GODFREY & KAHN S.C.

June 2021

Indian Nations update

John L. Clancy
414.287.9256
jclancy@gklaw.com

Brian L. Pierson
414.287.9456
bpierson@gklaw.com

Once-in-a-lifetime Opportunities for Indian Housing Development!

The federal government is funding Indian country at unprecedented levels. The 2021 Appropriations Act provided $647 million for formula-based Indian Housing Block Grants (IHBG), $100 million for competitive IHBG and $70 million for Indian Community Development Block Grants (ICDBG). The American Rescue Plan Act ("ARPA"), signed into law in March, includes:

- an *additional* $20 *billion* for tribal governments to use for designated purposes, including to respond to COVID or its negative economic impacts, to provide government services to the extent of revenue lost due to COVID and to make necessary investments in affordable housing, water, sewer, or broadband infrastructure;
- an *additional* $455 million of IHBG funds "to prevent, prepare for, and respond to coronavirus, including to maintain normal operations and fund eligible affordable housing activities under Native American Housing Assistance and Self-Determination Act (NAHASDA) during the period that the program is impacted by coronavirus;"
- an *additional* $280 million in ICDBG funds "for emergencies that constitute imminent threats to health and safety and are designed to prevent, prepare for, and respond to coronavirus."

Tribes should focus on (1) securing these funds and (2) maximizing their impact by leveraging them with other funding sources to meet important community needs.

Tribes that are well positioned to compete for 9% housing tax credits ("HTC") should pursue them.

Tribes in states whose qualified allocation plans are not tribe-friendly should pursue the less competitive, under-used "4%" HTCs. These credits, which tribes have historically ignored, can provide *30% or more of total development cost* of a large housing project and are especially valuable to leverage the once-in-a lifetime federal funding now available. Additional funding layers, such as Affordable Housing Program (AHP) funds through the Federal Home Loan Bank and state funds, can be added.

For example, a tribe that invests $6 million of the new IHBG or ARPA money could *fully fund*, *debt-free* a $10 million housing project by combining ARPA funds with non-competitive 4% HTC and AHP funds. By taking advantage of energy tax credits and power purchase agreements, units can be solarized for long term cost-efficiency at low, or no, upfront cost.

Assisting tribes in securing grant funds and developing affordable housing, infrastructure and energy facilities that leverage tax credits and other sources is a major focus of G&K's Indian Nations practice. For assistance in connection with any of the above-mentioned opportunities, or for more information, contact John Clancy (414.287.9252; jclancy@gklaw.com) or Brian Pierson (414.287.9456; bpierson@gklaw.com).

US Supreme Court unanimously affirms tribal police right to search and detain non-Indians on reservation highways

In *United States v. Cooley* (U.S. 2021), Saylor, a Crow Tribe police officer, stopped Cooley, a non-Indian, after observing Cooley's truck parked on the shoulder of US Route 212, a right-of-way within the Crow Indian Reservation. Saylor questioned Cooley. Suspicious of the responses, Saylor arrested Cooley and, in the course of a vehicle search, discovered drugs and drug paraphernalia. Federal prosecutors ultimately charged Cooley with one count of possession with intent to distribute methamphetamine and one count of possession of a firearm in furtherance of a drug trafficking crime. Cooley moved to suppress evidence, arguing that Saylor was acting outside the scope of his jurisdiction as a Crow Tribe law enforcement officer when he seized Cooley, in violation of the Indian Civil Rights Act of 1968 (ICRA). The district court granted Cooley's motion, finding that Saylor had identified Cooley as a non-Indian when Cooley initially rolled his window down and that Saylor seized Cooley when he drew his gun, ordered Cooley to show his hands and demanded his driver's license. The court reasoned that a tribal officer cannot detain a non-Indian on a state or federal right-of-way unless it is apparent at the time of the detention that the non-Indian has been violating state or federal law, and that Saylor therefore had no authority to seize Cooley when and where he did. The Ninth Circuit affirmed but the U.S. Supreme Court, in a unanimous decision authored by Justice Breyer handed down June 1, 2021, disagreed and reversed the Ninth Circuit: "The question presented is whether an Indian tribe's police officer has authority to detain temporarily and to search a non-Indian on a public right-of-way that runs through an Indian reservation. The search and detention, we assume, took place based on a potential violation of state or federal law prior to the suspect's transport to the proper non-tribal authorities for prosecution. We have previously noted that a tribe retains inherent sovereign authority to address 'conduct that threatens or has some direct effect on the health or welfare of the tribe.' ***Montana v. United States***, 450 U. S. 544, 566 (1981); see also *Strate v. A–1 Contractors*, 520 U. S. 438, 456, n. 11 (1997). We believe this statement of law governs here. And we hold the tribal officer possesses the authority at issue." (Internal emendations omitted.)

Other Selected Court Decisions

In *Little Traverse Bay Bands of Odawa Indians v. Whitmer*, 2021 WL 1976623 (6th Cir. 2021), the Little Traverse Bay Bands of Odawa Indians (Tribe) sued Michigan State officials seeking **confirmation of the reservation** allegedly created for the Tribe by treaty with the United States in 1855. The District Court granted the defendants summary judgment, holding that the Treaty created individual allotments, with temporary restrictions on alienation, for tribal members but not a tribal reservation. The Sixth Circuit Court of Appeals affirmed: "The Treaty's language makes clear that the land was held by the Federal Government in trust for the benefit of the tribe. … When construed liberally in favor of the Indians, we conclude that the land was set apart. … Coupled with this finding, however, we must also inquire into whether the land is used for Indian purposes. … If a tribe is free to use the land for non-Indian purposes, courts must conclude that the federal set-aside requirement is not met. … In the instant case, Article 1 of the Treaty contains no textual requirement that the land be used for a specific purpose. 1855 Treaty, Art. 1, 11 Stat. 621. Instead, it provides for a ten-year restraint on alienation and provision of trusteeship for lands selected by tribal members who were citizens of the state and who took possession of their selected land within the first five-year period after the Treaty's signing, but no restrictions for those members who took possession of land in the second five-year period. … That suggests the parties intended for tribal members to have freedom of title after the full ten-year period. Further, the lands remaining unappropriated by or unsold to the Indians after expiration of the last-mentioned term were scheduled to be 'sold or disposed of by the United States as in the case of all other public lands.' … We hold that the Treaty created an arrangement closer to a land allotment system than a reservation. See Cohen's Handbook of Federal Indian Law, § 3.04[2][c][iv] (2019); …. Therefore, although the Treaty of 1855 might have set apart land for an Indian purpose, that purpose was not a reservation." (Quotations, citations and internal emendations omitted.)

In *United States v. Haggerty*, 2021 WL 1827316 (5th Cir. 2021), Haggerty was convicted under the **General Crimes Act**, 18 U.S.C. § 1152, and 18 U.S.C. § 1363, which makes it a crime to "maliciously destroy[] property in Indian country," for vandalizing a statue that the Isleta Pueblo had erected on its reservation. Section 1152 extends federal criminal jurisdiction to Indian country but expressly excepts "offenses committed by one Indian against the person or property of another Indian." Haggerty challenged his conviction on the ground that the government had failed to prove that he was not an Indian. The Fifth Circuit rejected the argument: "It is a well-established rule of criminal statutory

construction that an exception set forth in a distinct clause or provision should be construed as an affirmative defense and not as an essential element of the crime. … In sum, with respect to crimes prosecuted via § 1152, settled and reconcilable Supreme Court doctrine, as well as principles of statutory construction, demonstrate that, when the victim is Indian, the defendant's status as Indian is an affirmative defense for which the defendant bears the burden of pleading and production, with the ultimate burden of proof remaining with the Government. Therefore, because Haggerty did not raise the issue of Indian status at trial as an affirmative defense, the Government met its burden to prove the jurisdictional element of § 1363 (as extended by § 1152) by introducing evidence sufficient to establish that the offense occurred in Indian country." (Internal quotations and citations omitted.)

In *Rabang v. Kelly*, Fed.Appx. 2021 WL 1752976 (9th Cir. 2021), Rabang and other **disenrolled members** of the Nooksack Tribe had sued members of the Nooksack Indian Tribal Council and other tribal officials claiming that their disenrollment violated the federal Racketeer Influenced and Corrupt Organizations Act (RICO). In response to actions by tribal officials, the Department of the Interior (DOI) refused to recognize actions taken by the tribal government until a lawful special election was held. The Nooksack Indian Tribe subsequently conducted elections for the Tribal Council, and the DOI recognized the results of those elections, whereupon the District Court dismissed for lack of jurisdiction. The Ninth Circuit Court of Appeals affirmed: "Resolution of Rabang's RICO claims requires consideration of the alleged predicate acts, which all center on the allegedly unlawful disenrollment of hundreds of members of the Nooksack Indian Tribe. But tribal enrollment decisions are generally beyond the power of federal courts to review. … Because the Nooksack Indian Tribe has a full tribal government that has been recognized by the DOI, … Rabang's case no longer falls under the futility exception to the tribal exhaustion requirement, which applies narrowly to only the most extreme cases." (Internal quotations, citations and emendations omitted.)

In *Confederated Tribes and Bands of the Yakama Nation v. United States*, 2021 WL 2177675 (Fed. Cl. 2021), Confederated Tribes and Bands of the Yakama Nation (Tribes) sued the United States under the Indian Tucker Act for money damages in the court of Federal Claims alleging that the government breached its fiduciary duty to the Tribes under its 1855 treaty, National Indian Forest Resource Management Act (NIFRMA) and other federal laws when it failed to assure that **timber harvests** in the Tribes' forest met minimum targets. The Federal District Court denied the government's motion to dismiss: "In Mitchell II, the Supreme Court found this Court has Indian Tucker Act jurisdiction over breach-of-trust claims rooted in the statutes and regulations governing timber management on Indian lands. … While the government casts plaintiffs' complaint as relying only on 'the aspirational statement' contained in NIFRMA as the purported source of statutorily prescribed fiduciary obligations, … a plain reading of the complaint proves otherwise. … The complaint expressly cites the 1910 and 1934 forest management statutes as creating fiduciary duties, both of which the Supreme Court considered in Mitchell II when determining whether breach-of-trust claims rooted in these statutes are jurisdictional under the Indian Tucker Act."

In *Chicken Ranch Rancheria v. Newsom*, 2021 WL 2168148 (E.D. Cal. 2021), five rancherias (Tribes) sued the governor and the State of California for bad faith under the **Indian Gaming Regulatory Act (IGRA)** after they were unsuccessful in negotiating renewals to Class III gaming compacts due to expire in 2022. The District Court granted the Tribes summary judgment, concluding that the State had sought to negotiate issues, including taxation, not permissible under IGRA and ordering that the parties engage in mediation pursuant to the IGRA-prescribed Secretarial Procedures that govern when a state fails to negotiate in good faith. The Court granted a stay only to enable the defendants to seek a broader stay from the Ninth Circuit Court of appeals and ordered that the mediation otherwise commence in September.

In *Standing Rock Sioux Tribe v. U.S. Army Corps of Engineers*, 2021 WL 2036662 (D. D.C. 2021), the Standing Rock Sioux Tribe and others had sued the U.S. Army Corps of Engineers (Corps), challenging the Corps' issuance, without requiring an environmental impact statement (EIS), of an easement permitting **Dakota Access** LLP (Dakota Access) to build and operate a pipeline transporting crude oil underneath Lake Oahe, a large reservoir on the Missouri River between North and South Dakota. The federal District Court in 2020 agreed and, in 2020, vacated the easement and ordered the pipeline, which had already become operational, emptied pending completion of the EIS. The D.C. Circuit affirmed the District Court's ruling vacating the issuance of the easement but reversed its order that the pipeline operations be suspended pending completion of the EIS, holding that the plaintiffs had failed to show that, in the absence of a shut down, they would suffer irreparable harm – a necessary predicate to injunctive relief.

Notwithstanding the existence of a judicially confirmed trespass, the Corps took no action to force Dakota to shut down. On remand the District Court held that the plaintiffs' showing of irreparable harm was insufficient to justify the issuance of a judicial shut-down order: "Plaintiffs' principal claim of irreparable injury derives from the threat of an oil spill underneath Lake Oahe. … That reservoir, as previously mentioned, provides the Tribes with water for drinking, industry, and sacred practices. In order for them to realize any harm from a pipeline leak, however, a series of contingent events must occur: 1) a spill under Lake Oahe; 2) of sufficiently large size; 3) the oil from which rises 92 feet from the pipeline to the bottom of the lake; and 4) which cannot be sufficiently mitigated or contained either before or upon entering the lake. … Simply itemizing that causal chain suggests the fundamental problem with Plaintiffs' irreparable-harm argument: they have not established, as they must, that any of the chain's individual components — let alone the feared end result — is likely, as opposed to merely possible. … Without such showing, of course, they cannot demonstrate the probability of a damaging DAPL spill at Lake Oahe sufficient to warrant injunctive relief." (Internal quotations, citations and emendations omitted.)

In *Noem v. Haaland*, 2021 WL 2014867 (D.S.D. 2021), the governor of South Dakota and the State of South Dakota sued the Secretary of Interior and Department of Interior (DOI) officials, challenging the DOI's denial of the State's permit to display fireworks at Mount Rushmore on the Fourth of July. The Cheyenne River Sioux Tribe and its historic preservation officer, Vance, moved to intervene. Over the State's objection, the Court granted the motion: "The Tribe and Vance emphasize the religious and cultural significance to the Lakota people of the Black Hills, where Native American peoples lived for thousands of years and which tribes negotiated to include as part of the Great Sioux Indian Reservation under the Fort Laramie Treaty of 1868. … The Lakota continue to regard the **Black Hills as sacred**, have multiple traditional cultural properties there, and conduct traditional cultural practices there. The Tribe and Vance contend that they will suffer the following three injuries if this Court grants a preliminary injunction to require the DOI to issue the requested permit: (1) imposition of a substantial burden on the Tribe's and its individual members' religious practices in violation of the Religious Freedom Restoration Act (RFRA), 42 U.S.C. § 2000bb; (2) a violation of the Tribe's and its individual members' rights under the Free Exercise Clause of the First Amendment; and (3) violation of Section 106 of the National Historic Preservation Act (NHPA) by forcing the federal defendants to illegally bypass evaluation of historic properties in the Black Hills. … Accepting the material allegations of the motion to intervene as true, which at this stage this Court must do, … these contentions are sufficient to establish standing for permissive intervention." (Citations omitted.)

In *Grondal v. United States*, 2021 WL 1962563 (E.D. Wash. 2021), certain non-Indian occupants of a campground on a fractionated allotment owned by members of the Confederated Tribes of the Colville Reservation sued to quiet title based on a lease purportedly approved by the Bureau of Indian Affairs (BIA). The government counterclaimed for **ejectment and trespass** damages. The District Court had previously determined the lease to be invalid. In the instant decision, the Court held that the reasonable rental value of property for the period of trespass was $1,411,702.

In *Allegany Capital Enterprises, LLC v. Cox*, 2021 WL 1807868 (W.D. N.Y. 2021), Allegany Capital Enterprises, LLC (ACE), a 100% Indian-owned limited liability company formed under the laws of the Sac and Fox Nation of Oklahoma, and Seneca Manufacturing Company (SMC), a partnership doing business in the Seneca Nation, both doing business in the Seneca Nation in New York, entered into an agreement with Diamond Mountain Manufacturing (DMM), a corporation owned by the Susanville Indian Rancheria Corporation (SIRCO). When SIRCO allegedly defaulted, ACE and SMC sought arbitration but the arbitrator determined that SIRCO had never waived its sovereign immunity. ACE and SMC then sued Cox, DMM's chief executive officer, and two other DMM corporate officers, alleging diversity jurisdiction and contending that the defendants fraudulently induced the plaintiffs to enter into contracts with DMM by misrepresenting DMM's willingness to waive sovereign immunity and DMM's actual waiver. The Defendants moved to dismiss on **sovereign immunity** and personal jurisdiction grounds. The District Court granted the motion as to two of the defendants but denied it as to Cox, holding that the record failed to show that DMM and its parent Susanville Indian Rancheria Corporation (SIRCO) were arms of the Susanville Indian Rancheria eligible to share the Rancheria's sovereign immunity and that DMM had no immunity to extend to Cox. The Court denied Cox' motion to reconsider: "Plaintiffs entered the Tobacco Deal Contracts with DMM. The claim before this Court, however, is Cox's alleged inducement of Plaintiffs to enter these agreements. As a result, there is no duplication of claims for breach of contract (not alleged here) and fraudulent inducement to enter that contract that would require DMM as a necessary party….

Cox's argument is a revival of her contention that DMM is a necessary party for Plaintiffs' breach of contract claim. No such claim exists; however, DMM is not a necessary Defendant in this action that (given its tribal sovereign immunity) would require dismissal of Cox."

In *Klamath Tribes v. United States Bureau of Reclamation*, 2021 WL 1819695 (D. Ore. 2021), the Klamath Tribes, a federally recognized tribe consisting of three peoples who traditionally inhabited the Klamath Basin, sued the Bureau of Reclamation, contending that the Bureau's plan to regulate water in the Klamath River Basin violated the government's obligations under the **Endangered Species Act** by failing to adequately consult with the Department of Fish and Wildlife and prevent incidental taking of water from Upper Klamath Lake to the detriment of a threatened salmon population, an endangered Orca population that depends on salmon recovery, and irrigation interests. The Court denied the Tribes' motion for a preliminary injunction: "Here, the Defendant Bureau, in coordination with expert agencies and all competing interests, is better equipped to serve the public interest than a judge with a law degree. And while the interim plan and decisions being made by the Bureau may result in the incidental taking of an endangered species, the Bureau has taken the appropriate steps under the Endangered Species Act to address the difficult drought situation that is presenting itself this year in the Klamath Basin."

In *Dutchover v. Moapa Band of Paiute*, 2021 WL 1738869 (D. Nev. 2021), Dutchover, a non-Indian, had been employed as a police officer for the Moapa Band of Paiute Indians. Dutchover sued the Tribe, eight individual Tribe members, the Moapa Tribal Council, and Moapa Tribal Enterprises, alleging that the defendants had discriminated against him based on his non-Indian race and created a hostile work environment in violation of the Civil Rights Acts of 1866 (42 U.S.C. § 1981), 1871 (42 U.S.C. § 1983) Title VII of the 1964 Civil Rights Act, and state common law. The district court dismissed claims against the tribal entities on the grounds of **sovereign immunity** and on the grounds that tribes are not state actors for purposes of the Civil Rights Act of 1871 and are expressly exempt from the scope of Title VII. The Court dismissed claims against the individual defendants for insufficient service of process.

In *Kansas v. United States*, 2021 WL 1784557 (D. Kans. 2021), a 1984 act of Congress had provided for the distribution of funds awarded to the Wyandotte Nation by the Indian Claims Commission, including $100,000 to be used "for the purchase of real property which shall be held in trust by the Secretary for the benefit of" the Nation. In 2020, the Secretary of the Interior determined that a parcel of land known as the Park City Parcel, purchased by the Nation in 1992, had been purchased with settlement funds and was, therefore, subject to the Secretary's mandatory obligation to take the parcel into trust and was also eligible for gaming under the **Indian Gaming Regulatory Act's** (IGRA) land claim settlement exception to the rule against gaming on lands acquired after the IGRA's enactment. The State of Kansas and two commercially threatened tribes sued under the Administrative Procedure Act. The District Court granted the government summary judgment, upholding the Secretary's determination: "There is substantial evidence backing up the Secretary's conclusions, and the agency articulated a satisfactory and rational explanation for its decision. … Given this, the Court cannot conclude that the trust determination was arbitrary and capricious. To be sure, Plaintiffs have pointed to evidence that could support a different outcome. But the mere presence of contradictory evidence does not invalidate the Agencies' actions or decisions." (Internal citations and quotations omitted.)

In *Loonsfoot v. Brogan*, 2021 WL 1940400 (W.D. Mich. 2021), Gavin and Janelle Loonsfoot, a married couple, members of the Keweenaw Bay Indian Community, were detained by the Baraga County sheriff pursuant to orders from the Keweenaw Bay Indian Community Tribal Court. They petitioned the federal district court for habeas corpus relief under the Indian Civil Rights Act, 25 U.S.C. § 1303, challenging their detention. The Court denied the petition, holding that the petitioners must first exhaust tribal remedies before petitioning for habeas corpus relief in federal court: Petitioners have not given the tribal trial court, much less the tribal appellate court, an opportunity to finally resolve the constitutional issues they raise in their habeas petition. Until appellate review is complete, the tribal courts have not had a full opportunity to evaluate the claims and federal courts should not intervene. … Because Petitioners have not exhausted their tribal court remedies and because Petitioners have not alleged facts supporting the inference that exhaustion would be futile, the petition is properly dismissed without prejudice." (Internal citations, quotations and emendations omitted.)

In *Great Plains Lending, LLC v. Department of Banking*, 2021 WL 2021823 (Conn. 2021), the Connecticut Department of Banking brought enforcement actions against Great Plains Lending, LLC and American Web Loan, Inc., doing business as Clear Creek Lending (Clear Creek), subsidiaries of Otoe-Missouria Tribe of Indians, as well as against the Tribe's chairman, John Shotten, who also served as the secretary-treasurer of the two entities, seeking to enjoin the tribal entities' internet lending to State residents in violation of state usury laws. After State's administrative agencies rejected the tribal entities' challenges to the State's jurisdiction and **sovereign immunity** defenses, the tribal entities sought judicial review under the State's administrative procedure act. The lower court upheld the rulings of the administrative agency. The Connecticut Supreme Court affirmed in part and reversed in part and remanded, holding that (1) tribal subsidiaries asserting sovereign immunity had the evidentiary burden of proving their status as "arms" of the Tribe under the criteria established by the Tenth Circuit Court of Appeals in *Breakthrough Management Group, Inc. v. Chukchansi Gold Casino & Resort*, 629 F.3d 1173, 1187 (10th Cir. 2010), (2) Great Plains satisfied the test as a matter of law, (3) the case would be remanded to the lower court for additional evidence regarding Clear Creek's status and (4) the State could pursue injunctive, but not monetary, relief against Shotten for violations of state law under the doctrine of Ex Parte Young.

In *Walsh v. State*, 2021 WL 1847739 (Minn. App. 2021), Mille Lacs County Attorney Joseph Walsh and Mille Lacs County Sheriff Don Lorge adopted a policy of non-recognition of the authority of the Mille Lacs Band of Chippewa Indians within the Band's disputed reservation, as well as challenging the Band's authority within its undisputed trusts lands in some respects. After the Band filed a federal lawsuit against Walsh and Lorge, alleging violation of the Band's **treaty** with the United States, they sued the State seeking indemnification on the ground that, as state employees, they were entitled to indemnification. The trial court dismissed for failure to state a claim, concluding that Walsh and Lorge were county, not state employees, and the Court of Appeals affirmed: "The plain language of these statutory definitions satisfies us that even though prosecutors represent the State of Minnesota, or the general public, in a broader sense in criminal matters, they do not thereby act on behalf of the 'state' within the specific, tailored meaning of the Minnesota state tort claims act. In other words, county attorneys do not ordinarily act on behalf of the state entities in section 3.732, subdivision 1(1), when prosecuting crimes. Instead, as explained above, they act on behalf of the county, and counties are specifically excluded from the definition of 'state.' We accordingly reject Walsh and Lorge's broad-sweeping argument that county attorneys and county sheriffs generally act on behalf of the state for the purposes of tort-claim indemnification, simply by virtue of prosecuting violations of, and enforcing, state law."

In *Stand Up for California! v. State of California*, 2021 WL 1933336 (Cal. App. 2021), plaintiffs sued the State of California and state officials to challenge the Governor's authority to concur in the decision of the United States Secretary of the Interior (Interior Secretary) to take **305 acres of land in Madera County into trust for North Fork Rancheria of Mono Indians (North Fork) for the purpose of operating a casino**. After the appellate court had previously ruled that the governor was without authority to concur, the California Supreme Court decided in *United Auburn Indian Community of Auburn Rancheria v. Newsom* (2020) 10 Cal.5th 538 (United Auburn) that California law empowered the Governor to concur and directed the appellate could to reconsider the matter in light of *United Auburn*. In the instant decision, the appellate court reaffirmed its earlier decision that the governor had no power to concur, concluding that the case was distinguishable from *United Auburn* because at the November 2014 general election California voters rejected the Legislature's ratification of the tribal-state compact for gaming at the Madera site, the people retained the power to annul a concurrence by the Governor and the voters exercised this retained power at the 2014 election by impliedly revoking the concurrence for the Madera site: "[T]he voter's rejection of the compact-ratifying statute is reasonably interpreted as an expression of their intent to reject class III gaming on the 305-acre Madera site taken into trust in February 2013. This rejection of Class III gaming at the Madera site implies the voters disapproved the Governor's concurrence in the Interior Secretary's two-part determination because that concurrence is one of IGRA's conditions that must be satisfied for Class III gaming to be allowed at the site. (See 25 U.S.C. § 2719(b)(1)(A).) Therefore, we conclude the people's rejection of Proposition 48 impliedly expressed their will to annul the Governor's August 30, 2012 concurrence for the Madera site.