



United States Department of the Interior

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IN REPLY REFER TO:

Tribal Operations

FEB 11 2014

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Dear Mr. Rosette, Mr. Peebles, and Mr. Marston:

The purpose of this correspondence is to inform you of my decision regarding the Notices of Appeal dated June 14, 2013, October 3, 2013, and October 9, 2013, filed in accordance with 25 CFR, Part 2.9 by the Reid Faction, the Lewis Faction, and the Ayala Faction, respectively. These appeals relate to the actions of the Superintendent, Central California Agency, returning the requests to contract with the Bureau of Indian Affairs (BIA) under the Indian Self-Determination and Education Assistance Act (ISDEAA), Public Law 93-638, submitted by each faction.

**TAKE PRIDE
IN AMERICA** 

The Reid Faction, consisting of Morris Reid, Janice Devine, Dixie Jackson, Harold Hammond, and Frank Fernandez, timely filed a Notice of Appeal, dated June 14, 2013, of the Superintendent's May 16, 2013, decision. The Reid Faction cites two decisions in the Superintendent's May 16, 2013, correspondence as the subject of the appeal. First, the Superintendent's decision to recognize the council elected as a result of the December 1, 2012, election consisting of: Nancy Ayala, Chairperson; Reggie Lewis, Vice-Chairperson; Tract Brechbuel, Secretary; Karen Wynn, Treasurer; Chance Alberta, Member-at-Large; Charles Sargosa, Member-at-Large; and Carl Buzz Bushman, Member-at-Large. Second, the Superintendent's decision to return the Reid Faction's request to contract under Public Law 93-638 with the BIA.

The Lewis Faction, consisting of Reggie Lewis, Chairman; Carl "Buzz" Bushman, Vice Chairman; Irene Waltz, Secretary; Chance Alberta, Treasurer; Melvin Espe, Member-at-Large; David Castillo, Member-at-Large; and Lynn Chenot, Member-at-Large, timely filed a Notice of Appeal, dated October 3, 2013, of the Superintendent's September 4, 2013, decision. The Lewis Faction cites three appealable issues of the Superintendent's decision to return the Lewis Faction's request without action due to his lack of jurisdiction because of the Reid Faction's appeal pending before the Regional Director. First, the Lewis Faction asserts the Superintendent "... failed to cite any declination criteria, legal basis, or lawful reason for refusing to act upon the Tribe's 638 Contract Proposal." Second, the Lewis Faction asserts "... the IBIA Orders and the applicable law all clearly direct the Superintendent to perform his duty and his responsibility to determine which individuals are authorized Tribal officials empowered to apply for and execute a 638 contract for FY 2013." Third, "... the BIA has not lived up to its duties under its trust relationship to make clear that the current governing body [is] occupying the Chukchansi Gold Resort & Casino."

The Ayala Faction, consisting of the Tribal Council led by Nancy Ayala, timely filed a Notice of Appeal, dated October 9, 2013, of the Superintendent's September 4, 2013, decision¹. The Ayala Faction cites the Superintendent's decision to return without action, the Ayala Faction's P.L. 93-638 application for a new three-year contract, Fiscal Years 2013-2015, because the Superintendent was precluded from acting upon the Ayala Faction's request due to the appeal pending before the Interior Board of Indian Appeals (IBIA), citing BIA's reliance upon *Picayune Rancheria of the Chukchansi Indians; Morris Reid, Dora Jones, Dixie Jackson, and Harold Hammond v. Pacific Regional Director, Bureau of Indian Affairs*, Docket No IBIA 13-045, Order dated April 2, 2013, as the appealable issue.

In the Order of April 2, 2013, in *Picayune Rancheria of the Chukchansi Indians; Morris Reid, Dora Jones, Dixie Jackson, and Harold Hammond v. Pacific Regional Director, Bureau of Indian Affairs, supra*, IBIA (Board) states "without determining whether the pendency of this appeal, under the facts of this

¹ On November 13, 2013, the Pacific Regional Office received the Reid Faction's Motion to Dismiss the "untimely" Notice of Appeal filed by the Ayala Faction. In a letter dated December 2, 2013, I denied the motion citing 25 CFR Part 2.15, computation of time, which states "computation shall include the last day of the period, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday." Due to the 2013 Government shutdown, from October 1, 2013, to October 17, 2013, the Ayala Faction was not afforded the opportunity to submit their Notice of an Appeal until October 17, 2013, or the end of the next day following October 7, 2013, when the BIA was reopened.

case, divests BIA of jurisdiction to consider a request on behalf of the Tribe for a new contract for FY 2013, the Board grants BIA jurisdiction to consider such a request (or requests).” Further, in the July 10, 2013, Order Concerning BIA Jurisdiction Over FY 2013 Contract Proposals and Over FY 2012 Contract Matters, and Order Directing and Allowing Responses to Appellant’s Supplemental Submission, the IBIA states: “Any issues regarding the jurisdiction of the Superintendent to address proposals or requests while Appellants’ appeal is pending before the Regional Director should be resolved by the Regional Director.” Thus the Board’s Order provides me the authority to hear these appeals, as they are all related to the ISDEAA contract proposals of the Picayune Rancheria of Chukchansi Indians for Fiscal Years 2013-2015.

All the appeals pertain to a request for a new ISDEAA contract for the Picayune Rancheria of Chukchansi Indians for FY 2013-2015. On December 10, 2013, due to the related subject matter of the appeals, and in accordance with Title 25, Code of Federal Regulations, Part 2.18, Consolidation of Appeals, I exercised my discretionary authority to combine the related appeals and issue one decision to resolve them. In addition, each party was given the opportunity to submit any final arguments to this office before a decision is issued².

The leadership of the Picayune Rancheria of Chukchansi Indians has been embroiled in disputes since the December 3, 2011, election. The hold-over officers (individuals not up for election and whose terms had not expired) that remained on the Tribal Council were Nancy Ayala, Jennifer Stanley and Nokomis Hernandez³. It appears the 2011 election was conducted in accordance with the Tribe’s Constitution adopted on October 22, 1988, and the Election Ordinance adopted on October 21, 2010. Under the 1988 Constitution, the Tribal Council has staggered terms and the regular tribal election held on December 3, 2011, was for the four Tribal Council seats whose terms had expired. The 2011 election results reflect that Morris Reid, Dora Jones, Dixie Jackson and Harold Hammond, Sr., received the highest number of votes in the election⁴. However, multiple candidates running in the election appealed to the Election Committee challenging eligibility of Harold Hammond, Sr., to be seated as a member of the Tribal Council, claiming that Mr. Hammond should have never been qualified to run for office as he did not meet the eligibility requirements⁵. The appeals of Mr. Hammond’s eligibility to run for office led to a disagreement over whether the Reid Faction was duly installed on to the council in accordance with the Constitution. The Reid faction claimed to be duly seated at the December 26, 2011, Tribal Council meeting, in accordance with tribal law. The Lewis Faction disputed whether the elected Tribal Council was properly seated and remained in office in accordance with tribal law. The record does not reflect if the question whether the elected Reid Faction was properly seated in accordance with Tribal law was finally resolved and this issue resulted in ongoing internal leadership disputes with both factions claiming to be the authorized governing body. The record shows the

² The December 10, 2013, letter provided a deadline of January 7, 2014, to submit final arguments; however, on January 6, 2014, the Superintendent forwarded a request from the Ayala Faction to extend the deadline to January 10, 2014. In accordance with 25 CFR § 2.16, on January 7, 2014, I granted the request to extend the deadline to January 10, 2014. All arguments were submitted or postmarked by January 10, 2014.

³ The record reflects that Nokomis Hernandez was appointed by the Tribal Council to replace Patrick Hammond, III.

⁴ See February 1, 2013, Administrative Record, Tab F, 66.

⁵ See February 1, 2013, Administrative Record, Tab F, 59,60,64,63, and 65.

Lewis Faction held a General Council meeting on March 10, 2012⁶, in an attempt to settle the dispute, but the validity of the meeting and the actions adopted at that meeting are contested by the Reid Faction. The Reid Faction did not participate in this meeting and challenges the validity of the meeting, claiming it was not called and conducted by the legitimate Tribal Council.

It appears the Tribe was still embroiled in an intra-tribal dispute between the Reid Faction and the Lewis Faction when a December 1, 2012, election was held by the Lewis Faction. The record reflects the December 1, 2012, election was conducted in accordance with the Tribe's Constitution adopted on October 22, 1988, and the Election Ordinance amended on September 20, 2012. The Tribal Council has staggered terms and a regular tribal election was conducted on December 1, 2012, for the three Tribal Council seats whose terms had expired. As indicated by the December 1, 2012, election report signed by Dominique Carrillo on January 3, 2013, the hold-over officers that remained on the Tribal Council were Reggie Lewis, Chance Alberta, Tracey Brechbuel and Karen Wynn and that Nancy Ayala, Carl Bushman and Charles Sargosa received the highest number of votes in the election. The Reid Faction did not participate in this election and contends it was not a valid tribal election because it was not held by the legitimate tribal government or Election Committee (due to the Reid Faction suspending Dominique Carrillo, Dana Hall and Orianna Walker from their positions on the Election Committee⁷). Further, they challenge the inclusion of Reggie Lewis, Chance Alberta, Karen Wynn and Tracey Brechbuel, on the Tribal Council, as those four seats are the same seats the Reid Faction claimed to occupy. The record does not reflect that the December 1, 2012, election resolved the pending leadership dispute regarding the interpretation of the installation of newly elected officers from the past election.

The Ayala/Lewis Faction temporarily suspended Tribal Council members Karen Wynn and Tracey Brechbuel on January 24, 2013, due to allegations concerning misuse of tribal funds. In correspondence dated January 31, 2013, the Ayala/Lewis Faction provided notice of the temporary suspensions to Karen Wynn and Tracey Brechbuehl pending the outcome of an investigation (the Ayala Faction later disputed the validity of these suspensions).

The record reflects that another intra-tribal dispute arose splitting the Ayala/Lewis Faction, apparently resulting from actions taken by the Ayala Faction on February 21, 2013, wherein they removed the entire Tribal Council, with the exception of Ayala, and replaced them with another Tribal Council. A series of suspensions and removals occurred in both factions, but it is unclear if either had a quorum of the Tribal Council.

In a purported attempt to resolve the dispute, the Lewis Faction attempted to utilize the referendum procedure, and on June 19, 2013, the Indian Dispute Resolution Services certified the results of the referendum and held a General Council meeting on September 14, 2013. At some point, following the General Council Meeting, the Lewis and Reid Factions reconciled their differences and began working together. In a letter dated January 2, 2014, the Reid and Lewis Factions submitted a joint

⁶ See February 1, 2013, Administrative Record, Tab F, 6.

⁷ See February 1, 2013, Administrative Record, Tab F, 35.

response to this Office's December 10, 2013, letter. The Lewis/Reid Faction state ". . . the two separate P.L. 93-638 contract applications for FY 2013-2015, are renewed, by way of this correspondence, as a single contract application for your consideration."⁸

This Office received two reports of a Tribal Election held December 7, 2013, submitted by the Lewis/Reid Faction and the Ayala Faction. According to memorandums from the Central California Agency Superintendent dated January 15, 2014, and January 22, 2014, the combined Lewis/Reid Faction reported its election was conducted pursuant to the Tribe's Constitution adopted on October 22, 1988, and an Election Ordinance amended on October 17, 2013, while the Ayala Faction December 7, 2013, tribal election was conducted in accordance with the Tribe's Constitution adopted on October 22, 1988, and the Election Ordinance amended on September 23, 2013. Following the December 7, 2013, elections, attorneys for both factions submitted correspondence arguing the merits of their elections, urging BIA recognition of respective elections, and discussing the invalidity of the other faction's election.⁹ Despite efforts by the various factions, the two tribal elections held on December 7, 2013, did not resolve the intra-tribal dispute over the interpretation regarding the installation of newly elected officers and the controversy carried over to the subsequent elections.

In *Cayuga Indian Nation of New York, Clint Halftown, Tim Twoguns, and Gary Wheeler v Eastern Regional Director, Bureau of Indian Affairs*, Docket No. IBIA 12-005, Order Vacating Decision, the IBIA states, ". . . at least since 1996, the Board has recognized that BIA has the authority to make a determination on tribal leadership 'when the situation [has] deteriorated to the point that recognition of some government was essential for Federal purposes.' *Wadena v. Acting Minneapolis Area Director*, 30 IBIA 130, 145 (1996) (emphasis added). A corollary is that BIA has 'both the authority and responsibility to interpret tribal law when necessary to carry out the government-to-government relationship with the tribe.' *United Keetoowah Band of Cherokee Indians v. Muskogee Area Director*, 22 IBIA 75, 80 (1992) (emphasis added); see also *Ransom v. Babbitt*, 69 F. Supp. 2d 141, 151-52 (D.D.C. 1999) (Department has authority to review tribal procedures 'when it is forced to recognize' tribal leadership). And it is well-established that in executing responsibilities for carrying on government relations with a tribe and providing necessary day-to-day services, BIA may not effectively create a hiatus in tribal government by simultaneously recognizing two tribal governments or declining to recognize any tribal government. *Goodface v. Grassrope*, 708 F.2d 335, 338-39 (8th Cir. 1983)."

In *Steven R. Smith v Acting Pacific Regional Director, Bureau of Indian Affairs*, Docket No. 42 IBIA 224, Order Dismissing Appeal, the IBIA states: ". . . it is well-settled that a valid election held during the pendency of an appeal moots any questions concerning prior tribal leadership. See e.g., *Williams v. Alaska Regional Director*, 39 IBIA 140, 142 (2003); *Kostzuta v. Southern Plains Regional Director*, 35 IBIA 205 (2000); *Rosales v. Sacramento Area Director*, 34 IBIA 125, 126 (1999); *Hamilton v. Acting Sacramento Area Director*, 29 IBIA 122, 123 (1996); *Villegas v. Sacramento Area Director*, 24 IBIA 150,

⁸ No formal request meeting the requirements set forth in 25 CFR § 900, Subpart C, has been submitted for consideration by the Lewis/Reid Faction.

⁹ Although the Lewis and Reid factions have apparently reconciled and are now working together, the Reid Faction has two appeals pending before the IBIA claiming to be the legitimate governing body of the Picayune Rancheria, IBIA Docket Nos. 13-045 and 13-081.

151-52 (1993). '[T]he determination of tribal leadership is quintessentially an intra-tribal matter raising issues of tribal sovereignty, and therefore the Department should defer to tribal resolution of the matter through an appropriate tribal forum, including the normal electoral process.' *Hamilton*, 29 IBIA at 123."

While this Office defers to tribal interpretations of tribal laws; it has not been possible to ascertain which factions actions are consistent with Tribal Law. There is no dispute that the Constitution of the Picayune Reservation, adopted by the Tribe October 22, 1988, is the Tribe's supreme governing document. However, the record reflects numerous instances where the Election Ordinance was amended by the various compositions of the opposing factions,¹⁰ purportedly in accordance with the Tribe's Constitution. The record also shows that multiple Tribal Courts were formed by the opposing factions, in attempts to resolve these issues. There is no provision in the Tribe's Constitution or federal law that provides the BIA with the authority to determine which of the opposing factions interpretation of the Tribe's law is correct, disputes regarding leadership of Picayune Rancheria of Chukchansi Indians are controlled by tribal law, and fall within the exclusive jurisdiction of the tribe, and BIA does not have the authority to determine the Tribe's permanent leadership. The record does not reflect whether recent tribal elections were conducted in accordance with tribal governing documents. ***As such, I affirm the Superintendent's decision to return the ISDEAA contract requests of all three factions, and vacate the Superintendent's decision to recognize the results of the December 1, 2012, election.***

The situation at the Picayune Rancheria of Chukchansi Indians has deteriorated to a point that recognition of a government is essential for the purpose of contracting under the ISDEAA, and to prevent any further hiatus of this government-to-government relationship with the Picayune Rancheria of Chukchansi Indians. Therefore, the Bureau of Indian Affairs, Pacific Region, will conduct business, on an interim basis, with the last uncontested Tribal Council¹¹ elected December 2010, consisting of: Dora Jones, Chance Alberta, Jennifer Stanley, Nancy Ayala, Morris Reid, Reggie Lewis, and Nokomis Hernandez, until such time as the issue is resolved in accordance with the Tribe's laws.

The level of conflict to which this dispute or disputes have risen since the December 2011, election is extremely concerning to this Office. In February 2012 it was reported that an attempt to take over the Tribal Office by one of the factions led to violence resulting in a stabbing of one individual, and requiring the Madera County Sheriff's Department to intervene. In February 2013 it was reported that a faction occupied the Tribal Office threatening violence with respect to anyone who attempted to remove the faction, again leading to intervention by the Sheriff's Department¹². In addition to

¹⁰ While this Office has received a copy of two of the versions of the amended Election Ordinance, the other versions have been addressed by the factions in various correspondence. (See September 10, 2013, letter from Dominique Carillo to the General Membership; January 16, 2014, memorandum from Superintendent to Regional Director; January 22, 2014 memorandum from Superintendent to Regional Director; December 16, 2013, letter from Lewis/Reid Faction to Regional Director, Exhibit C)

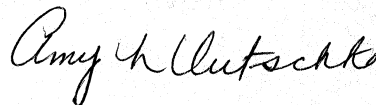
¹¹ See *Acting Governor Leslie Wardrie-Harjo, Cheyenne and Arapaho Tribes V. Southern Plains Regional Director*, 53 IBIA 121, 124 (2011)

¹² As indicated by the February 27, 2013, Sierra Star article titled "Tribal Leadership Split At Picayune Rancheria.

these reports, the dispute over the Tribe's leadership has led to multiple financial hardships including reported defaults on loans connected with the Tribe's gaming facility. In addition, many Federal agencies have been unable to determine with whom to conduct business amidst the dispute, causing essential Tribal programs that are funded by the Federal government to cease operation¹³, including the loss of NAHASDA funds. Due to these increasing issues there appears to be several grounds for finding it would be in the public interest to put this decision into immediate effect. As such, I will be filing a motion with the IBIA to place my decision into immediate effect.

This decision may be appealed to the Interior Board of Indian Appeals, 801 North Quincy Street, Arlington, Virginia 22203, in accordance with regulations at 43 CFR § 4.310 and 4.349. Your Notice of Appeal to the Board must be signed by you or your attorney and must be mailed within 30 days of the date you receive this decision. It should clearly identify the decision being appealed. If possible, attach a copy of the decision. You must send copies of your Notice of Appeal to (1) The Assistant Secretary – Indian Affairs, 4160 MIB, U.S. Department of the interior, 1849 C Street, N.W. Washington, D.C. 20240, (2) each interested party known to you, and (3) this office. Your Notice of Appeal sent to the Board of Indian Appeals must certify that you have sent copies to these parties. If you file a Notice of Appeal, the Board of Indian Appeals will notify you of further appeal procedures. If no appeal is timely filed, this decision will become final for the Department of the Interior at the expiration of the appeal period. No extensions of time may be granted for filing a Notice of Appeal.

Sincerely,



Regional Director

cc: See Attached Distribution List

¹³ See *Picayune Rancheria of Chukchansi Indians, et al, v. Sandra B Henriquez, et al*, No. CV-13-01917-PHX-DGC, Order, December 30, 2013, at Page 8 Line 5

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