The following letter and information packet was presented on 9.15.23 to the Haudenosaunee External Relations Committee (HERC) and they accepted its contents. However, the material could not be put on the floor at the Grand Council (9.16.23) for discussion, due to the lack of Mohawk Nation leadership. None of the Mohawk condoled chiefs appeared at the Grand Council. The land claims issue has been put in the well by a condoled Seneca chief for the Grand Council on 9.30.23.

Requests to Grand Council's External Relations Committee

This packet has been compiled by Kanien'kehá:ka people in order to relay information to the Grand Council External Relations Committee, cultivate clarity and request support. The position of the Onkwehon:we represented in this letter believe land settlements are an exchange of money that infringes upon the rights of present and future generations, which is antithetical to Kaianerekowa. Within this packet contains a relevant summary of the present Memorandum of Understanding (MOU, settlement) regarding the 1796 Seven Nations Treaty land claims brought forth by the St. Regis Mohawk Tribe, Mohawk Council of Akwesasne and the Mohawk Nation Council of Chiefs.

Tribal officials have stated multiple times that they will not release the most recent draft of the MOU before it is ratified. Nor will the most recent settlement be put forth for a public vote. Therefore our ability to fully compile all information is incomplete due to lack of transparency from parties involved in the settlement. Though there are several concerns regarding this MOU- from back-payment taxes to electrical power allocation- the main points of contention that is relevant to the Grand Council is 1) representatives from the settlement parties are stating they are conducting MOU agreements with the permission of the Grand Council, 2) the language surrounding the release clauses within the MOU impacts all Mohawk peoples (present and future).

There are two documents, a 2014 draft of the MOU and a 2023 New York Power Authority Financial Report, with clear statements indicating extinguishment clauses. "The St. Regis MOU would require an Act of Congress to **forever extinguish all Mohawk land claims** prior to such a settlement becoming effective." (reference- pg. 57) Not only does this impact Akwesasronen seeking land outside the confines of the "agreed upon" Seven Nation allocated parcels, but impacts people in sister communities including but not limited to- Ganièn:keh, Kana'tsioharè:ke, Kahnawà:ke, Kanehsatà:ke, Tyendinaga, Wáhta and Ohswé:ken.

Firstly, we would kindly request the Grand Council to provide evidence to support or deny this claim made by MNCC. If there is no explicit documentation of Grand Council supporting MNCC's pursuance of land settlements, we seek the support from the Grand Council's External Relations Committee in the form of a letter of clearly stating

1. The Grand Council did not give permission or sanction the Mohawk Nation Council of Chiefs to move forward with land claim settlements decisions that impact **all Mohawk land claims**
2. If in the event the MOU were to proceed, the Act of Congress would be deemed as invalid by the Grand Council

We are of the opinion that if the MOU only pertains to land of interest by the SRMT under the recognition of the Seven Nations Treaty then MOU extinguishment clauses must be made explicit "to an extinguishment of all St. Regis Indian land claims under the Seven Nations Treaty." SRMT must proclaim and recognize themself as Seven Nations entity and the MOU should state explicitly that it does not extinguish/release the inherent right of Kanien'kehá:ka individuals to **all homelands**, including those within the aforementioned Seven Nations parcels. In addition, the Mohawk Nation Council of Chiefs speaking on behalf of "The People of the Longhouse" should not be parties to the settlement under the pretenses of Wampum #58 and by participating in the court process to affirm the fraudulent Seven Nations Treaty, they are agreeing to Mohawk secession of NYS lands (reference- pg. 57).

For further information and communication: Contact Kanien'kehá:ka Kaianerekowa Kanonsesne at (518) 980-3505 and kanonsesneh@gmail.com

Appendix of Documents

HISTORY- Summary of the Land Issues

Parties Involved:

Plaintiffs: St. Regis Mohawk Tribe (SRMT), Mohawk Council of Akwesasne (MCA), Mohawk Nation Council of Chiefs (MNCC) (Together compose the Tri-Council)

Defendants: New York State (NYS), New York Power Authority (NYPA), Franklin County, St. Lawrence County

Timeline:

May 1796: Treaty with the Seven Nations of Canada is signed, cession of lands to the State of New York. (reference- pg. 3)

Nov 1796: Governor Jay addresses the state of New York State Legislature. There is clear indication that New York State knew the Seven Nations treaty was only in agreement with the Seven Nations of Canada (christianized Indians) and not the historical and modern Kanien'kehá:ka, stating "The claims of the Mohawks to certain other Lands still remain to be **adjusted**." (reference- pg. 6)

July 1982: The Canadian St. Regis Band of Mohawk Indians (present day MCA) files a claim accusing New York of illegally purchasing the land, and claims rightful ownership based on the Seven Nations of Canada Treaty (case 82-CV-0783).

Sept 1989: SRMT and the "People of Akwesasne represented by the MNCC" join the lawsuit under a consolidation of cases (89-CV-829, 82-CV-1114). Claiming ownership of certain lands in St. Lawrence and Franklin counties and to Barnhart, Long Sault and Croil islands. (The islands are within NYPA's St. Lawrence-FDR Power Project and Barnhart Island is the location of significant NYPA facilities).

- The Tri-Council filed the claim based on the legal concept of "ejectment" for the possession of the land: That NYS attempted to purchase three parts of the Reservation as described in the 1796 Treaty: (1) The Massena and Grass River properties, (2) The Hogansburg Triangle and (3) Fort Covington (a Town and Village).

1992 - 1998: Settlement discussions were held periodically. In 1998, the federal government intervened on behalf of all plaintiffs.

Nov 2004: A draft settlement between the parties was put up for a referendum vote, this is the vote that the parties are utilizing to legitimize the present day settlement. The only people eligible to vote were SRMT members. The results of the referendum were 748 YES votes (65%), 387 NO votes (33%), 14 VOID votes (1%), with the total voter turnout being 1149 (with Akwesasne's total population being close to 15000). The majority of longhouse people refuse to and are not represented in this outcome due to voting being antithetical to our traditions (reference- pg. 10)

April 2005: Ganiekeh's sends letter in opposition to the land claim to George W. Bush, stating "Seven Nations of Canada Treaty of 1797, which purported to extinguish title to Mohawk territory have been deemed illegal due in part to certain Mohawk individuals who claimed to have represented the Mohawk Nation and who truthfully had extinguished their citizenry by enforcing and adhering to the laws of a foreign government namely that of Great Britain." (reference- pg. 14)

March 2005: US Supreme Court made ruling on City of Sherrill v Oneida Nation. This case stands for a number of principles at the time that the substantial time had elapsed and that the non-Indian communities had "settled expectations" therefore a lawsuit for "ejectment" and possession of the lands was barred by the Court's decision.

July 2013: Sherrill laches were utilized to undermine the claims against NYPA, which were dismissed and the lawsuit against the Power Authority was concluded.

May 2014: Draft MOU was made public. Not only do the implications of the previously mentioned extinguishment clauses state "the New York Power Authority does hereby enter into this memorandum of understanding endorsing a negotiated settlement that requires an act of Congress to Forever extinguish all Mohawk land claims prior to the settlement agreement signed by the parties taking effect." In addition, the MOU indicates SRMT under this agreement were to adopt and enforce federal, state and municipal codes, regulations and authority- provisions 6, 10, 12 under agreement requirements presented by the St. Lawrence county. (reference- pg. 17) Most notably are concerns regarding the possibility of tax imposition.

March 2022: Judge Kahn determined that New York State had violated the Non-intercourse Act by attempting to purchase those large portions of the Seven Nation Treaty lands. (reference- pg. 24)

Jan 2023: SRMT hosts two information sessions regarding the MOU. These information sessions were targeted to land owning tribal members in the areas of concern.

May 2023: Mohawk Nation Council of Chiefs releases a statement on the land claims, stating "Grand Council directed the Mohawk Nation Council of Chiefs to **lead a legal effort on behalf of the Haudenosaunee**… The Grand Council has never withdrawn or altered its mandate." In addition, MNCC states "Once finalized, any draft settlement agreement will be put to the people." (reference- pg. 68)

June 2023: The New York State legislature pre-authorized Gov. Hochul to sign a settlement agreement so long as it is "considerably consistent" with the 2014 agreement with St. Lawrence County and the Resolution of June 5, 2023, by Franklin County. (reference- pg. 71)

July 2023: An additional information session was held exclusive to tribal members. They clarified that the final settlement agreement would not be disclosed to the people before ratification (contradicting the above May 2023 statement released by the MNCC). SRMT, upon request, clarified that the mention of an additional referendum would only be for determining the distribution/allocation of MOU funds between the three parties internally. In these discussions, SRMT assured the public there "There is no extinguishment language" in the MOU, contrary to aforementioned extinguishment clauses.

Aug 2023: Recent dockets reference to status of the MOU, "There is one issue between the MNCC an the St. Lawrence County which has not been resolved but that we believe is resolvable… **We do not anticipate that there will be an impasse as to any issue.** Once the internal agreement is agreed to among leadership of the Tribe, MCA and MNCC, each will need to obtain final approval according to their own procedures." (reference- pg. 73) With opposition clearly stated in letters submitted by both Wolf and Bear Clan (reference- pg. 58) that they are withdrawing from any and all land claims discussions, it is evident that MNCC is not following proper process and protocols of their traditional governance system.

Treaty With The Seven Nations Of Canada, 1796

Links and More Information (treaties/treaty-with-the-seven-nations-of-canada-1796-0045#collapseOne)

National Archives (https://catalog.archives.gov/id/88819873)

Page Scans Kappler's (https://cdm17279.contentdm.oclc.org/digital/collection/kapplers/id/293

Original Signatories:
Seven Nations of Canada (tribes/original-signatories-tribes/seven-nations-of-canada)

Successor in Interest Tribe(s):
Onondaga Nation (tribes/successors-in-interest/onondaga-nation) • Saint Regis Mohawk Tribe (tribes/successors-in-interest/saint-regis-mohawk-tribe)

Tags:
ratified (tags/treaties-by-tag?tag=ratified&key=treaty-tags)

Identifiers:
RIT_024 • NAI_88819873

May 31, 1796. | 7 Stat., 55. | Proclamation, Jan. 31, 1797.

At a treaty held at the city of New York, with the Nations or Tribes of Indians, denominating themselves the Seven Nations of Canada; Abraham Ogden, Commissioner, appointed under the authority of the United States, to hold the Treaty; Ohnaweio, alias Goodstream, Teharagwanegen, alias Thomas Williams, two Chiefs of the Caghnawagas; Atiatoharongwan, alias Colonel Lewis Cook, a Chief of the St. Regis Indians, and William Gray, Deputies, authorized to represent these Seven Nations or Tribes of Indians at the Treaty, and Mr. Gray, serving also as Interpreter; Egbert Benson, Richard Varick and James Watson, Agents for the State of New York; William Constable and Daniel M'Cormick, purchasers under Alexander Macomb:

Cession of lands to State of New York.

THE agents for the state, having, in the presence, and with the approbation of the commissioner, proposed to the deputies for the Indians, the compensation hereinafter mentioned, for the

Consideration paid therefor.

Indian reserve

extinguishment of their claim to all lands within the state, and the said deputies being willing to accept the same, it is thereupon granted, agreed and concluded between the said deputies and the said agents, as follows: The said deputies do, for and in the name of the said Seven Nations or tribes of Indians, cede, release and quit claim to the people of the state of New-York, forever, all the claim, right, or title of them, the said Seven Nations or tribes of Indians, to lands within the said state: Provided nevertheless, That the tract equal to six miles square, reserved in the sale made by the commissioners of the land-office of the said state, to Alexander Macomb, to be applied to the use of the Indians of the village of St. Regis, shall still remain so reserved. The said agents do, for, and in the name of the people of the state of New-York, grant to the said Seven Nations or tribes of Indians, that the people of the state of New-York shall pay to them, at the mouth of the river Chazy, on Lake Champlain, on the third Monday in August next, the sum of one thousand two hundred and thirty-three pounds, six shillings and eight-pence, and the further sum of two hundred and thirteen pounds six shillings and eight-pence, lawful money of the said state, and on the third Monday in August, yearly, forever thereafter, the like sum of two hundred and thirteen pounds six shillings and eight-pence: Provided nevertheless, That the people of the state of New-York shall not be held to pay the said sums, unless in respect to the two sums to be paid on the third Monday in August next, at least twenty, and in respect to the said yearly sum to be paid thereafter, at least five of the principal men of the said Seven Nations or tribes of Indians, shall attend as deputies to receive and to give receipts for the same: The said deputies having suggested, that the Indians of the village of St. Regis have built a mill on Salmon river, and another on Grass river, and that the meadows on Grass river are necessary to them for hay; in order, therefore, to secure to the Indians of the said village, the use of the said mills and meadows, in case they should hereafter appear not to be included within the above tract so to remain reserved; it is, therefore, also agreed and concluded between the said deputies, the said agents, and the said William Constable and Daniel M'Cormick, for themselves and their associates, purchasers under the said Alexander Macomb, of the adjacent lands, that there shall be reserved, to be applied to the use of the Indians of the said village of St. Regis, in like manner as the said tract is to remain reserved, a tract of one mile

square, at each of the said mills, and the meadows on both sides of the said Grass river from the said mill thereon, to its confluence with the river St. Lawrence.

In testimony whereof, the said commissioner, the said deputies, the said agents, and the said William Constable and Daniel McCormick, have hereunto, and to two other acts of the same tenor and date, one to remain with the United States, another to remain with the State of New York, and another to remain with the said Seven Nations or tribes of Indians, set their hands and seals, in the city of New York, the thirty-first day of May, in the twentieth year of the independence of the United States, one thousand seven hundred and ninety-six.

Abraham Ogden, [L. S.]

Egbert Benson, [L. S.]

Richard Varick, [L. S.]

James Watson, [L. S.]

William Constable, [L. S.]

Daniel McCormick, [L. S.]

Ohaweio, alias Goodstream, his x mark, [L. S.]

Otiatokarongwan, alias Col. Lewis Cook, his x mark, [L. S.]

William Gray, [L. S.]

Teharagwanegen, alias Thos. Williams, his x mark, [L. S.]

Signed, sealed, and delivered, in the presence of

Samuel Jones, recorder of the city of New York,

John Tayler, recorder of the city of Albany,

Joseph Ogden Hoffman, attorney general of the State of New York.

Founders Online

ADDRESS TO THE NEW YORK STATE LEGISLATURE, 1 NOVEMBER 1796

Address to the New York State Legislature

Assembly [New York, 1 November 1796]

When it is considered how greatly the Happiness of of every Nation depends on the Wisdom with which their Government is administered, the occasion which has called you together at this early Season, cannot but be regarded as unusually important.[1]

The Period fixed for the Election of a President of the United States is approaching, and the Measures preparatory to it in this State, are now to be taken. In every possible Situation of our National affairs—whether of Peace or War, of Tranquility or Ferment, of Prosperity or Misfortune, this object will not cease to demand the utmost Care and Circumspection.

Hitherto the Embarrassments arising from Competitions, and from the Influences incident to them, have not been experienced. They have been excluded by the uniform and universal Confidence reposed in that illustrious Patriot, who, being distinguished as the Father and Ornament of his Country by a Series of great & disinterested Services, was also eminently qualified, by an uncommon assemblage of Virtues and Talents, for that important and exalted Station.

But that extraordinary Man, having with admirable Wisdom & Fortitude conducted the Nation thro various Vicissitudes and unpropitious Circumstances, to an unexampled Degree of Prosperity, is now about to retire— Mankind has not been accustomed to see the highest Military & Civil Powers of a Nation so recieved, used and resigned, as they have been in this glorious Instance. Every Reflection and Sentiment connected with this interesting Subject, will naturally arise in your Minds — May the same benevolent, wise, and over-ruling Providence which has so constantly and remarkably sustained and protected us, preside over the Public Deliberations and Suffrages.

It gives me Pleasure to inform you, that at a Treaty, held in this City, under the authority of the United States, a final agreement has been concluded between this State, and the Indian Tribes who call themselves the Seven Nations of Canada.[2] Altho their Title to the Territory they claimed, was not unquestionable; yet it was judged more consistent with Sound Policy, to extinguish their claims and consequently their Animosities, by a satisfactory Settlement, than leave the State exposed to the Inconveniences which allways result from Disputes with Indian Tribes. Besides, considering our Strength and their comparative Weakness, every appearance of taking advantage of that Weakness, was to be avoided.

The Claims of the Mohawks to certain other Lands still remain to be adjusted,[3] but there is Reason to expect that these may ^also be^ amicably settled; and that the Period is not far distant, when the Indians on our Borders, having convincing Proofs of our Justice and Moderation, will by good offices and a Friendly Intercourse, be led to rely on our Benevolence and Protection, and to view our Prosperity as connected with their own.

I submit to your Consideration whether the Payments to be annually made to the different Tribes who are entitled to them by Contracts with the State, should not be so ordered, as that they may be *punctually* paid in a uniform manner, and at a *fixed* Expence.[4]

Difficulties were experienced in executing the benevolent Intentions of the Legislature respecting a Lazaretto in the vicinity of this City. Ground conveniently situated, could not be purchased; and the placing it on Governors Island, where it could not have been erected at a proper distance from the Garrison, was liable to strong objections. These Difficulties have been removed by the Liberality of the Corporation of the City. They have gratuitously conveyed Bedlows Island to the State, for this & such other Public uses as the Legislature may from time to time direct. Certain Buildings, erected there by the French Republic, have been purchased; and prepared to serve the purpose of a Lazaretto for the present— but as additions & alterations will be necessary, and as Precautions should be taken to prevent that Island from being further Diminished by Encroachments of the Water, the appropriation of some money for these objects will be requisite.

The measures prescribed by Law to prevent the bringing and spreading of infectious diseases in this State, have been taken and faithfully executed. It is however to be lamented, that Cases of the like Fever, with that which in the last Year proved so fatal to this City, have occurred, and there is at present very little Reason to doubt whether that Disease may be generated here. The Subject of Nuisances therefore, having become important to the Safety as well as ^to^ the Comfort of our Fellow Citizens, well deserves the Notice and Interposition of the Legislature.[5]

Precarious is the Peace & Security of that People who are not prepared to defend themselves. Permit me to observe that this State has but one Port, & that, important as it is to the whole State, its Situation cannot yet be deemed Secure. The Fortifications that were begun are still unfinished, and it appears to me to merit Consideration, whether this Port can otherwise be secured, than by skilfully fortifying the Passage at the Narrows.[6] It cannot be too frequently recollected that seasons of Peace & Prosperity are the most favorable for Measures & Works of this kind.

Considering the Funds which the State possesses—the appropriations which have been and will be made for various Public uses—the Accounts consequent to such Appropriations—and the evident utility of so arranging and conducting our Fiscal affairs, as that the Funds may be advantageously managed, Accounts with Individuals regularly settled, and the Ballances due to or from them punctually paid—I think it my Duty to suggest whether more adequate Provision for these Objects should not be made.

Altho our Taxes have for Years past been inconsiderable, and altho there is at present no Prospect of our being pressed by any necessity to encrease them, yet it is to be presumed from the Vicissitudes which attend human affairs, that at some future Period, more ample Contributions may become indispensable:— Would it not therefore be prudent, at this calm & tranquil Season, to adopt & establish such Rules & Regulations for Taxation, as being perfectly consistent with the Principles of Justice and rational Liberty, and gradually acquiring the advantages of Experience & usage, may relieve this delicate Subject from many of the perplexing Questions about Principles, Mode & Manner, which at all Times are difficult, & which are particularly embarrassing in Times of Anxiety & Agitation — ?

The distressed Situation in which the french Refugees from S^{t}. Domingo arrived here, induced the Legislature to provide for them in a very beneficent manner. The Sums allotted for their support have been expended, and the accounts audited and settled— Many of those unfortunate Persons have left the State; but it is represented to me that a Number of Old Persons and Children are still here, & in a Situation so destitute & wretched, that I cannot forbear mentioning it to you. They cannot with Propriety be considered as the Poor of any particular District— their fate is peculiar, as well as distressing; and they appear to me as having become by the Dispensations of Providence the Poor of the State.[7]

It often happens that Persons not urged by Circumstances equally pressing, come into the State from distant Parts, and in many Instances become burthensome to it. This Subject seems to call for some Regulations, especially as the Law heretofore passed relative to it, has ceased to operate.

I ought not to omit informing you, that the Hon'ble M^{r}. King having been appointed Minister Plenipotentiary to the Court of Great Britain, & accepted that Place, his Seat in the Senate of the United States has become Vacant.[8]

In the Course of your Deliberations on the Affairs of the State, and the means of preserving & encreasing the Public Welfare, many interesting Subjects will rise into View— such as these among others: The Manner in which the Salt Springs may be rendered the most useful, and the Woods in the Neighbourhood of them best preserved—[9] the Facilities & Encouragement that may be proper towards obtaining an accurate Map of the whole State—[10] The Necessity of rendering the Laws respecting Roads & Bridges more effectual—[11] and of revising & amending those which relate to the militia,[12] & which direct the Inspection of certain of our Staple Commodities—[13] as these & various other objects derive Importance from their Relations to the General Welfare, they will I am persuaded recieve a proportionate Degree of your Attention: And I assure you that it is no less my Desire, than it is my Duty, to cooperate with you in guarding & promoting the Prosperity & Happiness of our Fellow-Citizens.

John Jay

DS, ICHi (EJ: 03505). Endorsed: "Governors Speech to the / Legislature Novem. *1st 1796 / Senate Copy*". *Herald* (New York), 2 Nov.; *Register of the Times* (New York), 4 Nov.; *Claypoole's American Daily Advertiser* (Philadelphia), 4 Nov.; *Greenleaf's New York Journal*, 8 Nov.; *Gazette of the United States (Philadelphia)*, 9

Nov.; *Wood's Newark Gazette*, 9 Nov.; *Salem Gazette*, 11 Nov.; *Andrew's Western Star* (Stockbridge), 21 Nov. 1796; *Albany Chronicle, 2* Jan. 1797, and other newspapers; *N.Y. Assembly Journal*, 20th Sess. (1796–97), 5–6; *N.Y. Senate Journal*, 20th Sess. (1796–97), 4–5; NYGM, 2: 379–85.

For the responses of the state legislature and JJ's replies, see *Philadelphia Gazette*, 8 Nov.; *Aurora General Advertiser* (Philadelphia), 10 Nov.; *Register of the Times* (New York), 11 Nov.; *Andrew's Western Star* (Stockbridge), 21 Nov., and other newspapers; *N.Y. Assembly Journal*, 20th Sess. (1796–97), 11–12; *N.Y. Senate Journal*, 20th Sess. (1796–97), 10, 11.

1. A state law passed on 26 Mar. 1796 called for the legislature to convene on 1 Nov. for the purpose of choosing the presidential electors. *N.Y. State Laws*, 19th sess. (1796), 26.

2. For New York's treaty with the Akwesasne and Caughnawaga Mohawk communities, see the editorial note "Indian Affairs under Jay's Governorship," above.

3. For New York's treaty with the Mohawk of Upper Canada, see the editorial note "Indian Affairs under Jay's Governorship," above.

4. "An ACT to provide for the Payment of the Annuities to the Indians, stipulated to be paid by the State," was passed on 1 Apr. 1797. *N.Y. State Laws*, 20th sess. (1797), 183.

5. The state legislature passed on 30 Mar. 1797, "An ACT for the establishment and support of a Lazaretto," *N.Y. State Laws*, 20th sess. (1797), 158. For more on the yellow fever epidemic and the building of the lazaretto, see the editorial note "John Jay and the Yellow Fever Epidemics," above; JJ to Charlton, 22 Apr. 1796, above; JJ to Alderman Stoutenbourgh, 7 June 1796, LbkC, N: Governor's Lbk. 1 (EJ: 03020); JJ to John Murray, 13 July 1796, LbkC, N: Governor's Lbk. 1 (EJ: 03024); Richard Bayley to JJ, December 1796, ALS, NHi (EJ: 00891) containing letter of 28 Nov. 1796 and report on the lazaretto.

6. For the various plans to fortify New York's inner and outer harbors, see the editorial note "Defending New York," above.

7. On 2 Nov. 1796, a committee was formed in the Senate to consider the bill, "An act for the support of the St. Domingo French refugees in the City of New-York." It passed the Senate and the Assembly on 11 and 17 Jan., respectively. On 21 Jan. 1797, the Council of Revision deemed that "it does not appear improper" that the bill become law. *N.Y. Senate Journal*, 20th sess. (1796–97), 7, 25, 28, 29; *N.Y. Assembly Journal*, 20th sess. (1796–97), 6, 32, 55, 65; and *N.Y. State Laws*, 20th sess. (1797), 360. See also JJ's Address to the New York State Legislature, 6 Jan. 1796, notes 9–10, above; JJ to Richard Lawrence, 23 Jan. and 9 Feb. 1797, and 6 Jan. 1798; and Lawrence to JJ, 27 Jan. 1797, all below.

8. After RK stepped from his senate seat to take on the role of U.S. minister to Britain, John Laurance (Lawrence) succeeded him as U.S. senator after winning a special election held by the New York State Assembly. *N.Y. Assembly Journal*, 20th sess. (1796–97), 18–19.

9. On 1 Apr., the state legislature passed "An ACT concerning the salt springs in the county of Onondaga," *N.Y. State Laws*, 20th sess. (1797), 206–12.

10. On 28 Mar., the state legislature passed "An ACT in addition to an act entitled an act for the further direction of the Commissioners of the Land Office, and for other purposes therein mentioned, *N.Y. State Laws*, 20th sess. (1797), 126–28.

11. In order that "direct communications be opened and improved between the western, northern, and southern parts" of New York, the state legislature established three lotteries in order to raise the sum of $45,000. See "An ACT for opening and improving certain great roads within this state," *N.Y. State Laws*, 20th sess. (1797), 136–43, quote on 136.

During the twentieth session of the state legislature, lawmakers passed additional bills to build bridges over the Cayuga Lake, Rosendal Kill, and the Mohawk River, and to construct and repair roads in Orange Town and between Albany and Schenectady. *N.Y. State Laws*, 20th sess. (1797), 23–24, 133–36, 187–203, 213, 220–22.

12. For more on the efforts to reform the state militia, see the editorial note "Militia Matters in New York State," below.

13. The state legislature passed "An ACT to continue in force an act entitled 'An act for enreasing the compensation to the measurers of grain and inspectors of flour and meal in this state'" on 30 Mar., and "An ACT making alterations in the inspection laws of this State" on 3 April. *N.Y. State Laws*, 20th sess. (1797), 158, 217–19.

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SOURCE PROJECT	Jay Papers
TITLE	Address to the New York State Legislature, 1 November 1796
AUTHOR	Jay, John
DATE	1 November 1796
CITE AS	"Address to the New York State Legislature, 1 November 1796," *Founders Online*, National Archives, https://founders.archives.gov/documents/Jay/01-06-02-0236. [Original source: *The Selected Papers of John Jay*, vol. 6, *1794–1798*, ed. Elizabeth M. Nuxoll. Charlottesville: University of Virginia Press, 2020, pp. 503–507.]

Saint Regis Mohawk Tribe

Tribal Council Resolution
Resolution #2004- 61
Land Claims Settlement Agreement

WHEREAS, the St. Regis Mohawk Tribal Council is the duly recognized governing body of the St. Regis Mohawk Tribe and is responsible for the health, safety, education and welfare of all community members; and,

WHEREAS, the Tribal Council has the authority to determine internal tribal matters, and,

WHEREAS, the St. Regis Mohawks Tribe is representing the Mohawk people of Akwesasne in a Mohawk Land Claim suit filed against the State of New York; and,

WHEREAS, at the September 11, 2004 Tribal meeting it was requested by tribal membership that the Tribal Council Chiefs will not sign any settlement agreement with New York State until the proposed settlement agreement is presented to the tribal membership and approved by a community referendum.

THEREFORE BE IT RESOLVED THAT, the St. Regis Mohawk Tribal Council hereby agrees that they will not sign any land claim settlement agreement with New York State until such proposed settlement agreement is presented to the tribal membership and approved by a community referendum.

THE SAINT REGIS MOHAWK TRIBAL COUNCIL

Margaret Terrance
Chief Margaret Terrance

Chief Barbara A. Lazore

James W. Ransom
Chief James W. Ransom

***CERTIFICATION:** This is to certify that the St. Regis Mohawk Tribal Council pursuant to the authority vested therein duly passed the above resolution.*

Patricia Thomas
Patricia Thomas, Tribal Clerk

9-17-04
Date

412 State Route 37
Akwesasne, New York 13655
Phone: 518-358-2272
Fax: 518-358-3203

Saint Regis Mohawk Tribe

Chief Margaret Terrance
Chief Barbara A. Lazore
Chief James W. Ransom
Sub-Chief Rita Swamp
Sub-Chief Emily Lauzon
Sub-Chief Ronald LaFrance, Jr.

Tribal Council Resolution
Resolution #2004- 68
Tribal Referendum on New York State Land Claim Settlement Terms

WHEREAS, the St. Regis Mohawk Tribal Council is the duly recognized governing body of the St. Regis Mohawk Tribe and is responsible for the health, safety, education and welfare of all community members; and,

WHEREAS, for 22 years there has been on-going negotiations with New York State for land claim settlement for lands in Northern New York; and,

WHEREAS, New York State and the St. Regis Mohawk Tribe, the Mohawk Council of Akwesasne, and the Mohawk Nation Council of Chiefs recognize that it would be mutually beneficial to resolve the Akwesasne Mohawk Land Claims within New York State; and,

WHEREAS, The St. Regis Mohawk Tribe, the Mohawk Council of Akwesasne, and the Mohawk Nation Council of Chiefs have finalized settlement terms with New York State that will ensure the rights of the Seventh generation; and,

WHEREAS, the St. Regis Mohawk Tribe, the Mohawk Council of Akwesasne, and the Mohawk Nation Council of Chiefs have agreed to a community ratification of the settlement terms; and,

WHEREAS, the St. Regis Mohawk Tribe will seek ratification of the New York State Settlement terms by holding a Tribal Referendum to obtain the approval of Tribal community members.

THEREFORE BE IT RESOLVED THAT, the St. Regis Mohawk Tribal Council hereby rescinds TCR#2004-66 calling for a Tribal Referendum on November 27th from 9 a.m. to 4 p.m., as the traditional time for voting is 9 a.m. to 5 p.m.; and,

BE IT FINALLY RESOLVED THAT, the St. Regis Mohawk Tribe will hereby hold a Tribal referendum on Saturday, November 27, 2004 from 9 a.m. to 5 p.m. at the St. Regis Mohawk Tribal Community Building to seek ratification of the New York State Land Claim Settlement Terms.

THE SAINT REGIS MOHAWK TRIBAL COUNCIL

Margaret Terrance
Chief Margaret Terrance

Barbara A Lazore
Chief Barbara A. Lazore

James W. Ransom
Chief James W. Ransom

CERTIFICATION: This is to certify that the St. Regis Mohawk Tribal Council pursuant to the authority vested therein duly passed the above resolution.

Deputy Clerk
Patricia Thomas, Tribal Clerk

11-03-04
Date

412 State Route 37
Akwesasne, New York 13655
Phone: 518-358-2272
Fax: 518-358-3203

DO YOU ACCEPT THE TERMS OF THE PROPOSED LAND CLAIMS SETTLEMENT WITH THE STATE OF NEW YORK?

☐ YES

☐ NO

DO YOU ACCEPT THE TERMS OF THE PROPOSED LAND CLAIMS SETTLEMENT WITH THE STATE OF NEW YORK?

☐ YES

☐ NO

DO YOU ACCEPT THE TERMS OF THE PROPOSED LAND CLAIMS SETTLEMENT WITH THE STATE OF NEW YORK?

☐ YES

☐ NO

St. Regis Mohawk Tribal Referendum
November 27. 2004

	Walk- In Ballot Total	Absentee Ballot Total	TOTAL
YES VOTE	524	224	748
NO VOTE	363	24	387
VOID	∅	14	14
TOTAL	887	262	1149

Amber McDonald, Election Board Chairperson

Patricia Thomas, Tribal Clerk

Norman Tarbell, Election Board Member

Bernice Lazore, Election Board Member

Carol T. Herne

Shirley Arquette

Marlene Bero

Kathryn Jacobs

Ann Bero

Jessica A. Roundpoint

Marlene Arquette

GANIENKEH
NE IAIAK NIHONONWENTSAKEH
KANONSONNIONWE

Phone: (518)236-7100
Fax: (518)236-7101

Ganienkeh Territory
via Altona, NY 12910

April 1, 2005

George W, Bush
President of the United States
1600 Pennsylvania Avenue
Washington DC, 20500

Se: kon Skenna: Kowa (More greater peace)

The recent US Supreme court decision which ruled that any occupation of our ancestral homeland must be accompanied by taxation be it federal or state is illegal. Federal and State tax codes apply to American citizens. We are not American citizens. We are citizens of our own nation governed by principals and philosophies entrenched within our very own Constitution that of which is the Kaianerekowa also known as the Great Law of Peace or the Constitution of the Iroquois Confederacy.

Our Constitution which we as an independent sovereign nation have adhered to for centuries, long before there ever was an entity that referred to itself as the United States of America. Our Constitution has placed the duty and responsibility of protecting the land for the use and enjoyment of our children directly in the hands of the men and women of our nation for all time.

Your attempt to deny us our rights and powers as citizens of our own nation not only violates our Constitution, but it also violates International Law. The right to one's own nationality is clearly entrenched within the Charter of Human Rights. We have not become American or Canadian citizens through naturalization, we have never consented to foreign laws imposed upon our people and our land, such as Federal Indian Law. and our rights and powers are not derived from any treaty. The legitimate fact of the matter is your current habitation of our homeland is derived from treaty rights.

It was your forefathers who came upon our people with treaty in hand requesting the use of our land in order to survive. A request which we granted allowing only the depth of the plow to be adequate for your needs.

Although we do not physically occupy much of our homeland at this current time, we have never given up title to it. Treaties such as the Mohawk Treaty of 1796 and the Seven Nations of Canada Treaty of 1797, which purported to extinguish title to Mohawk territory have been deemed illegal due in part to certain Mohawk individuals who claimed to have represented the Mohawk Nation and who truthfully had extinguished their citizenry by enforcing and adhering to the laws of a foreign government namely that of Great Britain. An act which is in clear violation of our Constitution the Great Law of Peace "wampum 58". *(see attached document)*

The State of New York's participation in these treaties is also illegal. The Constitution of the United States stipulates that "no State in the Union has treaty making powers." This in turn adds credence to the fact that any sale of land that may have taken place in these contracts are complete frauds and blatant acts of treachery against the Mohawk people as well as the complete disregard of the fundamental rule of law.

The fundamental principals of the Constitution of the United States is derived from the very people whose rights and powers you choose to ignore and oppress. The Kaianerekowa is a Constitution which is complete and clearly supercedes that of your own Constitution.
Therefore we the Kanienkehaka people who adhere to the Kaianerekowa (the Great Law of Peace/ Constitution of the Iroquois Confederacy) hereby find the United States guilty of genocide and oppression as well as possession of stolen property. These charges are punishable under the International Law and crimes against humanity.

We demand that your government respect the rule of law and adhere to the fundamental principals of comity as first entered into by our people who are of the Longhouse, and your forefathers, an agreement which is recorded in the treaty known as the Guswentah also referred to as the Two Row Wampum.

Once more we the Kanienkehaka (People of the Flint) who are Rotinonshionni (People of the Longhouse) who are part of the Six Nation Iroquois Confederacy have never relinquished title to our homeland which encompasses over 18 million acres of what is currently known as New York State, Vermont, Quebec and Ontario. Should your government disagree with our position then we encourage you to prove otherwise.

Niawen Kowa
Ganienkeh Council Fire
Ganienkeh Territory

Kariwaientakwen
(Appointed Official)
Skenna Kariwiio Kasatstensera
Peace Power Righteousness

Cc. Governor George Pataki
Cc. Senator Hillary Rodham Clinton
Cc. Senator Charles Schumer
Cc. Senator Edward Kennedy
Cc. Senator John Kerry
Cc. Patrick Leahy
Cc. Ben Nighthorse Campbell
Cc. Elizabeth Little
Cc. Senator John Edwards
Cc. United Nations
Cc. Prime Minister of Canada

State of New York

Executive Chamber

Memorandum of Understanding
between the
County of St. Lawrence,
the
Saint Regis Mohawk Tribe
and the
State of New York

Whereas, the Saint Regis Mohawk Tribe, Mohawk Council of Akwesasne and Mohawk Nation Council of Chiefs (collectively, the Mohawk) have asserted claims for possession of lands within the Counties of Franklin and St. Lawrence in the State of New York, and for damages on the ground that the lands in question were originally transferred in violation of law, including, but without limitation, the Trade and Intercourse Act of 1790 (1 Stat. 137), or subsequent reenactments or versions thereof; and

Whereas, such litigation, *The Canadian St. Regis Band of Mohawk Indians v. New York et al. (82-CV-783); The Canadian St. Regis Band of Mohawk Indians v. New York et al. (82-CV-1114); and The St. Regis Mohawk Tribe, by the St. Regis Mohawk Tribal Council and the People of the Longhouse at Akwesasne, by Mohawk Nation Council of Chiefs v. The State of New York, et al. (89-CV-829)*, remains pending before the United States District Court for the Northern District of New York after over thirty years; and

Whereas, the State of New York, the Counties of Franklin and St. Lawrence, various municipalities of those Counties, and the New York Power Authority and other non-governmental entities with interests in the land at issue are defendants in such litigation; and

Whereas, continued disagreements and endless litigation have fostered distrust between the land claim defendants and the Mohawk related to jurisdictional, taxation and regulatory issues arising from the underlying land claims; and

Whereas, despite the holding of the Supreme Court of the United States in *City of Sherrill v. Oneida Indian Nation of New York*, 544 U.S. 197 (2005), the parties continue to engage in costly and time-consuming elements of litigation; and

Whereas, ultimate judicial resolution of the litigation remains elusive and recent judicial rulings make clear that no party should expect complete and total victory; and

Whereas, there is a recognition that any final resolution of pending disputes through a process of litigation would: take many additional years and entail great expense to all parties; continue economically and socially-damaging controversies; prolong uncertainty as to the access, ownership, and jurisdictional status of land in question; and seriously impair long-term economic planning and development for all parties; and

Whereas, the parties recognize that a negotiated settlement has the potential to swiftly and permanently resolve these disputes and wish to use the 2005 Settlement Agreement, to the extent practicable, as the framework for a new, revised Settlement Agreement; and

Therefore, the Chairman of the St. Lawrence County Board of Legislators and Governor of the State of New York do hereby enter into this Memorandum of Understanding endorsing a negotiated settlement agreement that requires:

1. The Saint Regis Mohawk Tribe (Tribe) to immediately release to the State of New York (State), upon the effective date of the negotiated Settlement Agreement, the remaining balance of gaming revenues withheld in prior years, and requires the State to distribute those funds under the existing formula, resulting in an immediate payment of approximately $1.875 million to St. Lawrence County and $937,500 each to the Towns of Brasher and Massena (collectively, the Towns);

2. Upon the effective date of the negotiated Settlement Agreement, the Tribe to make an immediate, one-time payment of an additional $1.5 million to St. Lawrence County;

3. The Tribe to continue to make revenue sharing payments required by the Tribal-State Compact between the Saint Regis Mohawk Tribe and the State of New York and, from those funds, the State to make the following distributions:

    a. Twenty-five percent of those funds to St. Lawrence and Franklin Counties, in accordance with existing statute, resulting in an estimated annual payment of $1.45 million to St. Lawrence County and $725,000 each to the Towns of Brasher and Massena;

b. An immediate, one-time payment of an additional $2 million to St. Lawrence County for its unrestricted use;

c. An additional annual payment of $4 million to St. Lawrence County for its unrestricted use; and

d. Payments to St. Lawrence County and respective towns sufficient to hold them harmless from the loss of future property and school taxes for parcels that become part of the Reservation;

4. Acquisitions of land by the Tribe that will be designated as Reservation land to be limited to properties owned by the Tribe, purchased from willing sellers or acquired by voluntary transfer, and located within the defined areas of approximately 3,440 acres in the Town of Brasher, and approximately 1,360 acres in the Town of Massena, designated as areas "C" and "D" on maps reviewed by the County;

5. The Tribe to provide basic governmental services to all properties that become part of the Reservation either directly or through appropriate service agreements under the auspices of the State;

6. The Tribe to adopt and enforce ordinances or codes that meet or exceed federal environmental standards and International Building Codes, and land use and zoning codes that meet or exceed the municipal land use and zoning codes in the respective towns to govern all properties that become part of its Reservation, and the Tribe to implement an expedited process to resolve disputes concerning the sufficiency and enforcement of such ordinances and codes;

7. Lands inside areas "C" and "D" owned or acquired by the Tribe or individual enrolled Mohawks that do not become part of the Reservation, and all such lands within St. Lawrence County outside areas "C" and "D," to remain subject to Federal, State and local laws, regulation and taxation;

8. A continued right of public access to any cultural, religious or public facilities that may become land-locked by parcels that become part of the Reservation;

9. The continuation of existing private, utility, railroad and highway easements and rights-of-way;

10. The establishment of a dispute resolution process that clearly specifies procedures for raising and addressing disputes between the parties, with the State being an active party in resolving disputes that are not settled though initial discussions between the Tribe and the effected localities;

11. The Tribe to expressly waive its sovereign immunity for the limited purpose of enforcement of the terms and obligations of the Settlement Agreement;

12. The Tribe to refrain from directly or indirectly supporting any challenge to the authority of the State, St. Lawrence County or the Towns to exercise their rights under the Settlement Agreement;

13. The U.S. District Court of the Northern District of New York and its appropriate appeals courts to retain jurisdiction for purposes of enforcement of the Settlement Agreement and to have authority to compel arbitrations in unresolved disputes and to enforce arbitration awards related to disputes arising out of the Settlement Agreement;

14. An Act of Congress to forever extinguish all Mohawk land claims against St. Lawrence County, the State, the New York Power Authority (NYPA) and all other land claim defendants prior to the Settlement Agreement signed by the parties taking effect;

15. The State to assume litigation costs and responsibility to enforce terms and obligations of the Settlement Agreement if the Tribe breaches those terms and obligations;

16. That if the Tribe 's failure to make Compact-obligated payments results in a State determination that a Tribal breach has occurred, the Tribe's gaming exclusivity may be terminated, allowing the State to consider siting of new gaming opportunities within the Tribe's former exclusivity zone;

17. The State to assist St. Lawrence County and the Town of Brasher in obtaining by May 15, 2015 authorization to use all-terrain vehicles on trails in the Brasher State Forest;

18. The State to assist St. Lawrence County and the Town of Colton in obtaining the required designation to allow all-terrain vehicles use on a short portion of State Highway 56 as part of the Countywide multi-use trail, consistent with local law;

19. The State to initiate an environmental review process for the Route 11 bypass, a four lane limited access highway, around the Canton and Potsdam areas in St. Lawrence County;

20. The NYPA to enter a long-term lease for the use of the hangar being constructed at the Massena International Airport; and

21. The State, through the Governor, to submit legislation authorizing the monetization by the New York Power Authority of unallocated portions of 20 megawatts of hydropower currently dedicated for economic development purposes in St. Lawrence County, and

authorizing the use of monetization funds for economic development purposes in St. Lawrence County in coordination with the St. Lawrence River Valley Redevelopment Agency; and

And Further Therefore, the New York Power Authority does hereby enter into this Memorandum of Understanding endorsing a negotiated settlement that requires:

1. An Act of Congress to forever extinguish all Mohawk land claims prior to the Settlement Agreement signed by the parties taking effect; and

And Further Therefore, the Tribal Chiefs of the Saint Regis Mohawk Tribe and Governor of the State of New York do hereby enter into this Memorandum of Understanding endorsing a negotiated settlement agreement that requires:

1. Establishment of a process to allow the Tribe to designate as part of the Reservation lands any parcels it owns, or acquires by purchase from willing sellers or by voluntary transfer, in defined areas of St. Lawrence County on maps reviewed by the Saint Regis Mohawk Tribal Council totaling approximately 3,440 acres in the Town of Brasher, and 1,360 acres in the Town of Massena, designated as areas "C" and "D";

2. The State to be responsible for any unpaid real property taxes on parcels located within the claim area and for assisting St. Lawrence County to clear and revert title, as necessary, to the appropriate property owner. Such owner is responsible for any future property taxes on the property unless the title is transferred to the Tribe and the parcel is designated as Reservation land pursuant to the Settlement Agreement;

3. The NYPA to make payments to the Tribe of $2 million per year for 35 years;

4. NYPA to make available to the Tribe up to nine (9) megawatts of power and energy at NYPA's lowest rate for St. Lawrence-Franklin D. Roosevelt Power Project to meet the needs of the Reservation;

5. The State to waive tuition and mandatory fees for Mohawks enrolled at Akwesasne who qualify for admission to any State University of New York institution of higher learning;

6. Prohibits the State or NYPA from disposing or otherwise alienating title to any lands on Barnhart Island, Croil Island and Long Sault Island, including but not limited to parks or other surplus lands, by way of private sale or transfer;

7. The Tribe to be notified of all lands within areas designated in the Settlement Agreement that may come up for sale or auction as a result of a foreclosure by the State or St. Lawrence County or other political subdivisions, and the Tribe to be given a right

of first refusal to purchase such parcels, at the assessed value without any applicable exemptions (as set forth in the most recent final assessment roll), as well as parcels in those areas that have passed to the State under the N.Y.S. Abandoned Property Law;

8. The U.S. Department of the Interior's land-into-trust process to NOT be required for land within the areas designated by the Settlement Agreement be designated as Reservation and come under the sovereign authority of the Tribe, without infringing upon the Tribe's right to use the land-into-trust process for parcels outside the designated areas, so long as the rights of the State, St. Lawrence Counties and localities to oppose any such trust acquisitions outside the designated areas are likewise not infringed;

9. That nothing in the Settlement Agreement will alter or diminish any treaty, statutory, contractual or aboriginal hunting, harvesting, fishing, trapping and/or gathering rights of the Tribe; nor any existing utility, railroad and highway easements and rights-of-way;

10. A continued right of the Tribe and its enrolled members to have access to public, religious and cultural facilities located on publicly-owned lands off the reservation, such as churches and cemeteries and other spiritual and cultural sites;

11. The Tribe to adopt and enforce ordinances or codes that meet or exceed federal environmental standards and International Building Codes, and land use and zoning codes that meet or exceed the municipal land use and zoning codes in the respective towns to govern all properties that become part of its Reservation land, and the Tribe to implement an expedited process to resolve disputes concerning the sufficiency and enforcement of such ordinances and codes;

12. Parcels that become Reservation lands to be exempt from New York State and local real property taxes and regulation, but all lands to remain subject to local real property taxes and other laws effective within New York State until the lands have been designated as Reservation land by the Tribe under the designation process established by the Settlement Agreement;

13. The Tribe to provide basic governmental services to all properties that become Reservation lands, either directly or through service agreements under the auspices of the State, similar to existing police and fire service agreements;

14. The Tribe to immediately release to the State the remaining balance of gaming revenues withheld in prior years and to resume making such revenue sharing payments;

15. The Tribe to indemnify legal costs of the State and/or St. Lawrence County incurred to defend any challenge to the Settlement Agreement brought by the members of any other

tribal entity, including but not limited to the Mohawk Council of Akwesasne or the Mohawk Nation Council of Chiefs, and to enforce the terms of the Settlement Agreement;

16. The State, St. Lawrence County and NYPA to refrain from directly or indirectly funding any challenge to the Tribe's authority to exercise its rights under the Settlement Agreement;

17. An Act of Congress necessary to effectuate the terms of the final Settlement Agreement; and

18. The federal courts to have authority to compel all arbitrations in unresolved disputes and to enforce arbitration awards related to disputes arising out of the Settlement Agreement.

The Chairman of the St. Lawrence County Board of Legislators shall seek a resolution endorsing the terms of this Memorandum of Understanding and authorizing its Chairman to enter into any negotiated settlement agreement that contains substantially similar terms on behalf of the County of St. Lawrence.

The President of the New York Power Authority shall seek a resolution endorsing the terms of this Memorandum of Understanding and authorizing its President and Chief Executive Officer to enter any negotiated settlement agreement that contains substantially similar terms on behalf of the Board of Trustees.

Signed this Twenty-eighth day of May, Two Thousand Fourteen:

ANDREW M. CUOMO, GOVERNOR
STATE OF NEW YORK

RON LAFRANCE, JR., TRIBAL CHIEF
SAINT REGIS MOHAWK TRIBE

JONATHAN S. PUTNEY, CHAIRMAN
ST. LAWRENCE COUNTY LEGISLATURE

PAUL O. THOMPSON, TRIBAL CHIEF
SAINT REGIS MOHAWK TRIBE

GIL C. QUINIONES, PRESIDENT
NEW YORK POWER AUTHORITY

BEVERLY COOK, TRIBAL CHIEF
SAINT REGIS MOHAWK TRIBE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

THE CANADIAN ST. REGIS BAND OF MOHAWK INDIANS, *et al.*,

Plaintiffs,

-against-

STATE OF NEW YORK, *et al.*,

Defendants.

5:82-CV-0783 (Lead)
5:82-CV-1114 (Member)
5:89-CV-0829 (Member)
(LEK/TWD)

MEMORANDUM-DECISION AND ORDER

I. INTRODUCTION

This case involves a long-running dispute over ancestral land claims between three Mohawk plaintiffs[1] and intervenor-plaintiff United States of America (collectively, "Plaintiffs"), and defendants State of New York and Governor of the State of New York ("State Defendants"), and County of St. Lawrence, County of Franklin, Village of Massena, Town of Massena, Town of Bombay, Town and Village of Fort Covington, Key Bank of Northern New York, N.A., Nationwide Mutual Insurance Co., Niagara Mohawk Power Co. and Canadian National Railways ("Municipal Defendants") (collectively, "Defendants"). Presently before the Court are Plaintiffs' motions for partial summary judgment. See Dkt. Nos. 768 ("St. Regis Mohawks' Motion"), 768-1 ("St. Regis Mohawks' Memorandum of Law"), 768-3 ("St. Regis Mohawks' Statement of Material Facts"), 769 ("Akwesane Mohawks' Motion"), 769-1 ("Akwesane Mohawks' Statement

[1] The Mohawk plaintiffs are: the St. Regis Mohawk Tribe ("St. Regis Mohawks"); the Canadian St. Regis Band of Mohawk Indians, now known as the Mohawk Council of Akwesasne ("Canadian Band" or "Akwesasne Mohawks"); and the People of the Longhouse ("Longhouse"). See Canadian St. Regis Band of Mohawk Indians v. New York, No. 82-CV-0783, 2013 WL 3992830, at *1 n.3 (N.D.N.Y. July 23, 2013) (Kahn, J.).

of Material Facts"), 769-2 ("Akwesane Mohawks' Memorandum of Law"), 770 ("Longhouse's Motion"), 770-1 ("Longhouse's Memorandum of Law"), 771 ("United States' Motion"), 771-2 ("United States' Statement of Material Facts"), 773-1 ("United States' Memorandum of Law"), 788 ("State and Municipal Defendants' Opposition" or "Opposition"), 790 ("Response to St. Regis Mohawks' Statement of Material Facts"), 791 ("Response to United States' Statement of Material Facts"), 792 ("Response to Akwesane Mohawks' Statement of Material Facts"), 793 ("United States' Reply"), 794 ("Akwesane Mohawks' and Longhouse's Reply"), 795 ("St. Regis Mohawk's Reply"). For the reasons that follow, the Court grants St. Regis Mohawks' Motion, Longhouse's Motion, and United States' Motion in full, and grants Akwesane Mohawks' Motion in part.

II. BACKGROUND

Because the underlying history of this case extends back nearly to the founding of the United States of America and has been retold many times, the Court does not provide a recitation of the facts except as necessary to contextualize and resolve the relevant issue. For an account of the history leading up to this case, and of this case itself, see Canadian St. Regis Band of Mohawk Indians v. New York, No. 82-CV-0783, 2013 WL 3992830, at *2 (N.D.N.Y. July 23, 2013) (Kahn, J.). After numerous stays for settlement negotiation or pending resolution of potentially relevant Second Circuit and U.S. Supreme Court cases, Defendants moved for judgment on the pleadings under Federal Rule of Procedure 12(c) on the ground of laches. See id. The motions for judgment on the pleadings were granted in part and denied in part. See id. at *22. Since then, the case has been stayed while the parties attempted to reach a settlement. See Docket. On January 11, 2021, the Honorable Thérèse Wiley Dancks, United States Magistrate

Judge, lifted the stay. Dkt. No. 756. Furthermore, Judge Dancks ordered that any dispositive motions be filed by May 17, 2021. Dkt. No. 758. Subsequently, Plaintiffs each filed their motions for partial summary judgment. See St. Regis Mohawks' Mot.; Akwesane Mohawks' Mot.; Longhouse's Mot.; United States' Mot. Generally, each plaintiff is seeking partial summary judgment on some or all of the elements of a prima facie case under the Nonintercouse Act ("NIA"), 25 U.S.C. § 177, as well as summary judgment against the State and Municipal Defendants on some of their counterclaims and defenses. See generally St. Regis Mohawks' Mem. of L.; Akwesane Mohawks' Mem. of L.; Longhouse Mohawks' Mem. of L.; United States' Mem. of L. Although the motions have a lot of similarity, the Court will examine each motion individually.

State and Municipal Defendants requested to file a joint opposition, which the Court agreed to. See Dkt. No. 783. In their Opposition, Defendants argue that the motions for partial summary judgment should be denied because (1) they do not address whether Plaintiffs' claims are barred under City of Sherrill v. Oneida Indian Nation of New York, 544 U.S. 197 (2005) and Cayuga Indian Nation v. State of New York, 413 F.3d 266 (2d Cir. 2005), cert. denied, 547 U.S. 1128 (2006); and (2) the motions are premature. See generally Opp'n. Plaintiffs then timely filed their replies. See St. Regis Mohawk's Reply; Akwesane Mohawks' and Longhouse's Reply; United States' Reply.

III. LEGAL STANDARD

Federal Rule of Civil Procedure 56 instructs courts to grant summary judgment if "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A fact is "material" if it "might affect the outcome of the suit under

the governing law," and a dispute is "'genuine' . . . if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). Thus, while "[f]actual disputes that are irrelevant or unnecessary" will not preclude summary judgment, "summary judgment will not lie if . . . the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Id.; see also Taggart v. Time, Inc., 924 F.2d 43, 46 (2d Cir. 1991) ("Only when no reasonable trier of fact could find in favor of the nonmoving party should summary judgment be granted.").

The party seeking summary judgment bears the burden of informing the court of the basis for the motion and identifying those portions of the record that the moving party claims will demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). Similarly, a party is entitled to summary judgment when the nonmoving party has failed "to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Id. at 322.

In attempting to repel a motion for summary judgment after the moving party has met its initial burden, the nonmoving party "must do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). At the same time, a court must resolve all ambiguities and draw all reasonable inferences in favor of the nonmoving party. Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 150 (2000). Thus, a court's duty in reviewing a motion for summary judgment is "carefully limited" to finding genuine disputes of fact, "not to deciding them." Gallo v. Prudential Residential Servs., Ltd. P'ship, 22 F.3d 1219, 1224 (2d Cir. 1994).

IV. DISCUSSION

A. Defendants' Arguments

Before addressing Plaintiffs' claims, the Court begins by reviewing Defendants' arguments. Once more, Defendants argue that Plaintiffs' NIA claims do not help the parties reach a final resolution and that Plaintiffs' motions are premature. The Court disagrees.

1. Sherrill[2]

Defendants claim that "the only issue remaining in this action is whether Plaintiffs' claim to the Hogansburg Triangle is similarly barred under Sherrill and Cayuga" and that "Plaintiffs' motions do not address the issue of whether their claim to the Hogansburg Triangle is barred under Sherrill and Cayuga." Opp'n at 1, 7. It is important to correct Defendants' contention that "the Court's focus is on the threshold question of Sherrill's applicability." Id. at 9. This Court merely found that it could not "conclude that these claims are barred by laches and therefore [could not] grant Defendants judgment on the pleadings on the Hogansburg Triangle claims." Canadian St. Regis Band of Mohawk Indians, 2013 WL 3992830, at *20. There is no indication that the Court narrowed the case on Sherrill's applicability. The Court had to consider Sherrill because Defendants raised it in their motions for judgment on the pleadings. Moreover, Defendants misconstrue the difference between rights and remedies. See Sherrill, 544 U.S. at 213 ("The substantive questions whether the plaintiff has any right or the defendant has any duty, and if so what it is, are very different questions from the remedial questions whether this remedy or that is preferred, and what the measure of the remedy is."); see also Navajo Tribe of Indians v.

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[2] Briefly, the Sherrill defense is an equitable defense in the context of ancestral land claims. See Canadian St. Regis Band of Mohawk Indians, 2013 WL 3992830, at *2.

New Mexico, 809 F.2d 1455, 1467 (10th Cir. 1987) ("The distinction between a claim or substantive right and a remedy is fundamental."); Town of Verona v. Jewell, No. 08-CV-0647, 2015 WL 1400291, at *6 (N.D.N.Y. Mar. 26, 2015) (holding that Sherrill "clearly distinguished between questions of right and questions of remedy") (Kahn, J.). There is no question that Sherrill could bar recovery, see Oneida Indian Nation of New York v. Cty. of Oneida, 617 F.3d 114, 135 (2d Cir. 2010) ("[T]he [Sherrill] defense is properly applied to bar any ancient land claims that are disruptive of significant and justified societal expectations that have arisen as a result of a lapse of time during which the plaintiffs did not seek relief.") (emphasis added), but this goes more to the question of remedy than of rights. In many ways, it is similar to an affirmative defense, which "does not negate the elements of the plaintiff's claim, but instead precludes liability even if all of the elements of the plaintiff's claim are proven." Roberge v. Hannah Marine Corp., No. 96-1691, 1997 WL 468330, at *3 (6th Cir. 1997).

With that in mind, Plaintiffs can focus on questions of rights (i.e. whether they can establish a prima facie NIA claim or elements of a prima facie NIA claim) at the summary judgment stage without addressing questions of remedy. Indeed, the Federal Rules of Civil Procedure permit these types of partial summary judgment motions. See Fed. R. Civ. P. 56(a) ("A party may move for summary judgment, identifying each claim or defense — or the part of each claim or defense — on which summary judgment is sought.") (emphasis added); Fed. R. Civ. P. 56(a), Advisory Committee Notes, 2010 Amendments ("The first sentence is added to make clear at the beginning that summary judgment may be requested not only as to an entire case but also as to a claim, defense, or part of a claim or defense."); see also Castle v. United States, No. 15-CV-0197, 2017 WL 6459514, at *16 n.23 (N.D.N.Y. Dec. 18, 2017) ("While it is

somewhat unusual for a plaintiff to seek summary judgment on only some of the elements of his or her claim, it is permissible under the Federal Rules of Civil Procedure."). "[Any] battle over equitable defenses as to the remedial phase must, if necessary, be waged another day." Little Traverse Bay Bands of Odawa Indians v. Snyder, 194 F. Supp. 3d 648, 655 (W.D. Mich. 2016).

2. Premature Motions

Next, Defendants rely on Rule 56(d) to argue that Plaintiffs' motions are premature. Rule 56(d) "provides, as interpreted by court opinions, that when a party facing an adversary's motion for summary judgment reasonably advises the court [via an affidavit or declaration] that it needs discovery to be able to present facts needed to defend the motion, the court should defer decision of the motion until the party has had the opportunity to take discovery and rebut the motion." Commercial Cleaning Servs., L.L.C. v. Colin Serv. Sys., Inc., 271 F.3d 374, 386 (2d Cir. 2001).[3] A Rule 56(d) affidavit must "describ[e]: (1) what facts are sought and how they are to be obtained; (2) how these facts are reasonably expected to raise a genuine issue of material fact; (3) what efforts the affiant has made to obtain them; and (4) why the affiant's efforts were unsuccessful." Gualandi v. Adams, 385 F.3d 236, 244 (2d Cir. 2004). "The failure to file a Rule 56(d) affidavit sufficiently explaining the need for additional discovery 'is itself sufficient grounds to reject a claim that the opportunity for discovery was inadequate.'" Lunts v. Rochester City Sch. Dist., 515 F. App'x 11, 13–14 (2d Cir. 2013) (quoting Paddington Partners v. Bouchard, 34 F.3d 1132, 1137 (2d Cir. 1994)); see Cross v. State Farm Ins. Co., 926 F. Supp. 2d 436, 446 (N.D.N.Y. 2013) ("Plaintiff has not presented a proper affidavit or declaration on this

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[3] Rule 56(d) was previously labeled as Rule 56(f). See Gomez v. City of White Plains, No. 13-CV-7750, 2014 WL 2210646, at *3 (S.D.N.Y. May 23, 2014).

motion, so his Rule 56(d) application fails on this basis alone"); see also Whelehan v. Bank of Am. Pension Plan for Legacy Companies-Fleet-Traditional Ben., 5 F. Supp. 3d 410, 421 (W.D.N.Y. 2014) ("Merely referencing the need for additional discovery in a memorandum of law in opposition to a motion for summary judgment is not an adequate substitute for a Rule 56(d) affidavit.").

Defendants have failed to submit an affidavit or declaration that satisfies the requirements of Rule 56(d). It is true that Defendants did submit an affidavit with their opposition, see Dkt. No. 789, but Defendants generally reference that they "have not had the opportunity to conduct discovery on the issues raised in Plaintiffs' motions or to develop the record necessary to permit a meaningful responses to those Statements of Material Fact." Id. ¶ 34. When viewed in the light most favorable to Defendants, they have not provided any information in their affidavit on the nature of the uncompleted discovery (what facts are sought and how they are to be obtained), what efforts Defendants have made to obtain those facts, and why those efforts were unsuccessful.[4] "The lack of discovery, in and of itself, cannot justify denial of a properly supported motion for summary judgment." Bowden v. City of Buffalo, No. 15-CV-6565, 2021 WL 1162879, at *7 (W.D.N.Y. Mar. 26, 2021). Thus, the Court rejects Defendants' Rule 56(b) request. Cf. Milton v. Rosicki, Rosicki & Assocs., P.C., No. 02-CV-3052, 2007 WL 2262893, at *8 (E.D.N.Y. Aug. 3, 2007) ("Mr. Milton has failed to file an affidavit under Rule 56(f) and has failed to outline (1) the specific nature of the uncompleted discovery, (2) how the discovery

[4] The Court doubts that Defendants' affidavit satisfies the second requirement even though it does suggest that the facts are expected to raise a genuine issue of material fact with respect to diminishment or standing, Dkt. No. 789 ¶ 27. For now, however, the Court will assume that the second requirement was met.

sought is reasonably expected to create a genuine issue of material fact, and (3) what specific efforts he has made to obtain discovery."); Kwong v. Bloomberg, 876 F. Supp. 2d 246, 258 (S.D.N.Y. 2012) ("While the plaintiffs have submitted an affidavit purportedly in compliance with Rule 56(d), this affidavit does not make a specific proffer regarding what discovery the plaintiffs seek, why that discovery would be reasonably expected to create a genuine issue of material fact, or what effort they have made to obtain discovery."), aff'd, 723 F.3d 160 (2d Cir. 2013); Cap. One, Nat'l Ass'n v. Halland Companies, LLC, No. 15-CV-5664, 2017 WL 9485645, at *6 (E.D.N.Y. June 5, 2017) ("Further, a Rule 56(d) request similarly fails where an 'attorney's Rule 56(d) affidavit lacked any particularity as to how the facts sought would create an issue of material fact and made no attempt to explain the efforts [the party] made to obtain those facts during the time provided for discovery.'") (quoting Hoffmann v. Airquip Heating & Air Conditioning, 480 F. App'x 110, 112 (2d Cir. 2012)), report and recommendation adopted, 2017 WL 3769229 (E.D.N.Y. Aug. 28, 2017); Carollo v. United Cap. Corp., 528 F. Supp. 3d 37, 50–51 (N.D.N.Y. 2021) (finding that all four requirements were met).

Having analyzed Defendants' arguments, the Court agrees with Plaintiffs that Defendants have conceded to Plaintiffs' legal arguments. See United States' Reply at 4; Akwesane Mohawks' and Longhouse's Reply at 10. "[W]hen a non-movant fails to oppose a legal argument asserted by a movant, the movant may succeed on the argument by showing that the argument possess facial merit, which has appropriately been characterized as a modest burden." Est. of D.B. by Briggs v. Thousand Islands Cent. Sch. Dist., 327 F. Supp. 3d 477, 526 (N.D.N.Y. 2018) (internal quotation marks omitted).

B. NIA Claims

To establish a prima facie case of a violation of the Nonintercourse Act, a plaintiff must show that "(1) it is an Indian tribe, (2) the land is tribal land, (3) the United States has never consented to or approved the alienation of this tribal land, and (4) the trust relationship between the United States and the tribe has not been terminated or abandoned." Golden Hill Paugussett Tribe of Indians v. Weicker, 39 F.3d 51, 56 (2d Cir.1994); see 25 U.S.C. § 177 ("No purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from any Indian nation or tribe of Indians, shall be of any validity in law or equity, unless the same be made by treaty or convention entered into pursuant to the Constitution.").

1. St. Regis Mohawks

Thus, Plaintiff argues that it meets all of the elements and can establish a prima facie case. St. Regis Mohawks' Mem. of L. at 12–25. The Court agrees.

a. Indian Tribe

In an earlier iteration of this case, the Court found that "the St. Regis constitutes a federally recognized tribe under the NIA." Canadian St. Regis Band of Mohawk Indians ex rel. Francis v. New York, 278 F. Supp. 2d 313, 329 (N.D.N.Y. 2003). Additionally, the Court takes judicial notice of the portion of the Federal Register that lists the "Saint Regis Mohawk Tribe [previously listed as St. Regis Band of Mohawk Indians of New York]" as one of the tribal entities "recognized by and eligible for funding and services from the Bureau of Indian Affairs (BIA) by virtue of their status as Indian Tribes." See 86 FR 7554-01, 2021 WL 289477 (Jan. 29, 2021); see also Romero v. Bestcare Inc., No. 15-CV-7397, 2017 WL 1180518, at *3 n.5 (E.D.N.Y. Mar. 29, 2017) ("Courts are permitted to take judicial notice of the contents of the

Federal Register[.]"). Federal recognition is not a prerequisite for establishing tribal status. See Golden Hill, 39 F.3d at 58. However, "[c]ourts have consistently found that recognition of a tribe by the United States government is to be given substantial weight in determining an Indian plaintiff's tribal status for Nonintercourse Act claims." Oneida Indian Nation of New York v. New York, 194 F. Supp. 2d 104, 119 (N.D.N.Y. 2002) (collecting cases) (Kahn, J.). Thus, based on the federal recognition of the St. Regis Mohawks coupled with Defendants' failure to address Plaintiffs' legal arguments, the Court finds that there is no genuine issue of material fact regarding Plaintiff's tribal status for purposes of the NIA.

b. Tribal Land

Briefly, the land in question is land that would comprise the Hogansburg Triangle.[5] On May 31, 1796, the State, the St. Regis Mohawks, and the Seven Nations of Canada entered into a treaty in which the Seven Nations ceded all claims to land in New York, with a reservation of land "equal to six miles square reserved in the sale made by the commissioners of the land office of the said state to Alexander Macomb, to be applied to the use of the Indians of the village of St. Regis, shall still remain so reserved." See Dkt. No. 768-8, Ex. 13 ("1796 Treaty"). On January 16, 1797, the United States Senate ratified the treaty. See St. Regis Mohawks' SMF ¶ 32; Resp. to St. Regis Mohawks' SMF ¶ 32. Then, on June 12, 1824, the State of New York purchased from the St. Regis Mohawks a tract of 1000 acres of land located in what is now the Hogansburg Triangle. See St. Regis Mohawks' SMF ¶ 38; Resp. to St. Regis Mohawks' SMF ¶ 38. Another

[5] "The Hogansburg Triangle consists of a roughly 2,000-acre triangle of land carved out of the middle of the southern portion of the current St. Regis Reservation." Canadian St. Regis Band of Mohawk Indians, 2013 WL 3992830, at *15. "Two sides of the Hogansburg Triangle abut reservation land, while the third side continues the reservation's border with the Town of Bombay, of which the Triangle is a part." Id.

transfer occurred on December 14, 1824, in which the St. Regis Mohawks quit claimed to the State land that had been leased to Michael Hogan in 1817. See Dkt. No. 768-10, Ex. 19. A final land transaction occurred on September 23, 1825. See Dkt. No. 768-10, Ex. 19. None of the land transactions in 1824 and 1825 were ratified by the United States Senate. See St. Regis Mohawks' SMF ¶ 44; Resp. to St. Regis Mohawks' SMF ¶ 44.

Normally, to satisfy this element, a plaintiff would need to show at the time of the conveyances (here, 1824 and 1825), they actually held either aboriginal or recognized title to the land that would comprise the Hogansburg Triangle. "Aboriginal title is the exclusive right of Indian tribes to use and occupy lands they have inhabited from time immemorial." Seneca Nation of Indians v. New York, 206 F. Supp. 2d 448, 503 (W.D.N.Y. 2002) (internal quotation marks omitted) (quoting Mashpee Tribe v. Secretary of Interior, 820 F.2d 480, 481–82 (1st Cir.1987)), aff'd, 382 F.3d 245 (2d Cir. 2004). "Recognized title is title to Indian lands that has been recognized by federal treaty or statute." Id. at 505. "In order to establish recognized title, an Indian tribe must show a 'definite intention by congressional action or authority to accord legal rights, not merely permissive occupancy.'" Id. (quoting Tee-Hit-Ton Indians v. United States, 348 U.S. 272, 278–79 (1955)).

Plaintiff argues that the 1796 Treaty established that the tribes hold recognized land. St. Regis Mohawks' Mem. of L. at 14–15. The Court agrees that the plain text of the treaty supports this interpretation. The 1796 Treaty states:

> The said deputies do, for and in the name of the said Seven Nations or tribes of Indians, cede, release and quit claim to the people of the state of New-York, forever, all the claim, right, or title of them, the said Seven Nations or tribes of Indians, to lands within the said state: *Provided nevertheless,* That the tract equal to six miles square,

> reserved in the sale made by the commissioners of the land-office of the said state, to Alexander Macomb, to be applied to the use of the Indians of the village of St. Regis, shall still remain so reserved.

1796 Treaty.

The 1796 Treaty explicitly contains a proviso ("Provided nevertheless, . . .") that is critical to the treaty's interpretation because the proviso places conditions on the preceding text. See Chesapeake Energy Corp. v. Bank of New York Mellon Tr. Co., 773 F.3d 110, 115 (2d Cir. 2014) ("When a proposition is followed by a clause beginning with 'so long as,' the 'so long as' clause typically serves as a proviso, introducing a condition that narrows the broader initial proposition."). Here, the initial proposition is that the tribes forever gave up all their claims, rights, and titles to the land in New York. However, the proviso explicitly modified the immediately preceding language by reserving a tract of land for the St. Regis Indians. In other words, this proviso did confer recognized title to the St. Regis Indians.[6] If this was not the case and the St. Regis Indians did not possess legal rights to the land that now encompasses the Hogansburg Triangle, then the proviso would be superfluous.[7] See United States v. Davis, 961 F.3d 181, 188 (2d Cir. 2020) ("According to a principle that sometimes goes by the name of the 'anti-surplusage' canon, '[i]t is our duty to give effect, if possible, to every clause and word of a statute,' and we must therefore try to 'avoid statutory interpretations that render provisions

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[6] Each of the plaintiff tribes claim to be successors-in-interest to the St. Regis Indians.

[7] In an earlier iteration of this case, the Court declined to make a determination of the title held by the St. Regis Indians at the motion to strike stage because it was premature. See Canadian St. Regis Band, 278 F. Supp. 2d at 344–46. There, Defendants raised arguments, contesting the interpretation of the 1796 Treaty. Here, however, Defendants do not raise any arguments. See generally Opp'n. Since we are now at the (partial) summary judgment stage, the Court can resolve this question of law.

superfluous,'") (internal citations omitted); see also Kahn Lucas Lancaster, Inc. v. Lark Int'l Ltd., 186 F.3d 210, 215 (2d Cir. 1999) ("Treaties are construed in much the same manner as statutes."), abrogated on other grounds by American Intern. Group, Inc. v. Bank of Am. Corp., 712 F.3d 775 (2d Cir. 2013). Indeed, since Defendants have not raised any arguments relating to the interpretation of the 1796 Treaty, the Court finds that Plaintiff met its modest burden.

c. The United States' Lack of Consent or Approval over the Conveyances

Next, the Court must determine whether the United States consented to or approved the alienation of this tribal land. Plaintiff argues "there is no evidence to support a finding that the conveyances were treaties ratified by the Senate, and this court has no basis to go beyond that fact because only the Senate has the power to ratify a treaty and only Congress has the power to extinguish Indian title." See St. Regis Mohawks' Mem. of L. at 21. The Court agrees.

The NIA explicitly provides that "[n]o purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from any Indian nation or tribe of Indians, shall be of any validity in law or equity, unless the same be made by treaty or convention entered into pursuant to the Constitution." 25 U.S.C. § 177 (emphasis added). Some courts also provide that "only a federal statute or treaty can affect tribal land rights." Oneida Indian Nation v. Phillips, 397 F. Supp. 3d 223, 233 (N.D.N.Y. 2019) (citing 25 U.S.C. § 177), aff'd, 981 F.3d 157 (2d Cir. 2020). This Court need not resolve whether a federal statute (but not a treaty) can satisfy this element of the NIA, because the Court finds that New York's 1824 and 1825 land transactions were not ratified by statute or treaty. Plaintiff submitted an affidavit indicating that its search had not revealed any treaty ratifying the transactions. See Dkt. No. 768-2 ¶ 2. Furthermore, the Court's

review of the United States Code did not reveal any congressional statute ratifying the transactions.[8] Thus, the United States did not consent to the transactions at issue.

d. Trust relationship between the United States and the Tribe

Plaintiff briefly argues in a footnote that "[a]s a federally recognized tribe, there is no question that the Tribe has a continuing trust relationship with the United States government." See St. Regis Mohawks' Mem. of L. at 12 n.6. Although this argument was not properly placed before the Court because of its placement in a footnote, see Young America's Foundation v. Stenger, No. 20-CV-0822, 2021 WL 3738005, at *15 (N.D.N.Y. Aug. 24, 2021) (collecting cases) (Kahn, J.), the Court considers this argument and agrees that the trust relationship between the United States and the St. Regis Mohawks has not been terminated or abandoned. "[T]he federal government regularly has a fiduciary or trust relationship with federally recognized tribes." Union Pac. R.R. Co. v. Runyon, 320 F.R.D. 245, 252 (D. Or. 2017); see also Montana Bank of Circle, N.A. v. United States, 7 Cl. Ct. 601, 613 (1985) ("There is a general trust relationship that exists between the United States and the FBIC, as a recognized group of Indians."). Furthermore, Defendants have not provided any information that Congress withdrew its trust obligations. See Joint Tribal Council of the Passamaquoddy Tribe v. Morton, 528 F.2d 370, 380 (1st Cir. 1975) ("any withdrawal of trust obligations by Congress would have to have been 'plain and unambiguous' to be effective.").

Thus, a prima facie NIA violation has been established.

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[8] The Court also found the other Plaintiffs' searches of treaties and statutes to be just as persuasive. See, e.g, United States' Mem. of L. at 15–16. Additionally, Defendants have admitted that none of the land transactions in 1824 and 1825 were ratified by the United States Senate. See St. Regis Mohawks' SMF ¶ 44; Resp. to St. Regis Mohawks' SMF ¶ 44.

2. Akwesane Mohawks

This Plaintiff argues that it meets the first three NIA elements. See generally Akwesane Mohawks' Mem. of L. Because the Court has already found that the 1796 Treaty established that the St. Regis Indians hold recognized land and that the United States did not consent to the transactions at issue, see supra sections IV(B)(1)(b)–(c), the analysis will be limited to whether this Plaintiff is an "Indian tribe."

As explained above, federal recognition is not a prerequisite for establishing tribal status. See Golden Hill, 39 F.3d at 58. Instead, "[f]ederal courts have held that to prove tribal status under the Nonintercourse Act, an Indian group must show that [1] it is a body of Indians of the same or a similar race, [2] united in a community under one leadership or government, and [3] inhabiting a particular though sometimes ill-defined territory." Id. at 59 (internal quotation marks omitted). This is commonly known as the Montoya criteria, named after the Supreme Court decision in Montoya v. United States, 180 U.S. 261, 266 (1901). Although the Court will apply the Montoya criteria because it is bound to by precedent, we agree with other courts who have found this standard to be problematic. See, e.g., Accohannock Indian Tribe v. Tyler, No. 21-CV-2550, 2021 WL 5909102, at *11 (D. Md. Dec. 14, 2021) ("While the Montoya standard from 1901 may not be the most politically appealing standard considering modern sensibilities, it is the only standard available under federal common law for this Court to employ."); Gristede's Foods, Inc. v. Unkechuage Nation, 660 F. Supp. 2d 442, 470 (E.D.N.Y. 2009) ("Against the backdrop of these conflicting practices of the federal government with regard to Indians, the court finds application of the Montoya criteria problematic. Nevertheless, the court is bound by precedent to apply the Montoya criteria for tribal recognition pursuant to federal common law.").

The Court finds that there is insufficient information in the record to determine whether the Akwesane Mohawks satisfy the Montoya criteria. In support of their motion, Plaintiff points out that they are a recognized tribe in Canada. See Akwesane Mohawks' Mem. of L at 5–7. Plaintiffs also provide a link to their entry in the Canadian government's directory of recognized tribes in Canada, as well as several Canadian Supreme Court decisions. See id. at 6, n.5; id. at 7. However, there was no evidence submitted by Plaintiff explaining how they satisfy the Montoya criterion, except for a general conclusory statement that "[Plaintiff] is a body of Indians, united under one government, which inhabits a particular, well-defined territory." Id. at 5. Plaintiffs do point to the fact that Defendants admitted to Plaintiff's tribal status, but this is not entirely correct. Defendants only admitted that Plaintiff is a tribe recognized by Canada. See, e.g., Dkt. No. 13 ¶ 4 ("The plaintiff Band is an Indian tribe organized under the laws of Canada.") and Dkt. No. 314 ¶ 4 ("ADMIT the first allegation contained in Paragraph 4 of Plaintiff's Amended Complaint that Plaintiff is an Indian Tribe organized under the laws of Canada"), Akwesane Mohawks' SMF ¶ 1 ("MCA is an Indian tribe recognized under the laws of Canada.") and Resp. to Akwesane Mohawks' SMF ¶ 1 ("The Defendants admit Paragraph 1 of The Mohawks of Akwesasne's Statement of Material Facts but deny that this Statement of Fact is material to the issues currently before the Court"). Canada's recognition of tribal status is irrelevant to this case, but the information that the Canadian government relied upon in making the recognition determination may be relevant. Plaintiff did not provide that information to the Court. Moreover, the link to the directory alone does not satisfy Montoya. Rather, the Court believes that an evidentiary hearing like in Gristede's Foods, Inc. v. Unkechauge Nation, No. 06-CV-1260, 2006 WL 8439534 (E.D.N.Y. Dec. 22, 2006) is necessary. In Gristede's, defendant tribes needed to

establish the Montoya factors in order to establish sovereign immunity. Id. at *2–5. The court found that there was insufficient information and so decided to hold an evidentiary hearing to establish whether the tribes satisfied Montoya. Id. at *5. The court then resolved the issue in favor of one of the tribes after the hearing. See generally Gristede's Foods, Inc., 660 F. Supp. 2d at 469– 477. Similarly here, Plaintiff has not provided sufficient information for the Court to determine its tribal status. Thus, this Court will refer discovery and an evidentiary hearing relating to Plaintiff's tribal status to the Magistrate Judge assigned to the case.

In conclusion, the Court grants Plaintiff's partial summary judgment motion as to the second and third elements of the NIA claim but reserves decision with regards to the first element of the NIA claim.[9]

3. Longhouse

This Plaintiff only argues that partial summary judgment should be granted in favor of Plaintiff on the second and third NIA elements. Longhouse Mem. of L. at 7. The Court agrees because the Court has already found that the 1796 Treaty established that the St. Regis Indians hold recognized land and that the United States did not consent to the transactions at issue. See supra sections IV(B)(1)(b)–(c).[10]

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[9] Plaintiff Akwesane Mohawks and Longhouse both contend that their NIA claims applly with equal force for 144 acres in the Hogansburg Triangle as they do for the rest of the subject land. Akwesane Mohawks Mem. of L. at 16–17 n.9; Longhouse Mem. of L. at 6. Since this issue is not relevant to the NIA determination, the Court will assume that Plaintiffs are correct. For more information about the 144 acre piece that is precluded from the United States' and St. Regis Mohawks' claims, see Canadian St. Regis Band of Mohawk Indians v. New York, No. 82-CV-0783, 2012 WL 8503274, at *19 n.35 (N.D.N.Y. Sept. 28, 2012), report and recommendation adopted in part, rejected in part, 2013 WL 3992830 (N.D.N.Y. July 23, 2013).

[10] Unlike Plaintiff Akwesane Mohawks, Plaintiff Longhouse chose not to argue their tribal status under the NIA. Because this issue is dispositive of Longhouse's NIA claims and

4. United States

Finally, the United States argues that it meets all of the elements of its NIA claim. See United States' Mem. of L. at 7–16. The Court agrees. As for the first and fourth elements, the United States argues that it met these elements because "United States is, and has always been, the trustee of the Indian beneficiaries of the 1796 Treaty and, as trustee, has the right to assert its NIA claims." Id. at 10. The Court agrees for the reasons laid out in the United States' Memorandum of Law. See also Cayuga Indian Nation of New York, by Patterson v. Cuomo, 565 F. Supp. 1297, 1321 (N.D.N.Y. 1983) ("It is well established that the United States may, as trustee on behalf of an Indian tribe, bring suit to enforce tribal possessory rights protected by the Nonintercourse Act and other federal laws.") (collecting cases). And the second and third elements are met for the reasons explained above. See supra sections IV(B)(1)(b)–(c). Thus, the United States is entitled to summary judgment on all of the elements of its NIA claim.

C. State Counterclaims

There is substantial overlap among Plaintiffs about the counterclaims they believe should be entered in their favor. All of the Plaintiffs address disestablishment and diminishment, but only the United States addresses the Quiet Title Act counterclaim. The Court will address the counterclaims in turn.

1. Disestablishment

This Court has previously held that "to determine whether a reservation has been diminished or disestablished, it is necessary to look to (1) the statutory or treaty language used to

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since the Magistrate Judge will be already holding a Montoya evidentiary hearing, the Court believes that it would be efficient to include Longhouse's tribal status in this evidentiary hearing.

open the Indian lands, (2) the historical context surrounding the congressional acts, and (3) the use and ownership of the lands since that time." Oneida Indian Nation, 194 F. Supp. 2d at 141 (citing Hagen v. Utah, 510 U.S. 399, 410–11 (1994)). The Supreme Court recently clarified that "only Congress can divest a reservation of its land and diminish its boundaries." McGirt v. Oklahoma, 140 S. Ct. 2452, 2462 (2020) (quoting Solem v. Bartlett, 465 U.S. 463, 470 (1984)) (cleaned up). Additionally, McGirt explained that "if during the course of our work an ambiguous statutory term or phrase emerges, we will sometimes consult contemporaneous usages, customs, and practices to the extent they shed light on the meaning of the language in question at the time of enactment." Id. at 2468. Even though McGirt did not explicitly overrule Hagen, the Court is bound by McGirt's approach, namely that the Court will not look to"(2) the historical context surrounding the congressional acts, and (3) the use and ownership of the lands since that time" unless there is an ambiguous term in the statute or treaty. See also Oneida Nation v. Vill. of Hobart, 968 F.3d 664, 675 n.4 (7th Cir. 2020), reh'g denied (Sept. 18, 2020) ("We read McGirt as adjusting this framework by establishing statutory ambiguity as a threshold for any consideration of context and later history.").

In each of their answers to the various complaints, State Defendants raised the same counterclaim: the 1832 treaty with the Menominee Indians and the 1838 Buffalo Creek Treaty disestablished the reservations. See, e.g., Dkt. Nos. 315 ¶¶ 83–91, 316 ¶¶ 58–67; Case No. 89-CV-829, Dkt. No. 53 ¶¶ 78–86. The Court analyzes each treaty in turn.

a. 1832 Treaty

According to the State's amended answer, "[i]n 1832 the United States entered into a treaty with the Menominee Indians ("1832 Treaty") whereby the Menominee Indian Nation ceded

lands to the United States to be set apart for the New York Indians, including the St. Regis Tribe '. . .to answer all the wants of the New York Indians, and St. Regis tribe.'" See, e.g., Dkt. Nos. 315 ¶ 87, 316 ¶ 63; Case No. 89-CV-829, Dkt. No. 53 ¶ 82. Additionally, "[p]ursuant to the 1832 Treaty, the New York Indians, including the St. Regis, were expected to leave the State of New York and relocate to the land ceded to the United States by the Menominee Indian Nation set aside for them." See, e.g., Dkt. Nos. 315 ¶ 88, 316 ¶ 64; Case No. 89-CV-829, Dkt. No. 53 ¶ 83. Under McGirt, this is not sufficient to show disestablishment. The State does not point to any ambiguous language in the treaty, nor could it because the plain text of the treaty provides that only the Menominee Indians ceded land under this treaty. See generally Dkt. No. 772-6. Indeed, the New York Indians and the St. Regis Indians actually received land from this treaty. Id. The Court finds that this cannot be plausibly read as an act of disestablishment. See also Solem, 465 U.S. at 470 ("Once a block of land is set aside for an Indian Reservation and no matter what happens to the title of individual plots within the area, the entire block retains its reservation status until Congress explicitly indicates otherwise.") (citing United States v. Celestine, 215 U.S. 278, 285 (1909)).[11] By focusing on the "expect[ations]" of the St. Regis Indians during this treaty, Defendant raises questions of intent and understanding of the parties at the time of the treaty, but once again, the Court can easily disregard this because the Court could not identify any relevant ambiguity within the treaty, a prerequisite before any consideration of context and later history. Simply put, "[t]here is no need to consult extratextual sources when the meaning of a statute's terms is clear." McGirt, 140 S. Ct. at 2469.

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[11] The Court has already determined that the 1796 Treaty conferred recognized or reserved title to the St. Regis Indians.

b. 1838 Buffalo Creek Treaty

The Court next looks at whether the 1838 Treaty of Buffalo Creek disetablished Plaintiffs' interest in the disputed lands. According to the State's amended answer, "[i]n 1838 the United States entered into another treaty with the New York Indians, the Treaty with New York Indians at Buffalo Creek in the State of New York ('Treaty of Buffalo Creek') . . . [where] [p]ursuant to the Buffalo Creek treaty, the New York Indians, including the St. Regis, relinquished their rights to the lands granted under the 1832 Treaty in exchange for lands west of Missouri." See, e.g., Dkt. Nos. 315 ¶ 89, 316 ¶ 65; Case No. 89-CV-829, Dkt. No. 53 ¶ 84.

This Court is not the first to determine whether the Buffalo Creek treaty disestablished Indian reservations. See, e.g., Cayuga Indian Nation of New York v. Seneca Cty., New York, 260 F. Supp. 3d 290, 310–315 (W.D.N.Y. 2017) (interpreting the Buffalo Creek treaty to find that the Cayuga reservation was not disestablished by the treaty), id. at 311–312 ("the Second Circuit has repeatedly indicated that the same treaty did not disestablish the Oneida reservation.") (collecting cases).

Article 9 of the Buffalo Creek treaty states:

> It is agreed with the American party of the St. Regis Indians, that the United States will pay to the said tribe, on their removal west, or at such time as the President shall appoint, the sum of five thousand dollars, as a remuneration for monies laid out by the said tribe, and for services rendered by their chiefs and agents in securing the title to the Green Bay lands, and in removal to the same, the same to be aportioned [sic] out to the several claimants by the chiefs of the said party and a United States' Commissioner, as may be deemed by them equitable and just.

Dkt. No. 772-7 ("1838 Buffalo Creek Treaty").

However, unlike with regard to the other tribes, there is a supplemental article that the Court must consider:

> And it is further agreed, that any of the St. Regis Indians who wish to do so, shall be at liberty to remove to the said country at any time hereafter within the time specified in this treaty, but under it the Government shall not compel them to remove. The United States will, within one year after the ratification of this treaty, pay over to the American party of said Indians one thousand dollars, part of the sum of five thousand dollars mentioned in the special provisions for the St. Regis Indians, any thing in the article contained to the contrary notwithstanding.

Id., Supplemental Article (emphasis added).

In Oneida v. City of Sherrill, 337 F.3d 139, 161 (2d Cir. 2003), the Second Circuit noted that with regards to the Oneidas, "[t]here is no specific cession language, and no fixed-sum payment for opened land in New York; rather there is only the possibility of a sale for uncertain future proceeds." Onedia, 337 F.3d at 161 (internal quotation marks omitted), rev'd on other grounds Sherrill, 544 U.S. 197 (2005). Here too, the Court finds that the 1838 Buffalo Creek Treaty did not disestablish the St. Regis Indian reservation.

Once more, disestablishment has "never required any particular form of words," "[b]ut it does require that Congress clearly express its intent to do so, [c]ommon[ly with an] [e]xplicit reference to cession or other language evidencing the present and total surrender of all tribal interests." McGirt, 140 S. Ct. at 2463 (2020) (internal citations and quotation marks omitted). The supplemental article explicitly says that the Government will not compel St. Regis Indians to remove. If the Government wanted to remove the St. Regis Indians, they would not have negotiated a treaty term saying that they would not compel them to remove and that it would be up to the St. Regis Indians to decide to remove. There is no ambiguity in the treaty's text, and so

the Court does not have to consider any extratextual sources. Thus, based on the plain text of the Buffalo Creek treaty, the Court finds that this treaty cannot be plausibly read as an act of disestablishment.

Having found that neither the 1832 treaty with the Menominee Indians nor the 1838 Buffalo Creek Treaty disestablished the reservations, the Court will grant summary judgment in favor of Plaintiffs and against the State on their disestablishment counterclaim.

2. Diminishment

Unlike disestablishment, diminishment "commonly refers to the reduction in size of a reservation." Yankton Sioux Tribe v. Gaffey, 188 F.3d 1010, 1017 (8th Cir.1999). McGirt applies with equal force to both disestablishment and diminishment. See McGirt, 140 S. Ct. at 2462 ("only Congress can divest a reservation of its land and diminish its boundaries.") (quoting Solem, 465 U.S. at 470) (cleaned up).

In each of their answers to the various complaints, Defendant State of New York raised the same counterclaim: any interest in the land conferred by the 1796 Treaty were diminished as a result of the land transactions between the St. Regis Indians and the State. See, e.g., Dkt. Nos. 315 ¶¶ 92–97, 316 ¶¶ 68–76; Case No. 89-CV-829, Dkt. No. 53 ¶¶ 87–93.

This Court has already found that the 1796 Treaty established that the St. Regis Indians hold recognized land and that the United States did not consent to the transactions at issue. See supra sections IV(B)(1)(b)–(c); see also McGirt, 140 S. Ct. at 2462 ("To determine whether a tribe continues to hold a reservation, there is only one place we may look: the Acts of Congress."). In short, because the Court already held that New York's 1824 and 1825 land transactions were not ratified by statute or treaty, the Court will grant summary judgment in favor

of Plaintiffs and against the State on their diminishment counterclaim. See also South Dakota v. Yankton Sioux Tribe, 522 U.S. 329, 343 (1998) ("[O]nly Congress can alter the terms of an Indian treaty by diminishing a reservation, and its intent to do so must be clear and plain") (citation and internal quotation marks omitted).

3. Quiet Title

Finally, with respect to the United States, the State asserted a counterclaim based on the Quiet Title Act ("QTA"). See Dkt. No. 316 ¶¶ 92–98. Resolution of this counterclaim depends on whether the QTA renders the United States immune from suit. The QTA provides:

> The United States may be named as a party defendant in a civil action under this section to adjudicate a disputed title to real property in which the United States claims an interest, other than a security interest or water rights. This section does not apply to trust or restricted Indian lands. . .

28 U.S.C. § 2409a(a) (emphasis added).

The Supreme Court has explained that "when the United States claims an interest in real property based on that property's status as trust or restricted Indian lands, the QTA does not waive the Government's immunity." Mottaz v. United States, 476 U.S. 834, 843 (1986). "As long as the United States has a 'colorable claim' to a property interest based on that property's status as trust or restricted Indian lands, the QTA renders the government immune from suit." State of Alaska v. Babbitt, 75 F.3d 449, 451–52 (9th Cir. 1996). The United States argues that the QTA counterclaim is groundless because it has demonstrated that "(1) the 1796 Treaty bestowed recognized title on the St. Regis Indians, creating a permanent property interest in the lands at issue in this case; and (2) the federal Reservation created by the 1796 Treaty has not been disestablished or diminished and remains fully intact today." United States' Mem. of L. at

40. The Court agrees and finds that the United States has a colorable claim to a property interest in the Indian lands in question. Thus, the Court will grant summary judgment in favor of the United States and against the State on their QTA counterclaim.

Therefore, the Court agrees with Plaintiffs and the relevant counterclaims will be dismissed.

D. State Defenses

The St. Regis Mohawks seek partial summary judgment on whether the defenses of abandonment and release and relinquishment can stand. The Akwesane Mohawks and Longhouse do not seek partial summary judgment on any of the State's defenses. The United States seeks partial summary judgment on the defenses of ratification, abandonment, release, and extinguishment. As with the counterclaims, the Court will analyze each defense in turn.

1. Abandonment

The defense of abandonment hinges on whether the St. Regis Indian tribes had aboriginal or recognized title. "Since aboriginal title is dependent upon actual, continuous and exclusive possession of the land, proof of a tribe's voluntary abandonment of such property constitutes a defense to a subsequent claim concerning the land." Cayuga Indian Nation of New York v. Cuomo, 758 F. Supp. 107, 110 (N.D.N.Y. 1991). "However, if an Indian tribe possesses recognized title in certain land, then Congress, and only Congress, may divest the tribe of its title to such land." Id. "[P]roof of the plaintiffs' physical abandonment of the property at issue is irrelevant in a claim for land based upon reserved title to Indian land, for such title can only be extinguished by an act of Congress." Id. at 118. Since the Court already found that the 1796 Treaty conferred recognized title on the St. Regis Indians, the defense of abandonment is

irrelevant and the Court will grant partial summary judgment in favor of the St. Regis Mohawks and the United States.

2. Release and Relinquishment

"[I]n accordance with the federal government's policy toward protecting Indian tribes and their land, as evidenced by the Nonintercourse Act, independent release and relinquishment of reservation land, without congressional ratification of same, would be ineffective to terminate reservation status." Cayuga Indian Nation of New York v. Vill. of Union Springs, 317 F. Supp. 2d 128, 138 (N.D.N.Y. 2004). Therefore, "congressional intent to terminate the [St. Regis Indians'] reservation is a necessary prerequisite to a finding of disestablishment or release and relinquishment[.]" Id. Since the Court has found that neither the 1832 treaty with the Menominee Indians nor the 1838 Buffalo Creek Treaty terminated the reservations, the St. Regis Indians did not release and relinquish rights to the reservation by entering into said treaties. The Court will grant partial summary judgment in favor of the St. Regis Mohawks and the United States on the release and relinquishment defenses.

3. Ratification

Defendant's next defense is that "the United States consented to, approved, and/or encouraged the grants, transfers, conveyances or other alienation of that land in a manner that bars the Plaintiff Tribes and the United States from making any claims against the State" and "the United States ratified the grants, transfers, conveyances or other alienation of that land such that the Plaintiff Tribes and the United States are barred from making any claims against the State." Dkt. No. 316 ¶¶ 42–43. The United States argues this Court was mistaken to claim that the law was "far from clear that ratification of Indian land transactions must necessarily be by

treaty or statute." Oneida Indian Nation, 194 F. Supp. 2d at 121; see also United States' Mem. of L. at 16–19. Instead, the United States argues that "Ratification of an alienation of Indian land must be pursuant to a ratified treaty or other act of Congress." Id. at 19. The Court agrees with the United States because McGirt provides a rationale that the Court did not have twenty years ago:

> Likewise, courts have no proper role in the adjustment of reservation borders. Mustering the broad social consensus required to pass new legislation is a deliberately hard business under our Constitution. Faced with this daunting task, Congress sometimes might wish an inconvenient reservation would simply disappear. Short of that, legislators might seek to pass laws that tiptoe to the edge of disestablishment and hope that judges—facing no possibility of electoral consequences themselves—will deliver the final push. But wishes don't make for laws, and saving the political branches the embarrassment of disestablishing a reservation is not one of our constitutionally assigned prerogatives. "[O]nly Congress can divest a reservation of its land and diminish its boundaries." Solem, 465 U.S., at 470, 104 S. Ct. 1161. So it's no matter how many other promises to a tribe the federal government has already broken. If Congress wishes to break the promise of a reservation, it must say so.

McGirt, 140 S. Ct. at 2462 (emphasis added). The Court has repeatedly found throughout this opinion that Congress did not ratify, whether through statute or treaty, any of the land transactions between the St. Regis Indians and the State. McGirt foreclosed the possibility of implicit congressional ratification. Thus, summary judgment is granted in favor of the United States on the ratification defense.

4. Extinguishment

The Court can briefly dispense of the next affirmative defense because it was not even listed as an affirmative defense in the State's Answer. Instead, the only reference to extinguishment is found in thedisestablishment and diminishment counterclaim sections (and the

Court has already ruled in favor of Plaintiffs on these counterclaims). See Dkt. No. 316 ¶¶ 60, 71, 75.

Therefore, the Court agrees with Plaintiffs and the relevant defenses will be stricken.

E. Municipal Defendants' Counterclaim and Defenses

Finally, three of the four Plaintiffs attack Municipal Defendants' Counterclaims and Defenses. Specifically, Plaintiff St. Regis Mohawks attacks Municipal Defendants' (1) defense that the conveyances were valid and therefore Plaintiffs "released and relinquished all claims" [Municipal Defendant's seventeenth affirmative defense]; (2) defense that the St. Regis Indians released and relinquished any interest they had in the land based on the 1832 treaty and the 1838 Buffalo Creek treaty [Municipal Defendant's twenty-first affirmative defense]; and (3) a counterclaim that any rights created by the 1796 treaty were "ceded, released, relinquished and/or disestablished" by land transactions, the 1832 treaty, and/or the 1838 Buffalo Creek treaty [Municipal Defendant's first counterclaim]. St. Regis. Mohawks' Mem. of L. at 2 n.1; see also Case No. 89-CV-829, Dkt. No. 51. Plaintiff Akwesane Mohawks only seek summary judgment in their favor on Municipal Defendants' first counterclaim, which is the same as the first counterclaim that the St. Regis Mohawks are attacking. Compare id. ¶¶ 119–20 with Dkt. No. 314 ¶¶ 105–106; see also Akwesane Mohawks' Mem. of L. at 16. Plaintiff Longhouse adopts the same arguments as the St. Regis Mohawks in regards to the same affirmative defenses and counterclaim. Longhouse Mem. of L. at 4. Like before, the Court analyzes each counterclaim and defense in turn.

1. Municipal Defendants' First Counterclaim

Municipal Defendants' first counterclaim is that any rights created by the 1796 treaty were "ceded, released, relinquished and/or disestablished" by land transactions, the 1832 treaty, and/or the 1838 Buffalo Creek treaty. Case No. 89-CV-829, Dkt. No. 53; Dkt. No. 314 ¶¶ 105–106. Municipal Defendants are raising arguments based on disestablishment, release, and relinquishment, but the Court has already found that neither 1832 treaty with the Menominee Indians nor the 1838 Buffalo Creek Treaty disestablished the reservations, nor were any of the relevant land transactions ratified by Congress. Without anything more, the Court agrees that Municipal Defendants' first counterclaim must be dismissed as a matter of law.

2. Municipal Defendants' Seventeenth Affirmative Defense

This affirmative defense is based on Municipal Defendants' contention that the land transactions were valid, and as a result, Plaintiffs released and relinquished their claims to disputed lands. Case No. 89-CV-829, Dkt. No. 51 ¶¶ 98–100. However, the Court has already found that none of the land transactions were ratified by Congress, and this proved to be fatal to the State's ratification defense. As such, the Court will grant summary judgment in favor of the Longhouse and the St. Regis Mohawks on this affirmative defense because the conveyances were not valid without explicit congressional ratification.

3. Municipal Defendants' Twenty-First Affirmative Defense

Finally, Municipal Defendants contend in their affirmative defense that pursuant to the 1832 treaty and 1838 Buffalo Creek treaty, "Plaintiffs released and relinquished any interest they may have had in the lands in New York and have no rights or interests in lands in the State of New York on which to base the instant claim." Case No. 89-CV-829, Dkt. No. 51 ¶¶ 112–17.

This too fails because the Court already found that since neither the 1832 treaty with the Menominee Indians nor the 1838 Buffalo Creek Treaty terminated the reservations, the St. Regis Indians did not release and relinquish rights to the reservation by entering into said treaties. As such, the Court will grant summary judgment in favor of the Longhouse and the St. Regis Mohawks on this affirmative defense.

V. CONCLUSION

Accordingly, it is hereby:

ORDERED, that Plaintiff St. Regis Mohawks' Motion (Dkt. No. 768) is **GRANTED**. Plaintiff St. Regis Mohawks have established a prima facie case under the NIA; and it is further

ORDERED, that Plaintiff Akwesane Mohawks' Motion (Dkt. No. 769) is **GRANTED in part**. Plaintiff Akwesane Mohawks have established the second and third elements for a prima facie case under the NIA. As for the first element, the Court reserves its decision, but the Court will refer discovery and an evidentiary hearing relating to Plaintiff's tribal status to the Magistrate Judge assigned to the case; and it is further

ORDERED, that Plaintiff Longhouse's Motion (Dkt. No. 770) is **GRANTED**. Plaintiff Longhouse has established the second and third elements for a prima facie case under the NIA. The Court will also refer discovery and an evidentiary hearing relating to tribal status to the Magistrate Judge assigned to the case; and it is further

ORDERED, that Plaintiff United States' Motion (Dkt. No. 771) is **GRANTED**. Plaintiff United States has established a prima facie case under the NIA; and it is further

ORDERED, that State Defendants' disestablishment and diminishment counterclaims (Dkt. Nos. 315 ¶¶ 83–97, 316 ¶¶ 58–76; Case No. 89-CV-829, Dkt. No. 53 ¶¶ 78–93) are **DISMISSED**; and it is further

ORDERED, that State Defendants' Quiet Title Act counterclaim (Dkt. No. 316 ¶¶ 92–98) is **DISMISSED**; and it is further

ORDERED, that State Defendants' abandonment and release/relinquishment defenses be **STRICKEN** from State Defendants' Answer to Plaintiff St. Regis Mohawk's Complaint (Case No. 89-CV-829, Dkt. No. 53 ¶¶ 65–66); and it is further

ORDERED, that State Defendants' abandonment, release, and ratification defenses to be **STRICKEN** from State Defendants' Answer to Plaintiff United States' Complaint (Dkt. No. 316, ¶¶ 42–45); and it is further

ORDERED, that Municipal Defendants' first counterclaim (Dkt. No. 314 ¶¶ 105–106, Case No. 89-CV-829, Dkt. No. 51 ¶¶ 119–20) is **DISMISSED**; and it is further

ORDERED, that Municipal Defendants' Seventeenth and Twenty-First Affirmative Defenses (Case No. 89-CV-829, Dkt. No. 51 ¶¶ 98–100, 112–117) against Plaintiffs St. Regis Mohawks and Longhouse is **STRICKEN**; and it is further

ORDERED, that the Clerk serve a copy of this Memorandum-Decision and Order on all parties in accordance with the Local Rules.

IT IS SO ORDERED.

DATED: March 14, 2022
Albany, New York

LAWRENCE E. KAHN
United States District Judge

Litigation Risk

ST. REGIS LITIGATION

In 1982 and 1989, several groups of Mohawk Indians, including a Canadian Mohawk tribe, filed lawsuits (the St. Regis litigation) against the state, the state's governor, St. Lawrence and Franklin counties, the St. Lawrence Seaway Development Corporation, the Authority, and others. The plaintiffs claimed ownership of certain lands in St. Lawrence and Franklin counties and to Barnhart, Long Sault and Croil islands. The islands are within NYPA's St. Lawrence-FDR Power Project and Barnhart Island is the location of significant NYPA facilities. Settlement discussions were held periodically between 1992 and 1998. In 1998, the federal government intervened on behalf of all Mohawk plaintiffs.

The parties agreed to a land claim settlement, dated February 1, 2005, which, if implemented, would have included the payment by the Authority of $2 million a year for 35 years to the tribal plaintiffs and the provision of up to 9 MW of low-cost NYPA power for use on the reservation. The legislation required to effectuate the settlement was not enacted and the litigation continued.

In 2013, all claims against NYPA were dismissed and the lawsuit against the Authority was concluded. On May 28, 2014, New York State, the St. Regis Mohawk Tribe, St. Lawrence County, and the Authority executed a Memorandum of Understanding ("St. Regis MOU") that outlined a framework for the possible settlement of all the St. Regis land claims.

In the St. Regis MOU, the Authority endorses a negotiated settlement that, among other terms and conditions, would require NYPA to pay the tribe $2 million a year for 35 years and provide up to 9 MW of its hydropower at preference power rates to serve the needs of the tribe's reservation. The St. Regis MOU would require an Act of Congress to forever extinguish all Mohawk land claims prior to such a settlement becoming effective.

Any settlement agreement, including the terms endorsed in the St. Regis MOU, would in the first instance need to be negotiated and agreed upon by all parties to the St. Regis litigation, including parties that did not execute the St. Regis MOU, such as the two other Mohawk groups, the federal government, and Franklin County. In addition, before any settlement becomes effective and NYPA would be obligated to make any payments contemplated by the St. Regis MOU, federal and state legislation must be enacted which approves the settlement and extinguishes all Mohawk land claims. NYPA is continuing to monitor settlement discussions which are ongoing with some of the parties to the St. Regis litigation.

MISCELLANEOUS

Additional actions or claims against the Authority are pending for the taking of property in connection with its projects, for negligence, for personal injury (including asbestos-related injuries), in contract, and for environmental, employment and other matters. All such other actions or claims will, in NYPA's opinion, be disposed of within the amounts of the Authority's insurance coverage, where applicable, or the amount which NYPA has available therefore and without any material adverse effect on its business.

Kanieńkehaka
Tekariwa ie Nawa kon
PEOPLE OF THE LONGHOUSE AKWESASNE

February 13, 2023

President of the United States, Joseph Biden
White House, Washington D.C. 20004

Watkwanonwarahton:

The Kanienkehaka of the Rotinoshionni (original peoples of Anonwareke) are of the understanding that certain organizations namely; the Saint Regis Mohawk Tribe, Mohawk Council of Akwesasne, Mohawk Nation Longhouse Representatives and the State of New York have been involved in proceedings negotiating land claim settlements of our Mother.

Court proceedings which began over 40 years ago, only to lay dormant for the last decade; have now been activated once again, with zero transparency regarding the negotiations taking place amongst the parties involved. The resurfacing of this information creates the necessity for the Kanienkehaka Kaianerekowa Kanonsesneh to address those involved about their treasonous actions in accordance to our natural ways (ref. Document -Wampum #58)

We the Kanienkehaka, are not an organization, we are a people. As there does not exist an organization, government or corporation that has the authority or jurisdiction to buy, sell, trade, barter or relinquish lands that are under the responsibility of the Kahnistensera under Kaianerekowa; therefore the above negotiations are null and void.

Any past organizations, negotiations, or promises that were made during a time of warfare being inflicted upon our people, were made UNDER DURESS, and is easily distinguishable as genocide.

Despite having survived all the genocidal acts (Ref. Doctrine of Discovery and the Residential School era) and attempts to assimilate our people with racist colonial policies (Ref. the Indian Reorganization Act and Appropriations Act), our way of life, known as the Kaienerekowa, has continued to exist within our clan families; who have carefully and competently carried our ceremonies through centuries of criminalization and enforcement by foreign government and its agents.

We are not American citizens nor are we a "Dependent Domestic Nation; We are a people who have continued to adhere to principles and philosophies entrenched within our very own existence, that of which is the Kaianerekowa, also referred to as the great law of peace or the constitution of the Iroquois confederacy.

We will forever, continue to uphold our responsibility of protecting the land and water for the use and enjoyment of our future generations, as long as the sun shines and the grass shall grow.

We have not become American or Canadian citizens through naturalization, we have never consented to the foreign laws imposed upon our people and this land, such as Federal Indian Law.

Attempts to deny us our rights and powers not only violates the Kaianerekowa, it also violates International Law. The right to one's own "nationality" is clearly entrenched within the Charter of Human rights.

Furthermore, denial of our ancestral rights is a blatant continuation of the doctrine of discovery, and its declaration, that we are an uncivilized subhuman species, despite our ancient constitution that your government drew inspiration from, and our "forest diplomacy" which is well documented in your history books.

Our rights and powers are not derived from any treaty. The legitimate fact of the matter is any colonial habitation of our homeland is derived from peace pacts negotiated during times of war amongst our ancestors; peace pacts which U.S. citizens and governments have failed to uphold for an extended period of time, which has ultimately resulted in the U.S. governments incompetence in its current negotiations regarding our traditional "Kanienkehaka" territory.

It was the United States forefathers who came upon our people with treaty in hand, requesting the use of our land in order to survive. A request which we granted allowing only the depth of the plow to be adequate for survival has been violated.

Although, Onkwehonwe do not physically occupy much of our homeland at this current time, we have never given up title to it. Treaties such as the Mohawk Treaty 1796 and the Seven Nations of Canada Treaty 1797, which purported to extinguish title to Kanienkehaka territory have been deemed unlawful due in part to certain individuals who claimed to have represented the "Mohawk" Nation extinguishing their citizenry by enforcing and adhering to the laws of foreign government, namely that of Great Britain. An act which is in clear violation of "Wampum 58". (See attached document)

The State of New York's participation in these treaties is unlawful. The constitution of the United States stipulates that "no state in the union has treaty making powers." This in turn adds credence to the fact that any sale of land that may have taken place in these contracts are completely fraudulent and blatant acts of treachery against the Kanienkehaka people, as well as the complete disregard of the fundamental rule of law; actions which are punishable under the International Law and Crimes Against Humanity.

The fundamental principals of the Constitution of the United States are derived from the very people whose rights and powers they chose to ignore and oppress. The Kaianerakowa is a natural body of principles which is complete and clearly supersedes that of the United States "De facto" Constitution. We, the Kanienkehaka have continued to adhere to the Kaienerekowa through our diplomatic relation and cycle of ceremonies.

The historical Two Row Wampum, a well documented comity, was entered into by your forefathers and our ancestors. The United States and the State of New York have continuously failed to adhere to the fundamental principles of this mechanism of peace.

Once more, we the Kanienkehaka, who are part of the Original Five Nations to form the Rotinonshionni Confederacy, have never relinquished title to our homeland which encompasses over 18 million acres of what is currently known as New York State, Vermont, Ontario and Quebec. Should the United States Government and the State of New York disagree with our position, then we encourage you to prove otherwise.

Kahonti'iostha

Kahnistensera

May 22, 2023

Akwesasne
Kanienkeh
Kanehsatake
Kahnawake
Oshweken
Tyendinaga
Wahta

The people of Kanienkeh have inhabited Anonwa're:ke since time immemorial and have adhered to Kaienerekowa consistently. The Kanienkehaka have never relinquished, traded, bartered, sold, or compromised their title and responsibilities to the land and all the natural resources including air and water. The Kahnistensera execute their responsibilities as stewards of the land and consistently commit to protecting the integrity of it for the children to come.

As such, the Kanienkehaka remind our families, our territories, and those who reside upon our mother that this land was, is, or never will be up for adoption, sale, transfer or dismantlement.

If there is an individual, organization, committee, corporation or government that is in negotiations for lands on A'nonwareke, this is an illegitimate conduct. Individuals who claim to represent Kanienkehaka in any manner that is in contrary to our constitution have placed themselves outside of Teiotiokwenhakstha (see wampum #58).

Teiotiokwenhakstha is consistently enacted to maintain harmony with the natural world.

Let it be known that ANY land claims or land negotiations will NOT be recognized and are unacceptable by the Kanienkehaka.

KAIANEREKOWA
(GREAT LAW OF PEACE / CONSTITUTION OF THE IROQUOIS)

WAMPUM #58
ANY CHIEF OR OTHER PERSONS WHO SUBMIT TO LAWS OF A FOREIGN PEOPLE ARE ALIENATED AND FORFEIT ALL CLAIMS IN THE IROQUOIS NATIONS

There are now the Five Nations League Chiefs standing with joined hands in a circle. This signifies and provides that should any of the chiefs of the League leave the Council and the League, his crown of deer's antlers, the emblem of his chieftainship title, together with his birthright, shall lodge on the arms of the union chiefs whose hands are so joined. He forfeits his title and the crown falls from his brow, but it shall remain in the League.

A further meaning of this is that if, at any time, anyone of the chiefs of the League choose to submit to the law of a foreign people, he is no longer in but out of the League and persons of this class shall be called, "They have alienated themselves" (Tehonatonkoton). Likewise, such persons who submit to laws of foreign nations shall forfeit all birthrights and claims of the League of Five Nations and territory:

You, the League of Five Nations Chiefs, be firm so that if a tree should fall upon your joined hands, it shall not separate you or weaken your hold. So shall the strength of union be preserved.

Sharenhó:wane Declaration

Whereas, the Sharenhó:wane Ronathahionni, Wolf Clan Path Makers of the Kanienkehá:ka, said Mohawk Nation, in Council make Declaration in regards to our clan; and,

Whereas, the Sharenhó:wane clan, is part of nine distinct governmental bodies of bear, wolf and turtle and,

Whereas, Sharenhó:wane, is part of the wolf clan government of the Kanienkehá:ka and,

Whereas, the lineal descent of the Kanienkehá:ka runs in the line of the Women, who are progenitors of the Nation and hold title to the Land for the generations of the clans of unborn and,

Whereas, the Two Row Wampum, a treaty of non-interference between two sovereigns, the Rotinonhsión:ni and the federal government, in an on-going relationship was broken and,

Whereas, the Sharenhó:wane clan nor the Kanienkehá:ka as Nation, has never surrendered jurisdiction through a treaty of surrender agreeable by law in 1948 under Statutes 28 USC 232 and 233 to the State of New York or United States of America and,

Whereas, de facto treaties pretended to have been made with original nations upon this continent were never signed by the Women who would not sign away inherent rights any more than we could our Posterity and,

Whereas, since the past, State of New York pretended to make negotiations and agreements with those not authorized to deal in the Sharenhó:wane clan. To this day, State of New York and United States of America, continues the same frauds that brought us to these issues; and,

Whereas, the Saint Regis Mohawk Tribal Council pretended to make agreements with State of New York, in regards to our clan. The Saint Regis Mohawk Tribe and council in its various names and corporations are creations of the State of New York, District of Columbia or United States of America forced upon the Kanienkehá:ka by State of New York in 1892; and,

Whereas, the Saint Regis Mohawk Tribe does not represent or have authority in the affairs of the Sharenhó:wane clan, nor can they make negotiations, agreements or trusts in relation to the Sharenhó:wane clan. Saint Regis Mohawk Tribe is not the traditional governmental body of our Nation. Our Nation council of Iakoiá:ne and Roiá:ne, through the People, has not permitted St. Regis Mohawk Tribe to sit in on issues concerning our clan. Any de facto Memorandums of Understanding or other agreements made with Saint Regis Mohawk Tribe in regards to our clan are and null and void; and,

Whereas, St. Regis Mohawk Tribe and Mohawk Council of Akwesasne are alien entities, both of which assume are the rightful heirs of the Seven Nations of Canada although neither is. St. Regis Mohawk Tribe did not exist under New York State statute until 1892 and the Mohawk Council of Akwesasne was imposed in 1899. The governing council throughout most of the 19th century were based upon traditional customs who contested the legitimacy of the Seven Nations cession and,

Whereas, Treaty with the Seven Nations of Canada, 1796 clearly states that the parties involved have agreed to extinguish all claims to lands within New York State forever, except for six-miles square for the Indians of St Regis and,

Whereas, the Sharenhó:wane clan have decided to withdraw from any and all land claim negotiations with the State of New York pertaining to the Treaty with the Seven Nations of Canada, 1796 as signatories were not representative of the Kanien'kehá:ka as Nation which indicates fraud and,

Whereas, the Sharenhó:wane clan shall maintain and exercise our inherent Right to the Land and the Right upon it, including but not limited to, travel and sustenance by hunting, fishing, planting and gathering food or medicine and,

Whereas, we the Sharenhó:wane clan, shall maintain and exercise our Right to live in Peace where we wish upon our Land, free from taxation and de facto representation and,

Whereas, we shall maintain and exercise our Duty to Keep and take Care of the Earth and strive to be in harmony and balance with her. We shall maintain and exercise our Law of Peace, to exist in Peace with Creation and People.

Sharenhó:wane Council

To the attention of the Mohawk Nation Council of Chiefs and Clanmothers' Office,

On a duly convened Kanien'kehá:ka Rotihskaré:wake Bear Clan meeting, hosted by Iakoiá:ner Wa'kerakátste Louise Herne and Roiá:ner Curtis Nelson, held on Kiohtónhaton ne Tsiothóhrha, December 9th, 2022, of which members of all three Kanien'kehá:ka Rotihskaré:wake families of Tehana'karí:ne, Rastawenhseróntha', and Shohskoharó:wane were in attendance Ionkwahskaré:wake, us of the Bear Clan, have come to Ska'nikòn:ra, One Mind, as follows:

Ionkwahskaré:wake, the Bear Clan, in consideration of the facts, the history, and the welfare of Á:se Tahatikonhsontónkie', the Faces Yet to Come, of which we are bound by duty to act in their best interest, have decided to withdraw the Ionkwahksaré:wake from any and all land claim negotiations with New York State pertaining to the Treaty with the Seven Nations of Canada, 1796. We wish to express this clearly and explicitly for there to be no misunderstanding of our stance on the issue which we have decided upon in our clan meeting.

Our reasoning for this withdrawal is due to our clan's disagreement with the original Treaty. By accepting any negotiated settlement the Kanien'kehá:ka would confirm that we are a legitimate party to the Treaty with the Seven Nations of Canada, 1796, and are thus bound to the terms of the original treaty. Upon examination of the Treaty the Bear Clan cannot continue to negotiate as a party to a treaty that states the following:

"THE agents for the state, having, in the presence, and with the approbation of the commissioner, proposed to the deputies for the Indians, the compensation hereinafter mentioned, for the extinguishment of their claim to all lands within the state, and the said deputies being willing to accept the same, it is thereupon granted, agreed and concluded between the said deputies and the said agents, as follows: The said deputies do, for and in the name of the said Seven Nations or tribes of Indians, cede, release and quit claim to the people of the state of New-York, forever, all the claim, right, or title of them, the said Seven Nations or tribes of Indians, to lands within the said state: Provided nevertheless, That the tract equal to six miles square, reserved in the sale made by the commissioners of the land-office of the said state, to Alexander Macomb, to be applied to the use of the Indians of the village of St. Regis, shall still remain so reserved."

– Treaty with the Seven Nations of Canada, 1796

The Treaty clearly states that the parties involved have agreed to extinguish all claims to lands within New York State forever, except for six-miles square for the Indians of Saint Regis (Ahkwesahsró:non). Ionkwahskaré:wake have come to Ska'nikòn:ra, One Mind, that we cannot agree to any agreement, settlement, or treaty that extinguishes our claim to the lands in Kaniè:ke', the Mohawk Valley, or to Atirontáksne, our nine million acres in the Adirondacks, of which the Kanien'kehá:ka Mohawk Nation has never ceded nor relinquished and of which we still maintain the aboriginal title to.

Furthermore, this Treaty was signed by Tsiá:ta Nihononhwentsiá:ke, the Seven Nations of Canada, of which Wísk Nihononhwentsiá:ke, the Rotinonhsión:ni Confederacy, were not affiliated with. This means that the Kanien'kehá:ka were not and are not a party to this Treaty of land relinquishment. Our sacred duty to protect our lands for Á:se Tahatikonhsontónkie', the Faces Yet to Come, binds us to reject this deal and remove ourselves from negotiations to maintain our claims to Kaniè:ke' and Atirontáksne for the generations unborn.

Thó: niionkwa'nikonhrò:ten' ne Kanien'kehá:ka Ionkwahskaré:wake.

This is the decision of the Mohawk Bear Clan.

Skén:nen sewanonhtónnionhwe,
With Peace,
Ionkwahskaré:wake, The Bear Clan

HAUDENOSAUNEE
TIONONTOWANE'Á:KA - KAION'KEHÁ:KA - ONONTA'KEHÁ:KA - ONENIOTE'À:KA - KANIEN'KEHÁ:KA
KANIEN'KEHÁ:KA NATION AT KAHNAWÀ:KE
PEOPLE OF THE LONGHOUSE

Mohawk Nation Office
(Kahnawà:ke Branch)
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Email: tsi_iehiatonhkwa@outlook.com
www.kahnawakelonghouse.com

The Hon. Kathy Hochul
Governor of New York State
NYS State Capitol Building
Albany, NY 12224

Ohiaríha (June) 2, 2023

Tekonnonhwerá:tons Governor Hochul,

Greetings from the Kanien'kehá:ka (Mohawk) Nation at Kahnawà:ke – People of the Longhouse. The Kanien'kehá:ka Nation at Kahnawà:ke hereby reaffirm its position against any proposed settlement of the Akwesasne Land Claim, as we have on numerous occasions since 1989.

The legal basis of the Akwesasne Land Claim is rooted in the 1796 Treaty with the Seven Nations of Canada, an agreement that the Kanien'kehá:ka Nation at Kahnawà:ke considers to be fraudulent. Colonel Louis Cook, Thomas Williams, and Ohnawiio Goodstream, as signatories to this agreement, had no authority by any party to finalize and sign a treaty to relinquish Kanien'kehá:ka title to lands in New York State.

In previous Memorandums of Understandings (MOU) made in the past between the St. Regis Mohawk Tribe and New York State, quitclaim language was always included in the proposed settlement. In the 2014 version of the MOU, it states that, *"An Act of Congress to forever extinguish all Mohawk land claims against St. Lawrence County, the State (of New York), the New York Power Authority, and all other land claim defendants prior to the settlement Agreement signed by the parties taking effect."*

This article is interpreted as a willful surrender of all Kanien'kehá:ka claims to it ancestral lands in New York State.

The 2014 version of the MOU also states, *"…the parties recognize that a negotiated settlement has the potential to swiftly and permanently resolve these disputes and wish to use the 2005 Settlement Agreement, to the extent practicable, as the framework for a new, revised Settlement Agreement."*
Considering that the proposed 2005 Settlement Agreement also contained language that clearly identifies a consensual surrender of all Kanien'kehá:ka lands in New York State, the Kanien'kehá:ka Nation at Kahnawà:ke cannot support or agree to such conditions.

The Kaianere'kó:wa, the constitution of the Rotinonhsión:ni Confederacy, clearly identifies the women of our nations to be the progenitors of the soil and sole titleholders of Kanonhsionní:keh – Country of the Rotinonhsión:ni. Only the Clanmothers and women of the Rotinonhsión:ni have the authority to make important decisions relating to Rotinonhsión:ni lands, whereas the Rotiiá:ner and warriors of the Rotinonhsión:ni only have the mandate from the women to act in the protection our territory and to assert our sovereignty. This makes agreements such as the 1796 Seven Nations of Canada Treaty and the 1797 Mohawk Treaty made by Joseph Brant and John Deseronto (in addition to any other land surrenders), illegal according to the Rotinonhsión:ni law.

The Kanien'kehá:ka Nation at Kahnawà:ke have never been consulted at any point during this litigation, nor have we ever consented to any proposed settlement and therefore any final settlement reached will not be recognized, nor honored by the Kanien'kehá:ka Nation at Kahnawà:ke. Moreover, the Kanien'kehá:ka Nation at Kahnawà:ke formally states its continued cultural, spiritual, and political relationship to our ancestral lands in New York State and shall do nothing to jeopardize our right to return to these lands.

In 1974, the Kanien'kehá:ka Nation, supported by the Rotinonhsión:ni Grand Council, initiated the Ganienkeh Indian Project that endeavoured to begin the process of repossessing lost lands in our ancestral territory. The Ganienkeh Indian Project is a clear mandate for our people create new settlements and repopulate our ancestral territory. If anything, this is an obvious testament that we have no interest in surrendering or quitclaiming our ancestral territory.

Tho nikawén:nake,

Kahnawí:io Dione – Turtle Clan

Skatsénhati Lazare – Wolf Clan Chief

Akwirén:te Deer – Bear Clan Chief

HAUDENOSAUNEE

MOHAWK - ONEIDA - ONONDAGA - CAYUGA - SENECA - TUSCARORA

MOHAWK NATION COUNCIL OF CHIEFS
VIA BOX 366 ROOSEVELTOWN NEW YORK 13683

Telephone (518) 358-3381 Fax (518) 358-3488

Statement of Mohawk Nation Council of Chiefs Regarding Land Claims

The Nation has seen a great deal of misinformation and falsehoods about land claims circulating recently. The Nation wishes to provide clarity and truthful information to the Community.

In 1982, the Mohawk Council of Akwesasne filed land claims in the federal court in New York. These claims asked the court to rule that certain Mohawk land – including the Mile Square, Grasse Meadows, the Hogansburg Triangle, and the islands in the St. Lawrence – had been taken illegally from the Mohawks. The litigation did not include the aboriginal claim to 9 million acres, which is separate, and did not give up Mohawk rights to that claim.

After considering whether the Haudenosaunee should become involved in the pending federal court claims, the Grand Council directed the Mohawk Nation Council of Chiefs to lead a legal effort on behalf of the Haudenosaunee. In 1989, the Mohawk Nation filed its own complaint in federal court, together with the St. Regis Mohawk Tribe, and the court consolidated the three Mohawk councils' legal actions into one.

Grand Council has never withdrawn or altered its mandate: the Mohawk Nation Council is tasked with representing the Haudenosaunee and future generations in the federal court litigation and in any efforts to resolve that litigation out of court.

In 2022, the Magistrate Judge overseeing the federal court litigation ordered the parties to participate in mediation to see whether the land claim could be resolved out of court. The Nation has participated in this mediation according to Grand Council's directive and with the intent to abide by the Great Law and protect core Haudenosaunee principles. Among others, these principles include the following:

1. Settlement of the pending land claim litigation must preserve Mohawk rights to pursue the aboriginal claim. The Mohawk Nation can never agree to extinguishment of the aboriginal claim.
2. Settlement must benefit the whole community and future generations, not just one Council or one part of the community
3. Settlement must bring land back to Akwesasne.

Following the Magistrate's order, the Nation is participating in settlement discussions with the goal of creating a draft agreement that brings land back to Akwesasne and that best protects Akwesasronon, the Haudenosaunee, and future generations. Once finalized, any draft settlement agreement will be put to the people.

Transcription of Statement of Mohawk Nation Council of Chiefs Regarding Land Claims:
Indian Times, May 2023

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RESOLUTION NO. 188

Offered by Legislator Lockwood, Lauzon, Janisewski, Dumas, Martin, Sparks & Ellis

Relating to Franklin County Accepts New York State's Offer For Settlement of the Land Claim

RESOLVED: That the Franklin County Legislature are all in agreement to accept the offered listed items by New York State for the settlement of the Land Claim:

1) $15,000,000 for the unrestricted use to Franklin County and the Towns of Bombay and Fort Covington.

2) Approximately $1,875,000 to Franklin County and $937,000 each to the Towns of Bombay and Fort Covington.

3) Full satisfaction of back taxes of parcels for all real property owned by the St. Regis Mohawk Tribe, the Mohawk Council of Akwesasne, the Mohawk Nation Council of Chiefs and individual Akwesasne Mohawks in land claim areas in Franklin County that have been foreclosed on, or that have pending unpaid property taxes subject lien.

4) Payments sufficient to hold the County and respective Towns harmless from the loss of future property and school taxes for parcels subject to the settlement agreement.

5) $2,000,000 annually in perpetuity, to be split among Franklin County and the Towns of Bombay and Fort Covington for their unrestricted use.

6) $1,000,000 annually in perpetuity, to be split among Franklin County and the Towns of Bombay and Fort Covington for their unrestricted use, so if the State receives gaming compact exclusivity payments money in excess of present or promised distributions.

and, be it

FURTHER RESOLVED: That Franklin County and the Towns of Bombay and Fort Covington agree to divide #1 above as follows: $12,000,000 to Franklin County and $1,500,000 to the Town of Bombay and $1,500,000 to the Town of Fort Covington.

Roll Call Vote:
7 Ayes

STATE OF NEW YORK

7566--B

2023-2024 Regular Sessions

IN SENATE

June 6, 2023

Introduced by Sens. KENNEDY, STEC -- (at request of the Governor) -- read twice and ordered printed, and when printed to be committed to the Committee on Rules -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT relating to settlement of certain land claims

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Land claims settlement. The legislature hereby finds that long-standing disputes between the Saint Regis Mohawk Tribe, the Mohawk Council of Akwesasne, and the Mohawk Nation Council of Chiefs, and the state of New York, Franklin county and St. Lawrence county, have generated litigation in state and federal courts regarding property and other taxation, and that the status of Mohawk lands has caused decades of unrest and uncertainty for the citizens and residents of the Northern New York region of this state. The legislature further finds that it is in the best interests of all citizens, residents and political subdivisions of this state to remove any uncertainty that such litigation or disputes have created regarding the title to and jurisdictional status of land within the state. The legislature recognizes that negotiated settlement of these disputes will facilitate a cooperative relationship between the state, the counties and the Mohawk. Therefore, the legislature declares that:

(a) Notwithstanding any other law, the state, through the governor, may execute a land claims settlement agreement including, but not limited to, terms considerably consistent with memoranda of understanding between the governor, the Saint Regis Mohawk Tribe and Saint Lawrence county executed on May 28, 2014 and Resolution 188, as adopted by the Franklin County Board of Legislature on June 5, 2023.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

LBD12015-06-3

(b) Such land claims settlement shall be deemed ratified by the legislature upon the governor's certification to the temporary president of the senate, the speaker of the assembly, and the secretary of state, that such agreement has received requisite federal approvals and the underlying litigation has been dismissed with prejudice.

(c) Except as otherwise specifically provided in the agreement, the state specifically reserves all its rights, as attributes of its inherent sovereignty, recognized by the tenth and eleventh amendments to the United States Constitution. Nothing in this section shall be construed to affect the existing authority of the governor under the constitution and laws of this state to execute land claims settlements.

§ 2. This act shall take effect immediately.

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August 31, 2023

Magistrate Judge Thérèse Dancks
United States District Court
Northern District of New York
Federal Building
100 S. Clinton Street
P.O. Box 7365
Syracuse, NY 13261-7365

Re: Status Report on behalf of Plaintiffs in *Canadian St. Regis Band of Mohawk Indians State of New York*, et al., 82-CV-783; 82-CV-114; 89-CV-829

Dear Magistrate Judge Dancks:

Pursuant to the Court's text order of July 5, 2023 (Doc. No. 859), Plaintiffs Saint Regis Mohawk Tribe ("Tribe"), Mohawk Council of Akwesasne ("MCA"), and Mohawk Nation Council of Chiefs ("MNCC") (together, "Plaintiffs"), and Plaintiff-Intervenor United States submit the following status report.

Since our last status report, the memorandum of understanding among the Plaintiffs, Franklin County, and the State was revised to reflect the agreement that had been reached between the State and County on the long-standing issue concerning payments from the State to the County. Further amendments to that memorandum have been proposed by the Tribe to meet concerns raised by the County, and for other reasons, and are currently being reviewed.

A separate memorandum of understanding among the Plaintiffs, Saint Lawrence County, and the State is not yet final. The Tribe has proposed some changes to the draft memorandum which are under review by the parties. There is one issue between the MNCC and Saint Lawrence County which has not be resolved but that we believe is resolvable.

Plaintiffs believe they have reached agreement in principle on certain issues with the State of New York and the New York Power Authority. Since our last status report, Plaintiffs have drafted proposed settlement language to embody the agreement in principle, which Plaintiffs have just sent to the State for review.

Once the parties arrive at a resolution of the outstanding issues, the understanding will have to be embodied in a settlement agreement that incorporates the MOUs with the Counties and the agreement reached with the State. The Tribe, MCA, and MNCC will each need to give final approval according to their own procedures.

Federal legislation to approve the settlement will be needed since it deals with claims under the Nonintercourse Act, 25 U.S.C. §177, and impacts the status of lands reserved to the Akwesasne Mohawks by treaty.[1]

The Plaintiffs have finalized an "internal agreement" among themselves governing implementation of the settlement, with the exception of one possible new provision under discussion. We do not anticipate that there will be an impasse as to any issue. Once the internal agreement is agreed to among leadership of the Tribe, MCA, and MNCC, each will need to obtain final approval according to their own procedures.

Plaintiffs and Plaintiff-Intervenor believe that sufficient progress has been made to support continuing the mediation through October 2023, with a report to the Court at the end of that month.

Respectfully submitted,

s/ *Michael L. Roy*
Michael L. Roy
Attorney for Plaintiff Saint Regis Mohawk Tribe

cc: All Counsel of Record (via ECF filing)

[1] The United States is not a party to any of the MOUs or other agreements referred to in this letter. As stated in the January 9, 2023 letter of the mediator in this action, John Bickerman, filed by the State of New York, Dkt. 837-1, the Federal Negotiation Team does not have the authority to bind the United States, as an act of Congress is necessary to bind the United States.