dismissal of Petitioners' suit is well supported by multiple independent State law grounds and does not

rule on any question involving Rule 19, Federal Rules of Civil Procedure, or any other question of federal law, this case is not a vehicle by which this Court could properly address the interplay between federal Rule 19 dismissals and tribal sovereign immunity.[6]

All of the above provides another reason why *certiorari* should be denied. *See, Dart Cherokee Basin Operating Co., LLC v. Owens,* 574 U.S. 81 (2014) (party who believes lower court ruling rested on some other ground than the ground upon which *certiorari* is sought has a duty under Rule 15.2 to apprise the court of that in its brief in opposition); *accord, Granite Rock Co. v. Intern'l Brotherhood of Teamsters,* 561 U.S. 287, 306 (2010) (party opposing grant of *certiorari* has a duty to point out alternative grounds for affirming lower court ruling when *certiorari* is sought on a different ground).

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[6] *Compare, Klamath Irrigation District, et al. v. U.S. Bureau of Revenue,* 48 F.4th 934 (9th Cir. 2022) (inability to join an intervening tribal party in state court stream adjudication proceeding due to tribe's sovereign immunity required dismissal of whole proceeding under Rule 19), petition for *cert* pending, No. 22-1116. *See also,* No. 22A862.

## CONCLUSION

Thus, this Court should deny Petitioners' Petition for Writ of *Certiorari*.

Respectfully submitted,
PUEBLO DE COCHITI

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