

1 **IN THE SUPREME COURT OF THE STATE OF NEW MEXICO**

2 **Opinion Number:** _____

3 **Filing Date: June 16, 2016**

4 **NO. S-1-SC-34287**

5 **HAMAATSA, INC.,**
6 **a New Mexico not-for-profit corporation,**

7 Plaintiff-Respondent,

8 v.

9 **PUEBLO OF SAN FELIPE,**
10 **a federally recognized Indian tribe,**

11 Defendant-Petitioner.

12 **ORIGINAL PROCEEDING ON CERTIORARI**

13 **John F. Davis, District Judge**

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1 **OPINION**

2 **VIGIL, Justice.**

3 **I. INTRODUCTION**

4 {1} The Pueblo of San Felipe (Pueblo) appeals from an opinion of the New Mexico
5 Court of Appeals declining to extend the Pueblo, an Indian tribe, immunity from suit.
6 Because it is settled federal law that sovereign Indian tribes enjoy immunity from suit
7 in state and federal court—absent waiver or abrogation by Congress—we reverse the
8 Court of Appeals with instructions for the district court to dismiss the suit for lack of
9 subject matter jurisdiction.

10 **II. BACKGROUND**

11 {2} Hamaatsa, Inc. (Hamaatsa) is a non-profit New Mexico corporation that owns
12 land in Sandoval County. Adjacent to Hamaatsa’s property is land owned in fee by
13 the Pueblo, a federally recognized Indian tribe organized under the Indian
14 Reorganization Act, 25 U.S.C. § 476 (2012). The Bureau of Land Management
15 (BLM) conveyed to the Pueblo, in fee simple, the land at issue on December 13,
16 2001. The property, albeit adjacent and contiguous with reservation land, is not yet
17 held in trust by the federal government as part of the Pueblo’s reservation. The United
18 States Department of the Interior, Bureau of Indian Affairs (BIA), awaits resolution
19 of the instant dispute prior to taking the fee-simple parcel into trust. *Hamaatsa, Inc.*

1 *v. Pueblo of San Felipe*, 2013-NMCA-094, ¶ 11, n.3, 310 P.3d 631, *cert. granted*,
2 2013-NMCERT-009 (No. 34,287, Sept. 20, 2013) (citing *Hamaatsa, Inc. v. Sw. Reg'l*
3 *Dir.*, 55 IBIA 132, 132-33 (2012)).

4 {3} In its 2001 conveyance to the Pueblo, “the BLM reserved ‘an easement and
5 right-of-way over, across, and upon a strip of land 40 feet wide along the existing
6 road . . . identified in NMNM 95818, for the full use as a road by the United States
7 for public purposes.’ ” Such roads are variously called “932 Roads” or “R.S. 2477
8 Roads,”¹ and throughout this opinion we refer to the NMNM 95818 easement as
9 “Northern R.S. 2477.” On September 19, 2002, the BLM purported to quitclaim its
10 interest in the Northern R.S. 2477 to the Pueblo. Access to Northern R.S. 2477 forms
11 the basis of Hamaatsa’s December 30, 2010, complaint against the Pueblo.

12 {4} Hamaatsa uses Northern R.S. 2477 on the Pueblo’s property to access its land.
13 In August 2009 Hamaatsa received a letter from the then Governor of the Pueblo
14 stating that Hamaatsa had no legal right of access across the Pueblo’s property and
15 that Hamaatsa’s use of Northern R.S. 2477 was a trespass. Hamaatsa continued to use
16 the road and filed suit requesting that the district court declare that the Pueblo cannot

17 ¹Referencing a statutory mechanism for creating public roads, Rev. Stat. 2477,
18 Act of July 26, 1866, ch. 262, § 8, 14 Stat. 251, 253 (1866) (codified at 43 U.S.C. §
19 932), *repealed by* Federal Land Policy and Management Act of 1976, Pub. L. No. 94-
20 579, § 706(a), 90 Stat. 2743, 2793 [hereinafter R.S. 2477].

1 so restrict Hamaatsa's use of the road.

2 {5} Specifically, Hamaatsa's complaint alleges that the land over which Northern
3 R.S. 2477 traversed was owned by the BLM since at least 1906 and the road was
4 constructed and used by the public from at least 1935 until the date of Hamaatsa's
5 complaint. Further, Northern R.S. 2477 was used by Hamaatsa and its predecessors
6 in interest to access its property, and has been a public road that vested in the public
7 as a state highway under R.S. 2477 when it was not retained by the United States
8 since at least 1935. Given the aforementioned quitclaim deed, the Pueblo argues that
9 there is no public road across its property that Hamaatsa may lawfully access. The
10 Pueblo further claims that Northern R.S. 2477 is but one point of access to
11 Hamaatsa's property.

12 {6} The Pueblo filed a motion to dismiss Hamaatsa's complaint pursuant to Rule
13 1-012(B)(1) NMRA, asserting that its sovereign immunity deprived the district court
14 of subject matter jurisdiction. After a hearing on the motion to dismiss the district
15 court denied the Pueblo's motion, reasoning that the action was an *in rem* proceeding
16 not seeking damages, to which sovereign immunity was no bar. The district court
17 granted the Pueblo leave to seek an interlocutory appeal which was then granted by
18 the Court of Appeals on July 5, 2011. The district court stayed all proceedings

1 pending resolution of the appeal.

2 {7} By a July 23, 2013, opinion the Court of Appeals affirmed the district court.
3 *Hamaatsa*, 2013-NMCA-094, ¶ 1. Though, seeing “no reason to address the issue of
4 in rem versus in personam,” the majority refused to recognize tribal sovereign
5 immunity for different reasons. *Id.* ¶ 10. It instead focused on the fact that “the Pueblo
6 offered no evidence of any property or governance interests whatsoever in the road
7 or that the road, concededly a state public road, would threaten or otherwise affect its
8 sovereignty.” *Id.* ¶ 11. Noting further that the Pueblo did not present any proof that
9 “a district court’s declaration . . . [that the road is public] would in any way
10 undermine the Pueblo’s sovereignty or sovereign authority, infringe on any right of
11 the Pueblo to govern itself or control its internal relations, or otherwise adversely
12 affect its governmental, property, or treasury interests,” *id.*, the Court of Appeals held
13 that without such evidence there was “no justifiable basis on which the Pueblo can
14 draw immunity from inherent sovereignty,” *id.* ¶ 13.

15 {8} The Court of Appeals additionally held that “the issue in this case is a matter
16 of state law, over which the district court has jurisdiction,” *id.* ¶ 14, based on the fact
17 that “ ‘[w]hether an easement—a public road at that—exists across land held in fee
18 simple is clearly an issue of state law,’ ” *id.* ¶ 14 (quoting *Jicarilla Apache Tribe v.*

1 *Bd. of Cty. Comm'rs*, 1994-NMSC-104, ¶¶ 10-19, 118 N.M. 550, 883 P.2d 136)
2 (alteration in original). The opinion reasoned that “to permit a sovereign immunity
3 bar at this facial attack [Rule 1-012(B)] stage of the proceedings would mean that,
4 based on nothing more than the bare assertion of sovereign immunity,” a pueblo
5 could acquire land anywhere in New Mexico, subject to a public road, and
6 “immediately deny the motoring public and all neighboring property owners access.”
7 *Id.* ¶ 16. The Court of Appeals went on to cite several United States Supreme Court
8 cases it claimed imply that tribes should no longer be protected by sovereign
9 immunity, including *Oklahoma Tax Commission v. Citizen Band Potawatomi Indian*
10 *Tribe of Oklahoma (Potawatomi I)*, 498 U.S. 505, 514 (1991) (Stevens, J.,
11 concurring) (stating that the “doctrine of sovereign immunity is founded upon an
12 anachronistic fiction”), and *Kiowa Tribe of Oklahoma v. Manufacturing*
13 *Technologies, Inc.*, 523 U.S. 751, 757-58 (1998) (providing that “[t]he
14 rationale . . . [for sovereign immunity] can be challenged as inapposite to modern,
15 wide-ranging tribal enterprises extending well beyond traditional tribal customs and
16 activities”). *Hamaatsa*, 2013-NMCA-094, ¶¶ 17-19. Ultimately, the majority of the
17 Court of Appeals panel concluded that *Kiowa* “read fully, should stimulate analysts
18 to reasonably view the case now before this Court as one beyond the periphery of

1 immunity, requiring affirmance of the district court’s denial of the Pueblo’s motion
2 to dismiss.” *Hamaatsa*, 2013-NMCA-094, ¶ 19. The Court of Appeals did just that,
3 affirming the district court’s denial of the Pueblo’s motion to dismiss. *Id.* ¶ 22.

4 {9} A dissenting view opined that the Pueblo’s motion to dismiss should have been
5 granted based on sovereign immunity. *Id.* ¶ 24 (Wechsler, J., dissenting). Apart from
6 its analysis of the merits, the dissent disagreed with the majority’s “discussion of: (1)
7 *Kiowa* . . ., (2) cases that do not involve tribal sovereign immunity, (3) the equities
8 of the case, and (4) the timing of the Pueblo’s motion.” *Hamaatsa*, 2013-NMCA-094,
9 ¶ 25 (Wechsler, J., dissenting).

10 {10} The dissent first noted that “tribal sovereign immunity is a matter of federal law
11 and is not subject to diminution by the state.” *Id.* ¶ 26 (Wechsler, J., dissenting)
12 (citation omitted). It acknowledged that “there are issues concerning the scope of
13 tribal sovereign immunity when tribes . . . engage in activities that extend beyond the
14 original purpose of the doctrine to safeguard tribal self-governance.” *Id.* ¶ 27
15 (Wechsler, J., dissenting) (citation omitted). However, while the United States
16 Supreme Court in *Kiowa* noted its misgivings toward the doctrine, the dissent noted
17 that *Kiowa* nonetheless applied sovereign immunity. *Hamaatsa*, 2013-NMCA-094,
18 ¶ 27 (Wechsler, J., dissenting) (citing *Kiowa*, 523 U.S. at 756-60). And, because

1 *Kiowa* applied sovereign immunity for tribal activity occurring off-reservation, much
2 like the activity at issue in the instant case, the dissent determined that the Court of
3 Appeals was “not in a position to act differently.” *Hamaatsa*, 2013-NMCA-094, ¶ 27
4 (Wechsler, J., dissenting).

5 {11} Next, the dissent disagreed with the majority’s application of cases involving
6 tribal sovereign authority, as distinguished from tribal sovereign immunity. *Id.* ¶¶ 28-
7 29 (Wechsler, J., dissenting). It highlighted that “[t]here is a difference between the
8 right to demand compliance with state laws and the means available to enforce them.”
9 *Id.* ¶ 29 (Wechsler, J., dissenting) (quoting *Kiowa*, 523 U.S. at 755). Thus, “cases
10 involving a tribe bringing suit to preclude a municipality from imposing taxes or
11 other local laws ‘do not explore the boundaries of a tribe’s *sovereign immunity* from
12 suit[, and r]ather, they explore a tribe’s *sovereign authority* over purchased lands.’ ”
13 *Hamaatsa*, 2013-NMCA-094, ¶ 29 (Wechsler, J., dissenting) (alteration in original)
14 (quoting *Armijo v. Pueblo of Laguna*, 2011-NMCA-006, ¶ 18, 149 N.M. 234, 247
15 P.3d 1119).

16 {12} Third, the dissent pointed out that “ ‘sovereign immunity is not a discretionary
17 doctrine that may be applied as a remedy depending on the equities of a given
18 situation[, and,] it presents a pure jurisdictional question.’ ” *Id.* ¶ 30 (Wechsler, J.,

1 dissenting) (alteration in original) (quoting *Armijo*, 2011-NMCA-006, ¶ 13).

2 Although the dissent agreed that Hamaatsa presented a strong equitable argument, it
3 reiterated that this argument “is not relevant to the jurisdictional question before us.”
4 *Hamaatsa*, 2013-NMCA-094, ¶ 30 (Wechsler, J., dissenting).

5 {13} Fourth, the dissent asserted that the timing of the Pueblo’s assertion of
6 sovereign immunity in its motion to dismiss is irrelevant. *Id.* ¶ 31 (Wechsler, J.,
7 dissenting). It noted that “an assertion that tribal sovereign immunity requires
8 dismissal of a lawsuit is generally raised in a [Rule 1-012(B)(1)] motion,” and that
9 “[a] motion under Rule 1-012(B) shall be made before pleading if a further pleading
10 is permitted.” *Hamaatsa*, 2013-NMCA-094, ¶ 31 (Wechsler, J., dissenting) (internal
11 quotation marks and citations omitted). It therefore concluded that “the Pueblo’s
12 motion was properly before the district court.” *Id.* (Wechsler, J., dissenting).

13 {14} Next, the dissent reached the merits of the Pueblo’s motion. *Id.* ¶ 32 (Wechsler,
14 J., dissenting). Analyzing the merits in the terms the district court used in denying the
15 Pueblo’s motion, the dissent concluded that the complaint presented an *in rem*
16 proceeding under its modern definition, being an action directed “not *against* the
17 property per se, but rather at resolving the interests, claims, titles, and rights in that
18 propert[y, a]nd it is persons—as individuals, governments, corporations—who

1 possess those interests.” *Id.* ¶ 34 (Wechsler, J., dissenting) (quoting *State v. Nunez*,
2 2000-NMSC-013, ¶ 78, 129 N.M. 63, 2 P.3d 264) (internal quotation marks omitted).
3 Unlike the district court, the dissent concluded that the Pueblo was protected by
4 sovereign immunity because “the doctrine of sovereign tribal immunity applies to an
5 in rem proceeding involving tribally owned property.” *Hamaatsa*, 2013-NMCA-094,
6 ¶ 44 (Wechsler, J., dissenting); *see also Oneida Indian Nation of N.Y. v. Madison Cty.*
7 (*Oneida I*), 401 F. Supp. 2d 219, 229 (N.D.N.Y. 2005) (“It is of no moment that
8 the . . . suit at issue here is *in rem* . . . [w]hat is relevant is that the [c]ounty is
9 attempting to bring suit against the tribe.”), *aff’d* by 605 F.3d 149 (2d Cir. 2010)
10 (*Oneida II*), *vacated and remanded on other grounds by Madison Cty., N.Y. v. Oneida*
11 *Indian Nation of N.Y. (Oneida III)*, 562 U.S. 42 (2011) (per curiam).

12 {15} Finally, the Court of Appeals’ dissent asserted that the Pueblo should enjoy
13 sovereign immunity regardless of the type of relief requested by the complaint, be it
14 monetary, declaratory, or injunctive. *Hamaatsa*, 2013-NMCA-094, ¶ 51 (Wechsler,
15 J., dissenting) (“[T]ribal sovereign immunity applies to actions for declaratory and
16 injunctive relief to the same extent that it applies to an action for damages.” (citations
17 omitted)). The dissent concluded that the district court should have granted the
18 Pueblo’s motion to dismiss based on its sovereign immunity. *Id.* ¶ 56 (Wechsler, J.,

1 dissenting).

2 {16} The Pueblo petitioned this Court for a writ of certiorari. We granted certiorari
3 to resolve whether the Pueblo is immune from Hamaatsa’s suit as a sovereign tribal
4 nation, whether the Court of Appeals incorrectly relied on considerations of equity
5 and fairness in considering the Pueblo’s immunity from suit, and whether the Court
6 of Appeals misapplied Rule 1-012(B) with respect to the Pueblo’s motion to dismiss
7 on sovereign immunity grounds. In this opinion, then, we address first whether the
8 Pueblo is entitled to sovereign immunity from suit; second, whether considerations
9 of equity in light of the nature of a claim should override that protection, requiring
10 us to clarify the distinction between sovereign authority and sovereign immunity; and
11 last, whether a motion to dismiss at this stage of the proceedings is the proper means
12 for asserting the defense of sovereign immunity. For the reasons that follow, we hold
13 that under federal law the Pueblo is immune from suit, absent a waiver of its
14 immunity or congressional authorization of the suit—regardless of the nature of the
15 claim giving rise to the dispute—and can assert its immunity by a Rule 1-012(B)(1)
16 motion to dismiss. We vacate the opinion of the Court of Appeals and remand the
17 case to the district court for dismissal of the Pueblo from Hamaatsa’s suit in
18 accordance with this opinion.

1 **III. STANDARD OF REVIEW**

2 {17} “In reviewing an appeal from an order granting or denying a motion to dismiss
3 for lack of jurisdiction, the determination of whether jurisdiction exists is a question
4 of law which an appellate court reviews de novo.” *Gallegos v. Pueblo of Tesuque*,
5 2002-NMSC-012, ¶ 6, 132 N.M. 207, 46 P.3d 668 (citations omitted); *see also*
6 *Martinez v. Cities of Gold Casino*, 2009-NMCA-087, ¶ 22, 146 N.M. 735, 215 P.3d
7 44 (“We review de novo the legal question of whether an Indian tribe . . . possesses
8 sovereign immunity.”), *cert. denied*, 2009-NMCERT-007 (No. 31,757, Jul. 15, 2009)
9 (citation omitted).

10 **IV. DISCUSSION**

11 **A. Indian Tribes Are Subject to Suit Only Where the Tribe Waives Its**
12 **Immunity or Congress Explicitly Authorizes Suit**

13 {18} Before discussing whether the Pueblo was entitled to immunity from this
14 lawsuit, it is important to highlight the historical context from which the doctrine of
15 tribal sovereign immunity arose. “Long before the formation of the United States,
16 [t]ribes ‘were self-governing sovereign political communities.’ ” *Michigan v. Bay*
17 *Mills Indian Cmty. (Bay Mills)*, ___ U.S. ___, 134 S. Ct. 2024, 2040 (2014)
18 (Sotomayor, J., concurring) (quoting *United States v. Wheeler*, 435 U.S. 313, 322-23
19 (1978)). It is a long held principle that any sovereign has the power to determine the

1 jurisdiction of its own courts, and when it comes to the jurisdiction over a sovereign
2 in a second sovereign's courts, it is generally the law of the second sovereign that
3 governs. *See Kiowa*, 523 U.S. at 760-61 (Stevens, J., dissenting). And, because the
4 tribes were not a party to the Constitutional Convention at which sovereign States
5 mutually ceded aspects of their sovereignty in becoming the United States, the United
6 States Supreme Court has held firm to the canon that tribes thus retain their
7 sovereignty in a fashion distinct from that of the States. *See, e.g., Blatchford v. Native*
8 *Village of Noatak*, 501 U.S. 775, 782 (1991) (explaining that at the Constitutional
9 Convention there was a "surrender of immunity from suit by sister States," and that
10 "it would be absurd to suggest that the tribes [similarly] surrendered immunity in a
11 convention to which they were not even parties" (citation omitted)). In recognition
12 of as much, tribes retain most of their sovereign powers as is consistent with the
13 controlling federal law, which is generally intended to serve the purpose of promoting
14 tribal economic development and self-sufficiency. *See Kiowa*, 523 U.S. at 757.

15 {19} Thus, we must acknowledge that "Indian tribes are 'domestic dependent
16 nations' that exercise 'inherent sovereign authority.'" *Bay Mills*, 134 S. Ct. at 2030
17 (quoting *Potawatomi I*, 498 U.S. at 509). They retain a unique status as "separate
18 sovereigns pre-existing the Constitution." *Santa Clara Pueblo v. Martinez*, 436 U.S.

1 49, 56 (1978). Yet, as domestic dependent nations, tribes are subject to plenary
2 control by Congress. *Id.* (citations omitted); *see also United States v. Lara*, 541 U.S.
3 193, 200 (2004) (explaining that commerce and treaty clauses, and structure of
4 Constitution, are basis for “plenary and exclusive” power of Congress); *see generally*
5 F. Cohen, Handbook of Federal Indian Law § 5.01, pp. 383-91 (2012). “Thus, unless
6 and until Congress acts, the tribes retain their historic sovereign authority.” *Bay Mills*,
7 134 S. Ct. at 2030 (internal quotation marks and citation omitted).

8 {20} One aspect of traditional sovereignty—thereby retained by tribes, and subject
9 only to congressional abrogation—is common-law immunity from suit. *Santa Clara*
10 *Pueblo*, 436 U.S. at 58 (“[W]ithout congressional authorization, the Indian nations
11 are exempt from suit.” (internal quotation marks and citation omitted)). That
12 immunity, as the United States Supreme Court explained, is “a necessary corollary
13 to Indian sovereignty and self-governance.” *Three Affiliated Tribes of Fort Berthold*
14 *Reservation v. Wold Eng’g*, 476 U.S. 877, 890 (1986). In light of its import, a tribe’s
15 immunity—as a corollary of its sovereignty—can only be qualified by express
16 congressional mandate or waiver. *Bay Mills*, 134 S. Ct. at 2030-31.

17 {21} Tribal sovereign immunity is the maxim, subject only to the power of a tribe
18 to waive the immunity or Congress’s plenary power to regulate the tribes. *Id.*; *Kiowa*,

1 523 U.S. at 759-60. As a matter of federal law, then, the doctrine of sovereign
2 immunity is protected from an individual state’s attempt to abridge or redefine its
3 scope. *Kiowa*, 523 U.S. at 756 (“So tribal immunity is a matter of federal law and is
4 not subject to diminution by the States.” (citations omitted)); *Pueblo of Tesuque*,
5 2002-NMSC-012, ¶ 7.

6 {22} As stated, the unequivocal precedent of the United States Supreme Court
7 declares only two exceptions to tribal sovereign immunity—the tribes’s waiver of
8 immunity or congressional authorization—neither of which exists in the instant case.
9 The Pueblo has chosen not to waive its immunity and affirmatively invokes it as a
10 shield from Hamaatsa’s claim. Nor has Congress authorized this type of suit against
11 the Pueblo. Thus, we hold firm to existing federal precedent granting the Pueblo, as
12 a sovereign Indian tribe, immunity from Hamaatsa’s suit in state court.

13 {23} We do pause to note, though, that in some circumstances tribal officers will not
14 enjoy the same immunity from suit as does the tribe itself. *Santa Clara Pueblo*, 436
15 U.S. at 59 (citing *Ex parte Young*, 209 U.S. 123, 132 (1908)). Under *Ex Parte Young*,
16 “[a] federal court is not barred by the Eleventh Amendment from enjoining state
17 officers from acting unconstitutionally, either because their action is alleged to violate
18 the Constitution directly or because it is contrary to a federal statute or regulation that

1 is the supreme law of the land.” 17A Charles Alan Wright, Arthur R. Miller &
2 Edward H. Cooper, Federal Practice and Procedure § 4232 (3d ed. 2007) (footnotes
3 omitted). Tribal sovereign immunity is distinct from the Eleventh Amendment’s
4 protection of states, but the same rule applies with respect to state and tribal officers.
5 *Vann v. Kempthorne*, 534 F.3d 741, 749 (D.C. Cir. 2008). Tribal officers are not
6 immune from suit in federal court where a “complaint alleges an ongoing violation
7 of federal law and seeks relief properly characterized as prospective.” *Verizon Md.*
8 *Inc. v. Pub. Serv. Comm’n*, 535 U.S. 635, 645 (2002) (internal quotation marks and
9 citation omitted).

10 {24} Although neither waiver nor congressional abrogation exists in the instant case,
11 our analysis does not end here because Hamaatsa further urges this Court to recognize
12 an exception to the doctrine of sovereign immunity in matters pertaining to the
13 public’s use and access to public roads located on fee-owned tribal lands without
14 tribal interference. We refrain from carving out such a novel exception because the
15 immunity enjoyed by tribes under federal law is not subject to such diminution. While
16 we reject Hamaatsa’s request, we consider it prudent to address the equitable and
17 procedural arguments raised by the parties, as well as the approach taken on these
18 issues by the district court and the majority and dissenting opinions of the Court of

1 Appeals.

2 **B. Proposed Exceptions to the Pueblo’s Sovereign Immunity From Suit**

3 {25} Hamaatsa asks this Court to deny the Pueblo’s right to sovereign immunity on
4 equitable grounds, stemming from the unfairness that could result from the Pueblo’s
5 interference with the public’s use of Northern R.S. 2477. Hamaatsa makes these
6 arguments under the premise that its action lies *in rem* as opposed to *in personam*,
7 and that it seeks declaratory relief against the Pueblo, opposed to monetary damages.
8 Courts time and again have sought to alleviate similar claims of inequity resulting
9 from the imposition of sovereign immunity, particularly given the modern increase
10 in tribal land ownership and involvement in the commercial economy. *See, e.g.*,
11 *Hamaatsa*, 2013-NMCA-094, ¶ 19. Such equitable considerations in fact formed the
12 impetus of the Court of Appeals’ rationale in denying the Pueblo immunity in state
13 court. But, in doing so, it improperly conflated two interrelated but distinct
14 doctrines—tribal sovereign authority and sovereign immunity. Because unequivocal
15 federal precedent establishes otherwise, it is incumbent upon this Court to first clarify
16 the important distinctions between those two doctrines.

17 **i. Sovereign Authority**

18 {26} Tribal sovereign authority and tribal sovereign immunity are distinct doctrines

1 with different origins and purposes. *Oneida II*, 605 F.3d at 156, *vacated and*
2 *remanded*, 562 U.S. 42 (2011). Tribal sovereign authority concerns the extent to
3 which a tribe may exercise jurisdictional authority over lands the tribe owns to the
4 exclusion of state jurisdiction. *See id.* Generally, a state has the authority to tax or
5 regulate—i.e., apply state substantive law to—tribal activities occurring within the
6 state and outside reservation lands, as well as to tax or regulate nonmembers activity
7 on Indian fee-owned and reservation lands. *Kiowa*, 523 U.S. at 755 (“We have
8 recognized that a State may have authority to tax or regulate tribal activities occurring
9 within the State but outside Indian country.”); *Potawatomi I*, 498 U.S. at 515 (holding
10 that Oklahoma may tax cigarette sales by a tribe’s store to nonmembers.). And,
11 conversely, a tribe—as a unique entity possessing attributes of sovereignty over both
12 its members and territory—may regulate its own members, and its fee-owned and
13 reservation lands, to the extent necessary to protect tribal self-government and
14 internal relations. *Montana v. United States*, 450 U.S. 544, 564 (1981) (“Thus, in
15 addition to the power to punish tribal offenders, the Indian tribes retain their inherent
16 power to determine tribal membership, to regulate domestic relations among
17 members, and to prescribe rules of inheritance for members. But exercise of tribal
18 power beyond what is necessary to protect tribal self-government or to control

1 internal relations is inconsistent with the dependent status of the tribes, and so cannot
2 survive without express congressional delegation.” (citations omitted)). Thus, tribal
3 sovereign authority, the power of a tribe to exert what is necessary to protect self-
4 governance and establish relations amongst its members to the exclusion of state
5 regulation, is inherently distinct from the notion of tribal sovereign immunity—the
6 plenary right to be free from having to answer a suit. As stated by the United States
7 Supreme Court in *Kiowa*, “[t]here is a difference between the right to demand
8 compliance with state laws and the means available to enforce them.” 523 U.S. at 755
9 (citation omitted). That is, just because a state may, for example, tax cigarette sales
10 by a tribe’s store to nonmembers, such authority to tax or regulate has no bearing on
11 the tribe’s ultimate immunity from a suit to collect unpaid state taxes. *See Potawatomi*
12 *I*, 498 U.S. at 512-14.

13 {27} By excepting the Pueblo from the protections of sovereign immunity the Court
14 of Appeals majority conflated the distinct doctrines of sovereign authority and
15 sovereign immunity. *See Hamaatsa*, 2013-NMCA-094, ¶ 14 (discussing cases
16 regarding tribal power to regulate in the context of its analysis of tribal sovereign
17 immunity). In so doing, it supports its reasoning that the Pueblo was not immune from
18 jurisdiction in the district court by citation to case law that instead concerns an Indian

1 tribe’s regulatory and adjudicatory jurisdiction over both its fee-owned and
2 reservation land. *See id.* Its conclusion—essentially that an Indian tribe cannot
3 exercise jurisdiction over conduct on a public roadway crossing land owned in fee by
4 the tribe, and thus the tribe cannot be immune from relevant suit—is at odds with
5 aforementioned controlling federal precedent. “To say substantive state laws apply
6 to off-reservation conduct . . . is not to say that a tribe no longer enjoys immunity
7 from suit.” *Kiowa*, 523 U.S. at 755. Thus, when it comes to the Pueblo’s immunity
8 from the instant suit, *Kiowa* and its progeny control. We now turn to Hamaatsa’s
9 remaining arguments, which we reject, because they in part rely upon that improper
10 conflation of sovereign authority and immunity.

11 **ii. *In Rem***

12 {28} Hamaatsa argued in the district court, as it does now, that due to the *in rem*
13 nature of these proceedings the Pueblo may not invoke its sovereign immunity. The
14 district court denied the Pueblo’s motion to dismiss based in part on that argument.
15 However, in the context of tribal sovereign immunity there exists no meaningful
16 distinction between *in rem* and *in personam* claims. We hold that regardless of
17 whether Hamaatsa asserts claims that lie *in rem* or *in personam*, its action against the
18 Pueblo is barred in accordance with federal law. Because tribal sovereign immunity

1 divests a court of subject matter jurisdiction it does not matter whether Hamaatsa’s
2 claim is asserted *in rem* or *in personam*. See *Miner Elec., Inc. v. Muscogee (Creek)*
3 *Nation*, 505 F.3d 1007, 1009 (10th Cir. 2007) (“Tribal sovereign immunity is a matter
4 of subject matter jurisdiction” (internal quotation marks and citation omitted)).

5 {29} Hamaatsa primarily relies on the United States Supreme Court’s holding, in
6 *County of Yakima v. Confederated Tribes and Bands of the Yakima Indian Nation*
7 (*Yakima*), that the county had authority to tax land owned in fee by the tribe because
8 the county’s jurisdiction is “*in rem* rather than *in personam*.” 502 U.S. 251, 265
9 (1992). That case, though, concerned the county’s authority “to tax certain ‘fee
10 patent’ parcels of land, located within the Yakima Reservation”—and not, as
11 Hamaatsa argues, the tribe’s amenability to suit in court based on a concept of an *in*
12 *rem* exception to immunity. See *Cayuga Indian Nation of N.Y. v. Seneca Cty., N.Y.*
13 (*Cayuga*), 890 F. Supp. 2d 240, 247-48 (W.D.N.Y. 2012), *aff’d*, 761 F.3d 218 (2d
14 Cir. 2014). *Yakima*, involving a tribe’s sovereign authority, does not govern the
15 instant dispute.

16 {30} While, as Hamaatsa argues, some state courts have explicitly carved out
17 exceptions to tribal sovereign immunity for *in rem* actions, see *Anderson & Middleton*
18 *Lumber Co. v. Quinault Indian Nation*, 929 P.2d 379, 385 (Wash. 1996); *Cass Cty.*

1 *Joint Water Res. Dist. v. 1.43 Acres of Land in Highland Twp.*, 2002-ND-83, ¶ 20, we
2 conclude the United States Supreme Court’s opinion in *Bay Mills*—decided
3 subsequent to all cases cited by Hamaatsa—unequivocally bars us from carving out
4 a similar exception. In *Bay Mills* the United States Supreme Court held “we have time
5 and again treated the ‘doctrine of tribal immunity [as] settled law’ and dismissed any
6 suit against a tribe absent congressional authorization (or a waiver).” 134 S. Ct. at
7 2030-31 (alteration in original) (quoting *Kiowa*, 523 U.S. at 756). The Second
8 Circuit, for example, understood this avowedly broad pronouncement to require it to
9 refuse to draw novel exceptions to tribal sovereign immunity, such as a distinction
10 between “*in rem* and *in personam* proceedings.” *Cayuga*, 761 F.3d at 221 (citing *Bay*
11 *Mills*, 134 S. Ct. at 2031; *The Siren*, 74 U.S. 152, 154 (1868) (“[T]here is no
12 distinction between suits against the government directly, and suits against its
13 property.”)). We choose to follow the Second Circuit, and thereby refuse to recognize
14 an exception to tribal sovereign immunity for *in rem* proceedings in light of the
15 United States Supreme Court’s holding in *Bay Mills*. And, since we hold that
16 Hamaatsa’s suit is nonetheless barred as a matter of federal law, we need not analyze
17 whether the instant suit constitutes an *in rem* or *in personam* suit. *Contra Hamaatsa*,
18 2013-NMCA-094, ¶ 32 (Wechsler, J., dissenting).

1 **iii. Type of Relief**

2 {31} The district court also denied the Pueblo’s motion to dismiss in part because
3 it found that tribal sovereign immunity was inapplicable to a complaint that did not
4 seek monetary damages. Hamaatsa, pursuing declaratory relief, thus renews that
5 argument here before this Court. We disagree, and instead hold that tribal sovereign
6 immunity is a wholesale bar to suit against a tribe in New Mexico for any relief—be
7 it monetary, declaratory, or injunctive. As a matter of federal law, suit being brought
8 against an Indian tribe is the prerequisite for invocation of the doctrine. *See Bay*
9 *Mills*, 134 S. Ct. at 2030-31. This conclusion is compatible with the majority of
10 federal courts having occasion to consider this generally undisputed principle of tribal
11 sovereign immunity. *See, e.g., Santa Clara Pueblo*, 436 U.S. at 59 (discussing
12 whether Santa Clara Pueblo had waived its immunity, and holding that “[n]othing on
13 the face of Title I of the [Indian Civil Rights Act] purports to subject tribes to the
14 jurisdiction of the federal courts in civil actions for *injunctive or declaratory relief*”
15 (emphasis added)); *Wisconsin v. Ho-Chunk Nation*, 512 F.3d 921, 928 (7th Cir. 2008)
16 (“Tribal sovereign immunity . . . extends to suits for injunctive or declaratory relief.”
17 (citation omitted)); *Citizen Band Potawatomi Indian Tribe of Okla. v. Okla. Tax*
18 *Comm’n (Potawatomi II)*, 969 F.2d 943, 948 (10th Cir. 1992) (holding the tribe

1 immune from injunctive relief action); *Imperial Granite Co. v. Pala Band of Mission*
2 *Indians*, 940 F.2d 1269, 1271 (9th Cir. 1991) (noting that tribal immunity “extends
3 to suits for declaratory and injunctive relief” (citation omitted)). The Court of
4 Appeals, similarly, has applied tribal sovereign immunity as a bar in suits seeking
5 non-monetary relief. *Armijo*, 2011-NMCA-006, ¶¶ 1, 5 (holding that the Pueblo of
6 Laguna’s immunity from suit barred Armijo’s actions against it seeking declaratory
7 relief to quiet title to land).

8 {32} Hamaatsa still urges this Court to hold otherwise, against the weight of federal
9 precedent. We decline to follow its alternative conclusion emanating from a line of
10 cases from the Fifth Circuit holding that tribal sovereign immunity should be
11 relegated to suits for monetary relief. *See Comstock Oil & Gas Inc. v. Ala. &*
12 *Coushatta Indian Tribes of Tex.*, 261 F.3d 567, 572 (5th Cir. 2001) (holding that “the
13 district court erroneously concluded that the [t]ribe was entitled to sovereign
14 immunity against the oil companies’ claims for equitable relief”); *TTEA v. Ysleta del*
15 *Sur Pueblo*, 181 F.3d 676, 680-81 (5th Cir. 1999) (reasoning that “tribal immunity
16 did not support [a district court’s] order dismissing the actions seeking declaratory
17 and injunctive relief”); *see also New York v. Shinnecock Indian Nation*, 523 F. Supp.
18 2d 185, 299 n.74 (E.D.N.Y. 2008) (following the Fifth Circuit and distinguishing

1 *Kiowa* by noting that it addressed sovereign immunity from damages actions and not
2 from injunctive relief), *vacated on other grounds*, 686 F.3d 133 (2d Cir. 2012). We
3 reject the rationale propounded by *Hamaatsa* and adopted in the Fifth Circuit because
4 it is not in accordance with the weight of federal precedent. We consider the
5 arguments made by *Hamaatsa* to be based upon inferences too tenuous to apply in the
6 instant case and to further conflate the doctrines of sovereign authority and sovereign
7 immunity.

8 {33} In *TTEA* the Fifth Circuit concluded that since *Kiowa* involved a contracts
9 action for money damages, its broad approval of the doctrine of tribal sovereign
10 immunity in that case ought be relegated to its facts. 181 F.3d at 680-81. The Fifth
11 Circuit relied on this logic once again in *Comstock Oil & Gas*, refusing to apply tribal
12 sovereign immunity as a bar to actions brought for declaratory or injunctive relief.
13 261 F.3d at 572. We are unpersuaded. An exception to tribal sovereign immunity for
14 equitable or declaratory relief cannot be squared with the more persuasive opinion in
15 *Ute Distrib. Corp. v. Ute Indian Tribe*, 149 F.3d 1260 (10th Cir.1998). In that case
16 the Tenth Circuit held that a plaintiff’s “action [against a tribe] seeking a declaratory
17 judgment that certain tribal water rights were not partitioned” was barred by
18 sovereign immunity. *Id.* at 1262-65. The Tenth Circuit also discussed the tribe’s

1 sovereign immunity from other claims made by the Ute Distribution Corporation
2 (UDC), and held that an action by UDC against a tribe for equitable relief was barred
3 by sovereign immunity. *Id.* The Tenth Circuit again rejected a plaintiff’s argument to
4 apply a non-monetary relief exception to tribal sovereign immunity in *In re Mayes*,
5 294 B.R. 145, 154-55 (B.A.P. 10th Cir. 2003). In *Mayes* the appellant argued that
6 since he merely sought declaratory relief, sovereign immunity did not apply. *Id.* at
7 154. Holding instead that the “[a]ppellant’s ‘form of relief’ argument [was] without
8 merit” because “the nature of the relief sought is irrelevant to the question whether
9 the suit is barred by sovereign immunity,” the Tenth Circuit again declined to create
10 an equitable or declaratory relief exception similar to that created by the Fifth Circuit.
11 *Id.* at 155 (citation omitted).

12 {34} In furtherance of its argument, Hamaatsa advocates for the rationale of a
13 dissenting opinion by Justice Stevens in *Kiowa* claiming that the majority’s opinion
14 did not extend to a suit for equitable relief. *See Kiowa*, 523 U.S. at 763-64 (Stevens,
15 J., dissenting). The Tenth Circuit rejected, upon remand, that very same argument
16 after it was made by Justice Stevens in a concurring opinion in *Potawatomi I*, 498
17 U.S. at 515 (Stevens, J., concurring). *Potawatomi II*, 969 F.2d at 948 n.5. The Tenth
18 Circuit stated that “[w]hile Justice Stevens suggested that ‘a tribe’s sovereign

1 immunity from actions seeking money damages does not necessarily extend to actions
2 seeking equitable relief,' this view was not shared by any other member of the Court
3 and was implicitly rejected [by] the majority" *Id.* (citation omitted). As such, the
4 Tenth Circuit held that "to the extent [the appellant] asks us to adopt Justice Stevens'
5 position, we reject it." *Id.*

6 {35} Hamaatsa additionally points to case law governing the inapposite doctrine of
7 sovereign authority in support of an exception to tribal sovereign immunity for non-
8 monetary relief. Citing *City of Sherrill, N.Y. v. Oneida Nation of N.Y. (Sherrill)*, 544
9 U.S. 197 (2005), Hamaatsa argues that a claim against a tribe seeking equitable relief
10 is available in spite of sovereign immunity. *Sherrill* does not stand for this
11 proposition. *Sherrill* dealt with the sovereign authority of the Oneida Nation, in a suit
12 brought by the Oneida Nation, as it relates to immunity from property taxation in the
13 contexts of either reservation or fee-owned lands. *Id.* at 211 ("Because the parcels lie
14 within the boundaries of the reservation originally occupied by the Oneidas, [the
15 Oneida Indian Nation] maintained that the properties are exempt from taxation, and
16 accordingly refused to pay the assessed property taxes."). Hamaatsa, in relying on the
17 logic of a subsequent federal district court opinion, points to a cryptic footnote in
18 *Sherrill* which it argues creates an exception to tribal sovereign immunity for

1 equitable relief. *See New York v. Shinnecock Indian Nation*, 523 F. Supp. 2d 185, 298
2 (E.D.N.Y. 2007), *vacated and remanded by* 686 F.3d 133. The *Sherrill* footnote reads
3 “[t]he dissent suggests that, compatibly with today’s decision, the [t]ribe may assert
4 tax immunity defensively in the eviction proceeding initiated by Sherrill. . . . We
5 disagree. The equitable cast of the relief sought remains the same whether asserted
6 affirmatively or defensively.” *Sherrill*, 544 U.S. at 214, n.7 (citation omitted). Yet,
7 the saga of the *Sherrill* litigation did not end there—instead, following *Sherrill*’s
8 order of remand, there were numerous opinions issued back and forth between the
9 Second Circuit and the United States Supreme Court on the issues of sovereign
10 authority and immunity that ultimately culminated in the United States Supreme
11 Court ordering the Second Circuit, per curiam, to determine “whether tribal sovereign
12 immunity from suit, to the extent it should continue to be recognized, bars taxing
13 authorities from foreclosing to collect lawfully imposed property taxes.” *Oneida III*,
14 562 U.S. at 42 (per curiam). In response, the Second Circuit determined that where
15 the Oneida Nation

16 had prevailed on the issue of tribal sovereign immunity from suit before
17 both the district court and this Court, [it] now assures us, as it did the
18 Supreme Court, that it will no longer invoke the doctrine of tribal
19 sovereign immunity from suit as a basis for preventing the Counties
20 from enforcing property taxes through tax sale or foreclosure.

1 *Oneida Indian Nation of N.Y. v. Madison Cty. (Oneida IV)*, 665 F.3d 408, 425 (2d
2 Cir. 2011). Thus, while recognizing that “[t]here may well be, as the Counties urge,
3 remaining disagreements as to whether the [Oneida Indian Nation] possessed tribal
4 sovereign immunity from suit at the time that these cases were before the district
5 court and then on appeal to us in the first instance,” the Second Circuit did not go as
6 far as to confirm that the *Sherrill* footnote created an exception to sovereign immunity
7 for non-monetary relief. *Oneida IV*, 665 F.3d at 425. The United States Supreme
8 Court denied a petition for certiorari, ending the litigation relevant to the instant suit
9 based on a waiver of—and not an exception to—sovereign immunity. *Oneida IV*, 665
10 F.3d 408, *cert denied*, 134 S. Ct. 1582 (2014). We conclude, given the relative weight
11 of authority counseling against this exception—and the unequivocal command of the
12 United States Supreme Court in *Kiowa* and *Bay Mills* that tribal sovereign immunity
13 bars suit absent abrogation or waiver—the rationale of *Sherrill* is best confined to the
14 doctrine of sovereign authority. *See, e.g., Bay Mills*, 134 S. Ct. at 2031 (“[United
15 States Supreme Court precedents] had established a broad principle, from which we
16 thought it improper suddenly to start carving out exceptions. Rather, we opted to
17 ‘defer’ to Congress about whether to abrogate tribal immunity for off-reservation
18 commercial conduct.” (citation omitted)). Thus, we choose not to recognize such an

1 exception in New Mexico at this time, as it is unsupported by federal law.

2 **iv. Further Equitable Considerations**

3 {36} Again, underlying the Court of Appeals reasoning in its majority opinion is an
4 appeal to giving greater weight to “the practical effects of the application of sovereign
5 immunity.” *Hamaatsa*, 2013-NMCA-094, ¶ 15. As such, the Court of Appeals based
6 its opinion in part on the equitable ground that the legal and practical effect of
7 sovereign immunity in the instant dispute would be to deprive Hamaatsa of legal
8 recourse. *See id.* ¶ 30 (Wechsler, J., dissenting). Sovereign immunity, though, is not
9 discretionary—it is a threshold jurisdictional consideration. *See Puyallup Tribe, Inc.*
10 *v. Dep’t of Game of State of Wash. (Puyallup)*, 433 U.S. 165, 172 (1977). No matter
11 the equities of a given situation, sovereign immunity presents a pure jurisdictional bar
12 to suit. *See Armijo*, 2011-NMCA-006, ¶ 13. In a case where tribal sovereign
13 immunity is properly invoked, as a matter of federal law, that must be the end of all
14 proceedings against a tribe. *See Puyallup*, 433 U.S. at 172. Unless and until Congress
15 chooses to abrogate tribal sovereign immunity in the context of public road
16 adjudication of this sort, we must respect the interests served by tribal sovereign
17 immunity and order the suit be dismissed.

18 {37} We commiserate with the less-than-ideal situation Hamaatsa now finds itself

1 in—and note that “[t]here are reasons to doubt the wisdom of perpetuating the
2 doctrine.” *Kiowa*, 523 U.S. at 758. Yet, venerable interests are served by adhering to
3 the doctrine of tribal sovereign immunity. *See Ho-Chunk Nation*, 512 F.3d at 928
4 (“Tribal sovereign immunity is a necessary corollary to Indian sovereignty and self-
5 governance[.]” (internal quotation marks and citation omitted)). And those interests
6 have resulted in a doctrine that has persisted for over a century. *Bay Mills*, 134 S. Ct.
7 at 2040 (Sotomayor, J., concurring). By virtue of maintaining tribal sovereignty
8 Congress gives deference to the fact that tribes “have not given up their full
9 sovereignty,” thereby respecting the dignity of the place tribes occupy in our system
10 of governance. *Id.* at 2040, 2042 (Sotomayor, J., concurring). Through immunity, the
11 federal government also comes nearer to accomplishing its goal of “render[ing] tribes
12 more self-sufficient, and better positioned to fund their own sovereign functions,
13 rather than relying on federal funding.” *Id.* at 2043 (Sotomayor, J., concurring) (citing
14 25 U.S.C. § 2702(1) (providing Congress’ purpose for enacting the Indian Gaming
15 Regulatory Act as creating “a statutory basis for the operation of gaming by Indian
16 tribes as a means of promoting tribal economic development, self-sufficiency, and
17 strong tribal governments”). The beneficial impact of tribal sovereign immunity in
18 advancing the welfare and self-sufficiency of Indian tribes demands its application

1 in all cases where Congress does not otherwise provide.

2 **C. Sovereign Immunity is Properly Raised by Motion to Dismiss**

3 {38} The Court of Appeals reasoned that because the Pueblo admitted that the facts
4 of Hamaatsa’s allegations were true for the purposes of its motion to dismiss, a
5 resolution of the Pueblo’s tribal-sovereign-immunity defense was inequitable and
6 improper at that stage of the proceedings. *See Hamaatsa*, 2013-NMCA-094, ¶ 10. We
7 hold that the concessions made by the Pueblo for the purposes of filing its motion to
8 dismiss are of no moment in the context of tribal sovereign immunity.

9 {39} “Tribal sovereign immunity is a matter of subject matter jurisdiction which can
10 be challenged in a Fed.R.Civ.P. 12(b)(1) motion to dismiss for lack of subject matter
11 jurisdiction.” *Bales v. Chickasaw Nation Indus.*, 606 F. Supp. 2d. 1299, 1301
12 (D.N.M. 2009); *see also Kiowa*, 523 U.S. at 754; *E.F.W. v. St. Stephen’s Indian High*
13 *School*, 264 F.3d 1297, 1302-03 (10th Cir. 2001); *Cash Advance & Preferred Cash*
14 *Loans v. State*, 242 P.3d 1099, 1113 (Colo. 2010) (en banc) (“We conclude that tribal
15 sovereign immunity bears a substantial enough likeness to subject matter jurisdiction
16 to be treated as such for procedural purposes. Consequently, the tribal entities
17 properly raised their claim of tribal sovereign immunity in a C.R.C.P. 12(b)(1) motion
18 to dismiss for lack of subject matter jurisdiction.”). We conclude the same logic holds

1 true in New Mexico’s state courts, and that tribal sovereign immunity is properly
2 raised in a Rule 1-012(B) motion to dismiss. *See Cash Advance & Preferred Cash*
3 *Loans*, 242 P.3d at 1113 (“Our determination accords with the fact that, irrespective
4 of whether all courts find that tribal sovereign immunity is precisely a question of
5 subject matter jurisdiction, the claim is generally raised in a rule 12(b)(1) motion,
6 pursuant either to federal or state rules of civil procedure.”); *see also Kiowa*, 523 U.S.
7 at 754; *Miner Elec., Inc. v. Muscogee (Creek) Nation*, 505 F.3d 1007, 1009 (10th Cir.
8 2007); *Allen v. Gold Country Casino*, 464 F.3d 1044, 1046 (9th Cir. 2006); *Garcia*
9 *v. Akwesasne Hous. Auth.*, 268 F.3d 76, 84 (2d Cir. 2001); *Hagen v. Sisseton-*
10 *Wahpeton Cmty. Coll.*, 205 F.3d 1040, 1043 (8th Cir. 2000); *Bales*, 606 F. Supp. 2d
11 at 1301.

12 {40} Rather than waiting until the later stages of litigation, the instant stage of the
13 proceedings is the proper time, and a Rule 1-012(B) motion to dismiss the proper
14 means, for asserting tribal sovereign immunity from suit. In fact, it is precisely the
15 proper means necessary to ensure that the benefits of immunity are maintained. As
16 a sovereign immune from suit, a tribe must be able to quickly and efficiently invoke
17 the protections of sovereign immunity in order to avoid costly and time-consuming
18 litigation. Tribal sovereign immunity from suit is more than a mere defense to

1 liability—it is immunity from *suit*, which is effectively lost if such a case is
2 erroneously permitted to proceed through trial. *See Burlington N. & Santa Fe Ry. Co.*
3 *v. Vaughn*, 509 F.3d 1085, 1090 (9th Cir. 2007). We conclude that the Pueblo
4 properly raised its tribal sovereign immunity at this stage of the proceedings by Rule
5 1-012(B) motion to dismiss, and that the Court of Appeals erred in concluding
6 otherwise.

7 **V. CONCLUSION**

8 {41} Unless and until Congress abrogates tribal immunity in relevant fashion our
9 hands are tied by controlling federal law. It is not within the province of the New
10 Mexico Supreme Court’s authority to abridge the federal doctrine of tribal sovereign
11 immunity. Because the Pueblo is immune from Hamaatsa’s suit, we reverse the Court
12 of Appeals and instruct the district court to enter an order dismissing Hamaatsa’s suit.

13 {42} **IT IS SO ORDERED.**

14
15

BARBARA J. VIGIL, Justice

16 **WE CONCUR:**

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18

CHARLES W. DANIELS, Chief Justice

1

2 **PETRA JIMENEZ MAES, Justice**

3

4 **EDWARD L. CHÁVEZ, Justice**

5

6 **JUDITH K. NAKAMURA, Justice**