

**FILED**  
Superior Court of California,  
County of Madera  
**06/26/2024**  
Adrienne Calip / Clerk of Court  
By: Brittany Velazquez, Deputy Clerk

NAVI SINGH DHILLON (SBN 279537)  
navidhillon@paulhastings.com  
SEAN D. UNGER (SBN 231694)  
seanunger@paulhastings.com  
LUCAS V. GRUNBAUM (SBN 314180)  
lucasgrunbaum@paulhastings.com  
PAUL HASTINGS LLP  
101 California Street, 48th Floor  
San Francisco, California 94111  
Telephone: (415) 856-7070  
Fax: (415) 856-7100

Attorneys for Plaintiff  
PICAYUNE RANCHERIA OF THE CHUKCHANSI  
INDIANS

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MADERA

PICAYUNE RANCHERIA OF THE  
CHUKCHANSI INDIANS, a Federally-  
recognized Indian tribe,

Plaintiff,

v.

EDMUND G. BROWN, JR., Governor of the  
State of California, et al.,

Defendants,

NORTH FORK RANCHERIA OF MONO  
INDIANS,

Defendant-Intervenor.

CASE NO. MCV072004

**[PROPOSED] JUDGMENT IN FAVOR OF  
PICAYUNE AND AGAINST NORTH  
FORK**

Judge: Hon. Michael J. Jurkovich  
Dept: 44

Action Filed: March 21, 2016  
Trial Date: None

[PROPOSED] JUDGMENT

On March 21, 2016, Plaintiff Picayune Rancheria of the Chukchansi Indians (Picayune) filed this action for mandamus and declaratory relief. The dispute concerns the legal status of a “concurrence” letter issued by the Governor of the State of California relating to a class III gaming casino proposed by Intervenor-Defendant North Fork Rancheria of Mono Indians (North Fork).

A hearing on cross-motions for summary judgment was held on May 31, 2024. Navi Singh Dhillon and Sean Unger of Paul Hastings LLP appeared on behalf of Picayune. Christopher Babbitt of Wilmer Cutler Pickering Hale and Dorr LLP and John Maier of Maier Pfeffer Kim Geary & Cohen LLP appeared on behalf of North Fork. Following the hearing, the Court granted Picayune’s motion for summary judgment and denied North Fork’s motion for summary judgment. Attached as Exhibit A is a copy of the Court’s order on the summary judgment motions.<sup>1</sup>

Insofar as set forth in the attached order, the Court enters judgment in favor of Picayune and against North Fork in connection with the operative First Amended Complaint filed by Picayune.

Through the People’s vote on Proposition 48, the Governor’s concurrence has been annulled rendering it void *ab initio*, and as such the Governor’s concurrence never took effect and is not in effect.

Any issues concerning costs shall be resolved in accordance with the procedures provided by law.

**IT IS SO ORDERED, ADJUDGED, AND DECREED.**

DATED: 06/26/2024

  
MICHAEL J. JURKOVICH  
JUDGE OF THE SUPERIOR COURT

The electronic signature and seal on this document have the same validity and legal force and effect as an original signature and court seal. California Government Code §68150(g).

///

///

<sup>1</sup> Prior to the May 31 hearing on the summary judgment motions, the Court issued a tentative ruling, which the Court adopted on May 31 as the order of the Court.

1 APPROVED AS TO FORM:

2 PAUL HASTINGS LLP

3 WILMER CUTLER PICKERING HALE  
AND DORR LLP

4  
5 By:



6 NAVI SINGH DHILLON

By: /s/ Christopher Babbitt\*

CHRISTOPHER BABBITT

7 Attorneys for Plaintiff  
8 PICAYUNE RANCHERIA OF THE  
CHUKCHANSI INDIANS

Attorneys for Defendant-Intervenor  
NORTH FORK RANCHERIA OF  
MONO INDIANS

9  
10 *\* The filer of this document attests that all signatories listed above have concurred in the filing*  
11 *of this document.*

# **EXHIBIT A**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**FILED**  
Superior Court of California,  
County of Madera  
**05/28/2024**  
Adrienne Calip / Clerk of Court  
By: Maria Flores, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF MADERA

PICAYUNE RANCHERIA OF THE  
CHUKCHANSI INDIANS, a federally-  
recognized Indian tribe,  
  
Plaintiff,  
  
vs.  
  
EDMUND G. BROWN, JR., Governor of the  
State of California,  
  
Defendant.

---

NORTH FORK RANCHERIA OF MONO  
INDIANS,  
  
Defendant-Intervenor

CASE NO. MCV072004  
  
**[TENTATIVE] RULING ON MOTIONS  
FOR SUMMARY JUDGMENT**  
  
Date: May 31, 2024  
Time: 9:30 a.m.  
Dept.: 44  
Trial Date: None Scheduled

Intervenor, NORTH FORK RANCHERIA (“North Fork” or “Intervenor”), and Plaintiff,  
PICAYUNE RANCHERIA OF THE CHUKCHANSI INDIANS (“Picayune”) each separately  
filed a Motion for Summary Judgment (“MSJ”) seeking a determination on Plaintiff’s First  
Amended Complaint for Declaratory Relief (“FAC”) as a matter of law.

This Court has prepared the below [Tentative] Ruling to assist the parties in preparing for

1 the hearing. It is not necessary to contact the Court in advance of the hearing concerning whether  
2 counsel contests the [Tentative] Ruling. No decision will be made on the [Tentative] Ruling until  
3 the hearing. (See Local Rule 3.3.6.)

4  
5 Outlined below is this Court's [Tentative] Ruling, GRANTING PICAYUNE  
6 RANCHERIA OF THE CHUKCHANSI INDIANS' Motion for Summary Judgment.

7  
8 Conversely, the Court's [Tentative] Ruling is to DENY Intervenor, NORTH FORK  
9 RANCHERIA's Motion for Summary Judgment.

10  
11 **FACTUAL AND PROCEDURAL BACKGROUND**

12 The facts in this case as set forth in the First Amended Complaint are essentially  
13 undisputed, although the parties dispute the characterization and legal import of various  
14 contentions. The general factual and procedural history of the case is summarized below.

15  
16 This case centers on North Fork's purchase of land in Madera ("Madera Site"), which was  
17 taken into trust by the United States in order to develop a class III gaming casino and hotel. (FAC,  
18 ¶9.)<sup>1</sup> However, because the Madera Site was acquired in trust after October 17, 1988, it fell within  
19 the Indian Gaming Regulatory Act's ("IGRA") general prohibition against gaming on lands  
20 acquired after that date. As the North Fork property is considered an "after-acquired land"  
21 pursuant to the IGRA, gaming could only be conducted if the Madera Site meets an exception to  
22 the IGRA's general prohibition against gaming on after acquired land, which is known as a "two-  
23 part determination" conducted by the Secretary of the Interior ("Secretary"). Once the Secretary  
24 makes the requisite "two-part determination," gaming can only occur if the Governor of the state  
25 in which the gaming will occur concurs in the Secretary's determination. (See 25 U.S.C. sec.,

26  
27  
28 <sup>1</sup> All further references will be to facts contained in Plaintiff's FAC, unless otherwise noted.

1 2719, subd. (b)(1)(A); 25 C.F.R. sec. 292.13.)  
2

3 In 2012, the Secretary issued a favorable “two-part determination” regarding gaming on  
4 the Madera Site. Two days before the “two-part determination” expired as a matter of federal law,  
5 Defendant, then Governor Brown, granted the requested concurrence, finding that permitting  
6 gaming on the Madera Site would be in the best interest of North Fork, and would not be  
7 detrimental to the surrounding community.  
8

9 After the concurrence was granted, the Governor and North Fork negotiated the terms for a  
10 tribal state compact regarding the manner in which gaming would be conducted at the Madera  
11 Site. On or about August 31, 2011, the Governor executed the final compact with North Fork  
12 (“Compact”), which was sent to the Legislature for the required ratification.  
13

14 On or about June 27, 2013, the Legislature passed Assembly Bill No. 277 (“AB 277”),  
15 ratifying the Compact. However, on or about November 2013, Proposition 48, a referendum on  
16 AB 277, qualified for the ballot in the following general election, which was held on November 4,  
17 2014. In a state-wide referendum, AB 277 was rejected, and consequently never went into effect.  
18

19 North Fork attempted to renegotiate the Compact with the Governor under the IGRA  
20 following the referendum. However, the Governor purportedly refused to negotiate concerning  
21 the Madera Site, which caused North Fork to initiate the IGRA’s remedial procedures. North Fork  
22 brought an action against the State in the United States District Court for the Eastern District of  
23 California, alleging “bad faith” compact negotiations in the case of *North Fork Rancheria v. State*  
24 *of California*, March 17, 2015, U.S.D.C. E.D. Cal., No. 15cv00419, Docket No. 1.<sup>2</sup> North Fork  
25 prevailed in the District Court action, as the District Court found that the State engaged in “bad-  
26

27 <sup>2</sup> Pursuant to Evidence Code, section 452, subdivision (d), a court may take judicial notice of any  
28 records of the courts of this state.

1 faith” negotiations concerning the requested tribal-state compact. (Order on Cross-Motions for  
2 Judgment on Pleadings, USDC IGRA Action, Docket No. 25.)

3  
4 Ultimately, after it became clear that North Fork and the Governor could not agree on the  
5 compact terms, the District Court appointed a mediator, ordering North Fork and the Governor to  
6 submit their last best offers for a compact, and instructed the mediator to select between the two  
7 proposed compacts. (Order Confirming Selection of Zela G. Claiborne as Mediator Pursuant to 25  
8 U.S.C. § 2710(d)(7)(B)(iv) and Requiring the Parties to Submit Their Last Best Offer For A  
9 Compact To Ms. Claiborne, USDC IGRA Action, Docket No. 30.) While the mediator selected  
10 North Fork’s proposed compact, the Governor allegedly still withheld his consent. However, it  
11 should be noted that a compact is not necessary for gaming on lands that have been converted to  
12 “Indian lands” for gaming purposes pursuant to the Secretarial “two-part determination,” as there  
13 are established “remedial procedures” in place. (See 25 U.S.C. § 2710, subd. (d)(7)(A-B).)

14  
15 In 2013, the Governor’s concurrence power, specifically in relation to his concurrence  
16 regarding gaming on the Madera Site, was challenged in this Court in the case of *Stand Up for*  
17 *California! State of California* (Madera Cty. Sup. Ct. Mar. 3, 2014) No. MCV062850). However,  
18 the *Stand Up for California!* case was dismissed at the demurrer stage, without leave to amend,  
19 after the court rejected the plaintiff’s argument that the Governor’s concurrence was invalid under  
20 California law. (See Ruling on Demurrers to First Amended Complaint, *Stand up for California!*  
21 *v. State of California* (Madera Cty. Sup. Ct. March 3, 2014) No. MCV062850.) That case was  
22 subsequently appealed. (See Notice of Appeal, *Stand up for California! v. State of California*  
23 (Madera Cty. Sup. Ct. March 3, 2014) No. MCV062850.)

24  
25 In December 2016, the court of appeal issued an opinion which stated that the Governor  
26 lacked the authority to concur in the Interior Secretary’s two-part determination. (*Stand Up for*  
27 *California! v. State of California* (2016) 6 Cal.App.5th 686 (“*Stand Up I*”).) However, in March  
28



1 2017, the California Supreme Court granted the petitions for review filed by the state and North  
2 Fork, and deferred consideration pending the outcome of *United Auburn Indian Community of*  
3 *Auburn Rancheria v. Newsom* (2020) 10 Cal.5th 538, 542 (“*United Auburn*”), which dealt with  
4 comparable issues. (*Stand Up for California! v. State of California*, *supra*, 64 Cal.App.5th 197,  
5 206 (“*Stand Up II*”).)

6  
7 Separately, on March 21, 2016, Plaintiff filed a Complaint in this Court, seeking  
8 declaratory relief and a writ of mandate against the Governor. The Complaint evidenced another  
9 challenge to the Governor’s concurrence to the Secretary of the Interior’s two-part determination  
10 relating to the Madera Site. Specifically, Plaintiff’s Complaint challenges the Governor’s  
11 authority under California law to grant a concurrence to the Secretarial two-part determination  
12 without legislative ratification, especially in light of the above-mentioned referendum to AB 277.

13  
14 On May 23, 2016, Defendant Governor Brown filed a Demurrer to Plaintiff’s Complaint.  
15 On July 8, 2016, this Court granted North Fork Rancheria of the Mono Indians Motion to  
16 Intervene. That same day, Intervenor filed a separate Demurrer to Plaintiff’s Complaint. This  
17 Court initially sustained the demurrers on December 2, 2016. However, once the Court of Appeal  
18 issued its opinion in *Stand Up I*, and in light of the Supreme Court’s review in *United Auburn*, this  
19 Court vacated its order sustaining the demurrers, and stayed proceedings pending resolution of the  
20 appellate proceedings.

21  
22 On August 31, 2020, the California Supreme Court filed its decision in *United Auburn*,  
23 concluding “current California law permits the Governor’s concurrence in the Interior Secretary’s  
24 determination to allow class III gaming on Indian land taken into trust for an Indian tribe after  
25 IGRA was enacted.” (*Stand Up II*, 64 Cal.App.5th at p. 207, quoting *United Auburn*, *supra*, 10  
26 Cal.5th 538.) The Supreme Court transferred *Stand Up I* back to the court of appeal “with  
27 directions to vacate its decision and reconsider the matter in light of [*United Auburn*]...” (*Ibid.*)  
28

1 In *Stand Up II*, the court of appeal was tasked to determine “whether the Governor’s  
2 concurrence in the Interior Secretary’s two-part determination for the Madera site [was] valid.”  
3 (*Stand Up II*, *supra*, 64 Cal.App.5th 197, 207.) As a result, the court addressed the legal effect  
4 that Proposition 48 had on Governor Brown’s concurrence and concluded that it had been  
5 “annulled” by the People, by impliedly revoking the concurrence for the Madera site, making the  
6 concurrence no longer valid. (*Stand Up II*, at pp. 210, 216.) On that basis, the court of appeal  
7 ruled the demurrer in that case should have been overruled. (*Id.*, at p. 216.)

8  
9 The State and North Fork petitioned the Supreme Court for review of the *Stand Up II*  
10 decision. On September 3, 2021, the Supreme Court denied the petitions for review.

11  
12 Following the filing of the opinion in *Stand Up II*, and the Supreme Court’s subsequent  
13 denial of review, the parties each subsequently filed competing Motions for Judgment on the  
14 Pleadings. Each party agreed with the underlying premise that the ruling in *Stand Up II* required  
15 judgment be granted. However, each side disputed the legal basis for such judgment, and whether  
16 dismissal was warranted. On July 15, 2022, this Court issued a Tentative Ruling on the competing  
17 Motions for Judgment on the Pleadings, which the Court reserved adopting, in order to provide  
18 Picayune the opportunity to file a formal motion for leave to amend.

19  
20 On December 12, 2022, this Court issued a Tentative Ruling on Picayune’s Motion for  
21 Leave to File First Amended Complaint and Petition. On December 16, 2022, this Court issued an  
22 Order After Hearing on Picayune’s Motion for Leave to File First Amended Complaint and  
23 Petition, where the Court: (1) adopted the Tentative Ruling on Picayune’s Motion for Leave to  
24 File First Amended Complaint and Petition, which granted Picayune’s Motion for Leave to File  
25 First Amended Complaint for Declaratory Relief; (2) denied Picayune’s Motion for Leave to File  
26 First Amended Petition for Writ of Mandate; and (3) adopted its July 15, 2022 Tentative Ruling on  
27 Motions for Judgment on the Pleadings, which granted the Governor and North Fork’s Motions  
28

1 for Judgement on the Pleadings solely as to Picayune’s Petition for Writ of Mandate, without  
2 leave to amend.

3  
4 On January 28, 2023, Picayune filed its First Amended Complaint, seeking a single cause  
5 of action for Declaratory Relief. On February 17, 2023, North Fork filed a Demurrer to  
6 Picayune’s FAC. On February 21, 2023, the Governor subsequently filed a Demurrer to  
7 Picayune’s FAC. On July 14, 2023, the Governor’s Demurrer was sustained without leave to  
8 amend, and North Fork’s Demurrer was overruled.

9  
10 On September 1, 2023, North Fork filed a Motion for Summary Judgment. Picayune filed  
11 their own Motion for Summary Judgment on December 8, 2023. Picayune filed an Opposition to  
12 the first Motion on January 16, 2024. North Fork opposed the second Motion on January 12, 2024.  
13 Both parties replied on February 7, 2024.

14  
15 The hearings on the Motions for Summary Judgment are scheduled for May 31, 2024.

## 16 17 ANALYSIS

### 18 I. North Fork’s MSJ Must be Denied, as it Improperly Attacks the FAC’s Prayer for 19 Relief, and Does Not Establish that Picayune’s Claim Fails as a Matter of Law; 20 Picayune’s MSJ Must Be Granted Because the Referendum Rendered the 21 Governor’s Concurrence Void Ab Initio.

#### 22 a. *General Summary Judgment Standard*

23 In determining the merits of a motion for summary judgment, the moving party has the  
24 burden of showing that there is no triable issue of material fact, and that they are entitled to  
25 judgment as a matter of law. (Code Civ. Proc., § 437c; *Aguilar v. Atlantic Richfield Co.* (2001) 25  
26 Cal.4th 826, 850.) The moving party has the initial burden of producing evidence making a prima  
27 facie showing that *no* genuine issue of material fact exists. (*Id.* at p. 845 [italics added].) “The  
28

1 trial court must decide if a triable issue of fact exists. If none does, and the sole remaining issue is  
2 one of law, it is the duty of the trial court to determine it.” (*Pittelman v. Pearce* (1992) 6  
3 Cal.App.4th 1436, 1441; see *Seibert Sec. Servs., Inc. v. Superior Court* (1993) 18 Cal.App.4th  
4 394, 404 [holding that if the material facts are clear, the application of legal principles to resolve  
5 the case is proper].)

6  
7 Summary judgment is a drastic remedy to be ordered with caution because it denies the  
8 adverse party the right to a trial. (See *Huynh v. Ingersoll-Rand* (1993) 16 Cal.App.4th 825, 830.)  
9 Doubts as to the propriety of summary judgment should be resolved against granting the motion.  
10 (*Ibid.*) The summary judgment provisions were never intended to deprive a party of a right to a  
11 trial. (*Richter v. United Calif. Theatres, Inc.* (1960) 177 Cal.App.2d 126, 131.) However, if the  
12 moving party meets this burden of production, the burden then shifts to the non-moving party to  
13 produce evidence of a triable issue of fact. (Code Civ. Proc, § 437c, subd. (p)(2); *Aguilar, supra*,  
14 25 Cal.4th at p. 850.)

15  
16 “Summary judgment is appropriate in a declaratory relief action when only legal issues are  
17 presented for the court's determination. (*Gafcon, Inc. v. Ponsor & Associates* (2002) 98  
18 Cal.App.4th 1388, 1401–1402.) The defendant's burden in a declaratory relief action “is to  
19 establish the plaintiff is not entitled to a declaration in its favor. It may do this by establishing (1)  
20 the sought-after declaration is legally incorrect; (2) undisputed facts do not support the premise for  
21 the sought-after declaration; or (3) the issue is otherwise not one that is appropriate for declaratory  
22 relief.” (*Id.* at p. 1402.)” (*California Public Records Research, Inc. v. County of Yolo* (2016) 4  
23 Cal.App.5th 150, 185.) This is the standard to which Intervenor is held.

24  
25 a. ***North Fork’s MSJ Must be Denied as It Improperly Attacks Claims for***  
26 ***Relief and Does Not Establish the Actual Controversy in the Declaratory***  
***Relief Action Cannot Be Settled as a Matter of Law.***

27 i. ***Summary Judgment as to Claims for Relief***

1 Evaluating the appropriateness of particular requested remedies in a Motion for Summary  
2 Judgment is only necessary when the remedy is an element of the cause of action itself. (*People ex*  
3 *rel. Feuer v. Superior Court (Cahuenga's the Spot)* (2015) 234 Cal.App.4th 1360, 1374 [“we find  
4 nothing in the history or current text of section 437c that suggests that equitable remedies (e.g.,  
5 issuance of a permanent injunction) must be determined at the hearing on a motion for summary  
6 judgment; such remedies are not either limited or foreclosed by a determination that all of the  
7 elements of a cause of action have been established and that the moving party is entitled to  
8 summary judgment.”].) For that reason, although the jurisdictional issues North Fork raises will be  
9 discussed to the extent that they narrow what issues this Court can and must consider in  
10 determining the merits of these summary judgment motions, they are not determinative because  
11 they do not concern the elements of the sole cause of action for declaratory relief on the issue of  
12 whether the referendum rescinding the governor’s concurrence was retroactive.

13  
14 The Court will address each of the procedural issues raised in North Fork’s MSJ:

15  
16 1. *Court Lacks Jurisdiction*

17 First, North Fork argues that “This Court Lacks Jurisdiction to Grant Picayune The Relief  
18 It Seeks.” (NF MSJ P&A, 3:5.) North Fork alleges that Picayune’s FAC asks “this Court to  
19 adjudicate North Fork’s ability to conduct class III gaming under IGRA – squarely a question of  
20 federal law.” (*Id.*, at 4:9-11.) Further, “[b]y asking this Court for a ‘judicial declaration to the  
21 effect that North Fork may not conduct class III gaming at the Madera Site by relying on the  
22 Governor’s concurrence.’ First Am. Compl. ¶42<sup>3</sup>, Picayune is asking this Court to enter an  
23 essentially identical judgment to one it failed to obtain from either the Eastern District of  
24 California in 2017 or the D.C. Circuit in 2018.” (*Id.* at 5:9-17.)

25  
26 This argument, at its core, relates to an argument regarding the “relief” sought by Picayune  
27

28  

---

3 The Court notes ¶42 of the FAC is located in the “Prayer for Relief” portion of the FAC.

1 in its FAC. As indicated above, because these specific forms of relief are not an element of the  
2 declaratory relief cause of action, which essentially seeks clarification on whether the referendum  
3 rendered the governor's concurrence void *ab initio*, the Court's lack of jurisdiction on the federal  
4 issues presented by some of the remedies requested is not determinative.

5  
6 *2. North Fork's Sovereign Immunity*

7 Similar to the issue above, North Fork appears to be challenging Picayune's Prayer for  
8 Relief, rather than establishing that Picayune's claim for Declaratory Relief, as a whole, cannot be  
9 resolved in Picayune's favor as a matter of law on summary judgment. For that reason, the Court  
10 need not rule on this issue.

11  
12 *3. Impermissible Collateral Attack on Federal Agency & Secretary of Interior as*  
13 *an Indispensable Party*

14 The final two procedural arguments raised by North Fork relate to the "Secretary of the  
15 Interior's 2012 decision to take the land into trust for gaming and her 2016 decision to issue  
16 secretarial procedures to authorize gaming on the land" and the argument that this action would  
17 result in an "impermissible collateral attack" on those decisions (NF MSJ P&A, 5:20-6:2), as well  
18 as the Secretary of the Interior's subsequent status as an "indispensable party" to this action. (*Id.*  
19 at 11:13:9.) In particular, North Fork argues "because the judgment that Picayune seeks (First.  
20 Am. Compl., ¶¶42-43) would prejudice her interests..." (NF MSJ P&A, 11:6-9.) These  
21 arguments, again, appear to relate to the FAC's prayer for relief, rather than an allegation that the  
22 Declaratory Relief action, as a whole, is subject to summary judgment in North Fork's favor.  
23 Thus, the Court need not rule on this issue.

24  
25 *b. Picayune's Declaratory Relief Claim Regarding the Effect of the*  
26 *Referendum on the Governor's Concurrence is Not Moot.*

27 "California courts will decide only justiciable controversies. [Citations.] The concept of  
28 justiciability is a tenet of common law jurisprudence and embodies '[t]he principle that courts will

1 not entertain an action which is not founded on an actual controversy ... ’ [Citations.]  
2 Justiciability thus ‘involves the intertwined criteria of ripeness and standing. A controversy is  
3 ‘ripe’ when it has reached, but has not passed, the point that the facts have sufficiently congealed  
4 to permit an intelligent and useful decision to be made.’ [Citation.] But ‘ripeness is not a static  
5 state’ [citation], and a case that presents a true controversy at its inception becomes moot ‘ ‘if  
6 before decision it has, through act of the parties or other cause, occurring after the commencement  
7 of the action, lost that essential character.’ ’ ’ [Citation.] ‘The pivotal question in determining if a  
8 case is moot is therefore whether the court can grant the plaintiff any effectual relief. [Citations.]  
9 If events have made such relief impracticable, the controversy has become ‘overripe’ and is  
10 therefore moot.’ [Citation.]” (*Lockaway Storage v. County of Alameda* (2013) 216 Cal.App.4th  
11 161, 174 [holding county’s appeal from the petition for writ of mandate was moot because the  
12 county already fully complied with the writ, and petitioner already completed its project, meaning  
13 the court could not provide any effective relief from the order commanding the county to allow the  
14 project to proceed].)

15  
16 “Witkin provides a succinct summary of these two categories of cases. Unripe cases are  
17 ‘[t]hose in which parties seek a judicial declaration on a question of law, though no actual dispute  
18 or controversy ever existed between them requiring the declaration for its determination.’ (3  
19 Witkin, Cal. Procedure, *supra*, Actions, § 21, p. 85.) Moot cases, in contrast, are ‘[t]hose in which  
20 an actual controversy did exist but, by the passage of time or a change in circumstances, ceased to  
21 exist.’ (*Id.* at p. 86.)” (*Wilson & Wilson v. City Council of Redwood City* (2011) 191 Cal.App.4th  
22 1559, 1573.)

23  
24 The court in *Wilson* addressed the “mootness” issue further, as follows:

25 “A case is considered moot when ‘the question addressed was at one time a live  
26 issue in the case,’ but has been deprived of life ‘because of events occurring after  
27 the judicial process was initiated.’ (*Younger v. Superior Court* (1978) 21 Cal.3d  
28 102, 120.) Because ‘ ‘the duty of ... every ... judicial tribunal ... is to decide actual  
controversies by a judgment which can be carried into effect, and not to give  
opinions upon moot questions or ... to declare principles or rules of law which  
cannot affect the matter in issue in the case before it[,] [i]t necessarily follows that

1 when ... an event occurs which renders it impossible for [the] court, if it should  
2 decide the case in favor of plaintiff, to grant him any effectual relief whatever, the  
3 court will not proceed to a formal judgment ... .’ [Citations.]” (*Consol. etc. Corp.*  
4 *v. United A. etc. Workers* (1946) 27 Cal.2d 859, 863.) **The pivotal question in**  
5 **determining if a case is moot is therefore whether the court can grant the**  
6 **plaintiff any effectual relief.** (*Giles v. Horn* (2002) 100 Cal.App.4th 206, 227; see  
7 also *Daily Journal Corp. v. County of Los Angeles* (2009) 172 Cal.App.4th 1550,  
8 1557 [case moot where contract with county had expired and court could not award  
9 it to disappointed bidder].) If events have made such relief impracticable, the  
10 controversy has become ‘overripe’ and is therefore moot. [Citations.]

11 Thus, ‘ [m]ootness has been described as ‘ ‘the doctrine of standing set in a time  
12 frame: The requisite personal interest that must exist at the commencement of the  
13 litigation (standing) must continue throughout its existence (mootness).’ ’  
14 [Citations.]’ ’ [Citations.] When events render a case moot, the court, whether trial  
15 or appellate, should generally dismiss it. (See *Lillbask ex rel. Mauclair v.*  
16 *Connecticut Dept. of Education* (2d Cir. 2005) 397 F.3d 77, 84; see also *Consumer*  
17 *Cause, Inc. v. Johnson & Johnson, supra*, 132 Cal.App.4th at p. 1183 [trial court  
18 should have refused to decide case upon plaintiff’s discovery that allegations of  
19 complaint were wrong and defendant was not violating statute at issue].)” (*Wilson,*  
20 *supra*, at p. 1574, emphasis added.)

21 Picayune’s FAC for Declaratory Relief makes the following contentions: “An actual  
22 controversy has arisen and now exists between Picayune, the Governor, and North Fork  
23 concerning the effectiveness and legal status of the Governor’s concurrence, including the parties’  
24 rights and duties with respect thereto in light of Proposition 48. Picayune asserts that in light of the  
25 People’s vote on Proposition 48 the Governor’s concurrence never went into effect and is not in  
26 effect. Proposition 48, a referendum, annulled the Governor’s concurrence rendering it *void ab*  
27 *initio*. North Fork takes the view that the Governor’s concurrence was effective through the  
28 People’s vote on Proposition 48 rejected it. North Fork further takes the view that it may rely on  
the Governor’s concurrence to conduct class III gaming at the Madera Site.” (FAC, ¶39.)

29 The court of appeal in *Stand Up II*, and the Supreme Court in *United Auburn*,  
30 authoritatively and conclusively decided that the Governor has the power to concur, but also that  
31 the 2012 concurrence is “no longer valid.” (See *United Auburn, supra*, 10 Cal.5th at p. 543  
32 [holding California law empowers the Governor to concur]; *Stand Up II, supra*, 64 Cal.App.5th  
33 197, 210, 216 [holding Proposition 48 “annulled” Governor Brown’s concurrence by impliedly  
34 revoking the concurrence for the Madera site, making the concurrence no longer valid].) Each



1 party appears to agree with these conclusions, and the general proposition that the ruling in *Stand*  
2 *Up II* resulted in the Governor’s concurrence being ruled as presently “ineffective.” (*Stand Up II*,  
3 *supra*, 64 Cal.App.5th 197, 201.) However, the parties dispute whether the concurrence was  
4 previously in effect such that North Fork can still rely on it to establish that a necessary condition  
5 for gaming under IGRA.

6  
7 “A cause of action for declaratory relief may adjudicate future rights and liability between  
8 parties who have a relationship, either contractual or otherwise.” (*Centex Homes v. St. Paul Fire &*  
9 *Marine Ins. Co.* (2015) 237 Cal.App.4th 23, 28.) “Before a controversy is ripe for adjudication it  
10 ‘must be definite and concrete, touching the legal relations of parties having adverse legal  
11 interests. [Citation.] It must be a real and substantial controversy admitting of specific relief  
12 through a decree of a conclusive character, as distinguished from an opinion advising what the law  
13 would be upon a hypothetical state of facts.’” [Citations.]’ ” (*Ibid.*) “Thus, declaratory relief is  
14 appropriate only where there is an actual controversy, not simply an abstract or academic dispute.  
15 [Citations.] For purposes of declaratory relief, an ‘actual controversy’ is one which ‘... ‘admits of  
16 definitive and conclusive relief by judgment within the field of judicial administration, as  
17 distinguished from an advisory opinion upon a particular or hypothetical state of facts. The  
18 judgment must decree, not suggest, what the parties may or may not do.’” (*Newland v. Kizer*  
19 (1989) 209 Cal.App.3d 647, 657.)” (*Committee for Sound Water & Land Development v. City of*  
20 *Seaside* (2022) 79 Cal.App.5th 389, 408.) “In essence, declaratory relief operates to declare future  
21 rights, not to address past wrongs. [Citation]” (*Monterey Coastkeeper v. California Regional*  
22 *Water Quality Control Bd., etc.* (2022) 76 Cal.App.5th 1, 13.)

23  
24 Here, it is worth noting that this Court previously held that there was an “actual  
25 controversy” between the parties such that Picayune could pursue a claim for Declaratory Relief as  
26 it pertained to North Fork, and North Fork has not claimed any intervening action that would have  
27 resolved this controversy in the meantime.

1       The validity of the Governor’s concurrence for any purpose is still a live issue because a  
2 valid concurrence is necessary for gaming to be allowed under IGRA. “Under IGRA, the Interior  
3 Secretary may allow class III gaming on land the federal government takes into trust for an Indian  
4 tribe after IGRA was enacted if she determines that gaming would be in the best interest of the  
5 tribe and would not be detrimental to the surrounding community. But it is only with the  
6 concurrence of the Governor from the state where gaming would occur that IGRA allows the  
7 Interior Secretary's decision to take effect. (25 U.S.C. § 2719(b)(1)(A).)” (*United Auburn, supra*,  
8 10 Cal.5th at p. 548.) “The Secretary's two-part determination is not contingent upon the  
9 Governor's concurrence, but *gaming* on land acquired in trust by the Secretary after October 17,  
10 1988, is contingent upon the Governor's concurrence. 25 U.S.C. § 2719(a), (b)(1)(A); *see*  
11 *Confederated Tribes of Siletz Indians v. United States*, 110 F.3d 688, 696 (9th Cir. 1997) (“[T]he  
12 effect of the provision is that the Governor must agree that gaming should occur on the newly  
13 acquired trust land before gaming can in fact take place.”).” (*Stand Up for California! v. United*  
14 *States DOI* (D.D.C. 2016) 204 F. Supp. 3d 212, 249-250.) The Federal Court has previously  
15 declined to rule on the legality of gaming on this site pending resolution of the concurrence issue  
16 by the state court. (*Id.* at p. 255.) Because a ruling resolving this specific issue directly impacts the  
17 federal court’s ability to determine whether gaming is permitted on this specific piece of property,  
18 it would not be merely an abstract or academic dispute. A ruling on this issue will not determine  
19 whether gaming is permitted, but it will clarify whether the federal court may rely on the  
20 Governor’s annulled concurrence in making that decision.

21  
22       Therefore, resolving the specific issue raised by this request for declaratory relief, whether  
23 the Governor’s concurrence was retroactively annulled or became ineffective later, such that the  
24 state law analysis is clarified for the federal court, is not moot.

25  
26                   **c.   *The Voter’s Referendum Rendered the Governor’s Concurrence Void Ab***  
27                   ***Initio***  
28

1       The parties take opposing views on the merits of when the Governor’s concurrence became  
2 ineffective. Picayune argues that Proposition 48 annulled the concurrence such that there was  
3 never a time when the concurrence could be relied upon. North Fork argues that Proposition 48  
4 operated prospectively and the concurrence remained valid from the time it was issued until the  
5 votes on Proposition 48 were counted. The resolution of this issue hinges on how, as a matter of  
6 law, the opinion in *Stand Up for California! v. State of California, supra*, 64 Cal.App.5<sup>th</sup> 197  
7 (*Stand Up II*) is interpreted.

8  
9       The Court in *Stand Up II* discussed the people’s “power of referendum” with regard to the  
10 legislative aspect of the Governor’s concurrence, noting that the power of referendum is the power  
11 to determine whether a legislative act becomes law. (*Stand Up II, supra*, 64 Cal.App.5<sup>th</sup> at p. 214,  
12 citing *Midway Orchards v. County of Butte* (1990) 220 Cal.App.3d 765, 781.) *Stand Up II*  
13 instructs that courts must “jealously guard” the People’s power of referendum, including by  
14 “liberally” construing referendum provisions. (*Id.* at p. 213.) North Fork’s counterargument that  
15 *United Auburn*, in holding that the Governor can lawfully concur without remaining “in limbo  
16 until presented to voters for approval at some unspecified future date” is unavailing. (NF MSJ  
17 P&A 15:14-18 citing *United Auburn, supra*, 10 Cal.5<sup>th</sup> at p. 544.) North Fork leans on the *United*  
18 *Auburn* holding that “the Governor acted lawfully when he concurred in the Interior Secretary’s  
19 determination”, but it does not necessarily follow that the fact that the Governor acted lawfully  
20 indicates that the concurrence went into effect while subject to the referendum power. (*Ibid.*)  
21 There was no referendum to consider in *United Auburn*. (*Ibid.*) Picayune does not argue that no  
22 law subject to the referendum power goes into effect until some hypothetical future referendum; it  
23 argues that when a referendum is called, the law does not go into effect until the People have had  
24 their say. Taken in that light, Picayune’s view of the power of referendum does not run afoul of  
25 *United Auburn* and is worth considering as part of an analysis of *Stand Up II*.

26  
27       The Court in *Stand Up II* held that, “the people’s rejection of Proposition 48 impliedly  
28

1 expressed their will to annul the Governor's August 30, 2012 concurrence for the Madera site.”  
2 (*Stand Up II, supra*, 64 Cal.App.5th 197, 216.) The parties argue over whether the term “annul”  
3 means that something is void *ab initio*. Both parties cite *Sefton v. Sefton* (1955) 45 Cal.2d 872 to  
4 support their positions. Picayune cites the general definition of annulment used in that case, which  
5 “has the effect of declaring a marriage void *ab initio*.” (*Id.* at p. 874, italics in original.) North  
6 Fork argues that annulment is “a mere legal fiction” that does not alter the rights of parties who  
7 relied on the validity of the marriage prior to the decree of annulment. (*Id.* at p. 875.) On this  
8 point, North Fork’s argument is unavailing as that passage is discussing the very narrow  
9 circumstance of whether annulment of a marriage reinstates alimony from a prior marriage, and  
10 North Fork has given no convincing argument for why this narrow exception to the generally  
11 stated definition of annulment would apply here. (*Ibid.*) Contrary to North Fork’s argument, the  
12 mere fact that Picayune has acknowledged that not all annulments are inherently *ab initio*, does  
13 not concede that such is the case here. (NF MSJ P&A 17:26-18:1.) Although the *Stand Up II*  
14 opinion does not specifically use the phrase “*ab initio*” the plain language and context of the  
15 discussion does support using the general, retroactive, definition of annulment.

16  
17       Moreover, the *Stand Up II* opinion noted that the Court in *United Auburn* held that the  
18 Governor’s concurrence power was defeasible, concluding that the people of California had the  
19 authority to annul a concurrence. (*Stand Up II, supra*, 64 Cal.App.5th 197, 212, citing *United*  
20 *Auburn, supra*, 10 Cal.5th at pp. 544, 563.) The court examined several definitions for the concept  
21 of defeasibility: “The adjective “defeasible” means “capable of being or liable to being voided,  
22 annulled, or undone: subject to defeasance esp. by being cut off through the exercise of a power or  
23 the happening of an event.” (Webster's 3d New Internat. Dict. (1993) p. 590.) The noun  
24 “defeasance” means defeat, overthrow, undoing or “rendering null or void.” (*Ibid.*) Accordingly,  
25 the adjective “indefeasible” is defined as “not capable of or not liable to being annulled or voided  
26 or undone.” (*Id.* at p. 1147.) These terms have the same meanings when used in a legal context.  
27 Black's Law Dictionary (8th ed. 2004) defines “defeasible” as “capable of being annulled or  
28

1 avoided” and “indefeasible” as “not vulnerable to being defeated, revoked, or lost.” (*Id.* at pp. 449,  
2 783.)” (*Id.* at pp. 211-212.) It is notable that many of these definitions include words like  
3 “undone”, which by its plain meaning seems to suggest a condition where it is as if the  
4 concurrence never happened.

5  
6 The structure of the *Stand Up II* opinion further supports this understanding as this  
7 discussion occurs under the heading “Retroactive Annulment”, a heading which suggests that the  
8 Court was considering whether the referendum had invalidated the concurrence retroactively  
9 rather than merely prospectively. (*Stand Up II, supra*, 64 Cal.App.5th at p. 210.)

10  
11 The Court spent substantial time discussing the consequences of each presented  
12 interpretation and People’s intent when rejecting Proposition 48, specifically that “the voter’s  
13 rejection of the compact-ratifying statute is reasonably interpreted as an expression of their intent  
14 to reject class III gaming on the 305-acre Madera site taken into trust in February 2013.” (*Stand*  
15 *Up II, supra* 64 Cal.App.5th at p. 216.) The parties here have made it clear that a consequence of  
16 interpreting the Governor’s concurrence as being effective until Proposition 48 failed would be  
17 that North Fork intends to rely on that limited window of effectiveness to say that the  
18 requirements of IGRA have been met and gaming would be permissible. While this court cannot  
19 rule on whether that claim to block gaming should succeed in Federal Court, the Fifth District’s  
20 dicta suggests that that interpretation would run counter to the people’s will, and thus counter to  
21 the policy underlying the ruling in *Stand Up II*. (*Ibid.*) *Stand Up II* clearly interpreted the people’s  
22 rejection of Proposition 48 as intended to foreclose the operation of a gaming facility on the  
23 Madera parcel. (*Ibid.*) Thus, the correct definition of annul is the one that supports this outcome to  
24 the extent controlled by state law, meaning that the Governor’s concurrence has been retroactively  
25 determined to have never been effective.

26  
27 For the foregoing reasons, the Court’s tentative is to find that Picayune’s interpretation of  
28

1 the validity of the Governor's concurrence in light of Proposition 48 and *Stand Up II* is the correct  
2 interpretation.

3  
4 CONCLUSION

5 For these reasons, the Court's [Tentative] Ruling is to GRANT Plaintiff, PICAYUNE  
6 RANCHERIA OF THE CHUKCHANSI INDIANS' Motion for Summary Judgment.

7  
8 Conversely, the Court's [Tentative] Ruling is to DENY Intervenor, NORTH FORK  
9 RANCHERIA's Motion for Summary Judgment.

10  
11 The Court looks forward to the argument of counsel at the hearing on May 31, 2024, at  
12 9:30 a.m. in Department 44.

13  
14  
15  
16  
17 DATED May 27, 2024

By:



Michael Jurkovich  
Judge of the Superior Court

18  
19  
20 Electronically signed with the same legal force and effect as an original signature pursuant to GC§68150(g)  
and CCP§34.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**PROOF OF SERVICE**

I am employed in the City of San Francisco and County of San Francisco, State of California. I am over the age of 18, and not a party to the within action. My business address is 101 California Street, Forty-Eighth Floor, San Francisco, CA 94111.

On June 21, 2024, I served the foregoing document(s) described as:

**[PROPOSED] JUDGMENT IN FAVOR OF PICAYUNE  
AND AGAINST NORTH FORK**

on the interested parties as follows:

Christopher E. Babbitt  
Wilmer Cutler Pickering Hale & Dorr LLP  
2100 Pennsylvania Avenue, NW  
Washington, D.C. 20037  
Christopher.Babbitt@wilmerhale.com  
Attorneys for Defendant-Intervenor North Fork Rancheria of  
Mono Indians of California

John A. Maier  
Maier, Pfeffer Kim Geary & Cohen LLP  
1970 Broadway, Suite 825  
Oakland, CA 94612  
jmaier@jmandmplaw.com  
Attorneys for Defendant-Intervenor North Fork Rancheria of  
Mono Indians of California

Michelle Laird  
Supervising Deputy Attorney General  
Office of the Attorney general; Department of Justice  
600 W. Broadway, Suite 1800  
P. O. Box 85266  
San Diego, CA 92186-5266 (92101 if by Fed Ex)  
Michelle.laird@doj.ca.gov  
Attorneys for Defendant and Respondent  
Edmund G. Brown, Jr., Governor of the State of California

Erica Becker, Deputy Attorney General  
Office of the Attorney General  
Department of Justice  
1300 I Street, Suite 125  
Post Office Box 944255  
Sacramento, CA 94244-2550 (95814 if by Fed Ex)  
Email: [Erica.becker@doj.ca.gov](mailto:Erica.becker@doj.ca.gov)  
Attorney for Defendant and Respondent  
Edmund G. Brown, Jr., Governor of the State of California

1 ☒

**VIA ELECTRONIC TRANSMISSION:**

2 Pursuant to an agreement of the parties for electronic service, I personally emailed  
3 a true and correct copy of the aforementioned document(s) in PDF format to the  
4 respective email address(es) listed above on June 21, 2024. The electronic  
5 notification address of the person making the service is  
[kenhartley@paulhastings.com](mailto:kenhartley@paulhastings.com).

6 I declare under penalty of perjury under the laws of the State of California  
7 that the above is true and correct.

8 Executed on June 21, 2024, at Novato, California.

9 

10 \_\_\_\_\_  
Ken Hartley