Gary J. Montana, PHV
MONTANA & ASSOCIATES, LLC
N 12923 N. Prairie Rd.
Osseo, WI 54758
Telephone: (715)597-6464
Facsimile: (715)597-3508
Email: lakotagm@yahoo.com
garymontana@montanaandassociates.com

Attorney for Defendant(s)
Picayune Rancheria of Chukchansi Indians

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

(FRESNO DIVISION)

STATE OF CALIFORNIA, Plaintiff, Vs. PICAYUNE RANCHERIA OF CHUKCHANSI INDIANS OF CALIFORNIA, A FEDERALLY RECONIZED TRIBE OF INDIANS, Defendant(s).	Case No. 14-CV-01593 LJO-SAB **MEMORANDUM IN SUPPORT OF MOTION FOR ORDER TO SHOW ORDER TO SHOW CAUSE WHY 2010 TRIBAL COUNCIL SHOULD NOT BE HELD IN CONTEMPT FOR VIOLATING PRELIMINARY INJUNCTION** Date: November 12, 2015 Time: 8:30 a.m. Ctrm: 4 Judge: Lawrence J. O'Neill (LJO)

I

INTRODUCTION

A. Intra-Tribal Dispute

This Court issued a Preliminary Injunction on or about October 29, 2014, based upon the Court's conclusion that the public health, safety and welfare provisions of the Class III Compact between the State of California and the Picayune Rancheria of Chukchansi Indians had been breached. The action by the State of California was precipitated by the alleged armed conflict

which took place on or about October 9, 2014, between the Ayala/Lewis Faction and the McDonald Faction on the Casino property. Based upon this incident the State of California requested a Temporary Restraining Order (TRO) on October 10, 2014, which was issued on that same date.

Certainly the incident that occurred on October 9, 2014, would not have occurred *but for* the illegal *de facto* takeover of the casino and hotel by the Ayala/Lewis Faction the month before. The only underlying reason the incidents of October 9, 2014 were exacerbated and became hostile was due to the fact that the Ayala/Lewis Faction was allowed to bring their armed *de facto* government to the eleventh floor of the casino hotel. This would not have occurred – if the Madera County Sheriff's Department would not have acquiesced to said actions by the Ayala/Lewis Faction. It is undisputed that the Ayala/Lewis Faction was armed and guarded all entrances of the casino hotel with the approval of the Madera County Sheriff's Department. Undoubtedly, no incident would have occurred if said faction would not have been allowed by the Madera County Sheriff's Department to illegal occupy the casino hotel. The Ayala/Lewis Faction should have been required by the Madera County Sheriff's Department to limit and restrain their intra-tribal dispute activities to lands away from the gaming operation, which has been the case on previous occasions when the Tribe was struggling over issues of so-called leadership.

Any conclusion otherwise regarding the proximate cause of the conflict that occurred on October 9, 2014, cannot stand any concrete factual scrutiny and the bare facts *infer* that the federal, state and county officials involved have sided with one faction over another and recognized one faction over the another – thus, in essence recognizing as the legal governing faction the Ayala/Lewis Faction who is now comprised of competing governing factions.. Prosecution of the McDonald faction council members and law enforcement emphasizes the fact that Madera County officials, *acting under color of state law* recognized the Ayala/Lewis Faction

as the legally acknowledged governing body by their inaction in allowing said group to occupy the casino and hotel.[1] Unmistakably, according to established case law, federal and state authorities do not possess the recognized statutory authority or otherwise to determine who is and who is not the governing body of the Tribe. Only a tribal forum has that jurisdictional authority – not Madera County or NIGC. Federal agencies as well as, federal courts lack jurisdiction to decide intra-tribal disputes. *Sac & Fox Tribe of the Mississippi in Iowa, Election Bd. v. Bureau of Indian Affairs,* 439 F.3d 832, 835 (8th Cir.2006) (holding that jurisdiction to resolve internal tribal disputes lies with Indian tribes and not district courts); *see also Santa Clara Pueblo v. Martinez,* 436 U.S. 49, 55 (1978) (explaining that Indian tribes remain a separate people with power to regulate their internal and social relations); *Lewis v. Norton,* 424 F.3d 959, 960 (9th Cir.2005).[2]

B. Picayune Rancheria – Distributee(s)

The Picayune Rancheria of Chukchansi Indians' Distributee(s)[3] are presently the only legitimately enrolled members of the Rancheria, based upon the 1988 Constitution of the Tribe, Article III, Section 1.[4] All the remaining factions, who represent nearly 96 % of the Tribe's

[1] The inherent sovereignty of any federal recognized tribe allows for the creation of tribal law enforcement to enforce the laws of the Tribe. It is undisputed that the Picayune Rancheria of Chukchansi Indians is a federally recognized Indian tribe. The precise limits of tribal powers are not readily definable because tribal authority "is attributable in no way to any delegation to [the tribes] of federal authority". *United States v. Wheeler*, 435 U.S. 313, 328 (1978); The powers of tribes extend "over both their members and their territory." *United States v. Mazurie*, 419 U.S. 544, 557 (1975). P.L. 280 does not change the authority of Tribes to create courts and to enforce their own laws. *See*, Felix Cohen, Handbook of Indian Law, pg. 344, 345; see, also, *Bryan v. Itasca County*, 426 U.S. 373 (1976); *Santa Rosa Band v. Kings County*, 532 F.ed 655 (9th Cir. 1975), ert. Denied, 429 U.S. 1038 (1977).

[2] The Court held that where tribal leadership is in dispute, the BIA abuses its discretion under the APA by failing to take sides until the tribe sorts out the dispute internally. *See id.* ("We commend the BIA for its reluctance to intervene in the election dispute, but it was an abuse of discretion for the BIA to refuse to recognize one council or the other until such time as Indian contestants could resolve the dispute themselves."); *accord Attorney's Process & Investigation Servs., Inc. v. Sac & Fox Tribe of Miss. in Iowa*, 609 F.3d 927, 943 (8th Cir.2010)

[3] *See* Hardwick v. United States, No. C 79–1710 JF (PVT), 2006 WL 3533029, at *1 (N.D.Cal. Dec.7, 2006). "Upon distribution of tribal property, the tribes ceased to exist and members of the former tribes were stripped of their status as Indians." *Id*. In 1979, individuals from a number of terminated tribes filed the Hardwick action, seeking "restoration of their status as Indians and entitlement to federal Indian benefits, as well as the right to reestablish their tribes as formal government entities." Id. In 1983, Hardwick was settled with respect to members of seventeen former tribes, including the Picayune Rancheria. *Id*.

[4] Article III – Membership, *Section 1 – Membership*, The membership of the Tribe shall consist of: (1) All persons who were listed as distributees or dependent members of distributees in the plan for distribution of the assets of the Picayune Rancheria, as approved by the *Secretary of the Interior* on June 30, 1960.

enrollee(s) who have caused nearly all of the political upheaval at the Tribe, are not qualified for membership in the Tribe presently, as absolutely no "special relationship" with the Tribe has ever been established as required by Article III, Section (a)(2). [5] Based upon this legal and factual basis the Distributee(s) are the only individual enrollee(s) who qualify for membership in the tribe and are duly enrolled. The Distributtee(s) all descend from the original three (3) Distributee(s) – Maryann Ramirez, Gordon Wyatt and Nancy Wyatt who were listed on 1958 Distribution Plan.[6] (*See*, attached Exhibit No. 1)

Although the issue of tribal membership is beyond any federal or state court's jurisdictional review; this Court's original Temporary Restraining Order (TRO) provided for the payment of per capita to all those enrolled in the Tribe in 2010. The Tribe had in 2010 and 2011 disenrolled approximately 170 individuals from the Tribe who did not qualify for membership and had been erroneously enrolled. This Court's TRO which required payment to those individuals who have been previously disenrolled from the Tribe, was as mentioned outside the jurisdictional parameters of the Court. *See*, *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978). Any recognition of current enrollment and who has and who does not retain benefits is without doubt an authority which remains within the exclusive jurisdictional authority of the Picayune Rancheria of Chukchansi Indians.[7] See, *Cahto Tribe of Laytonville Rancheria v. Dutschke,* 715

[5] All persons of Chukchansi Indian blood who have a special relationship with the Tribe not shared by Indians in general, and who have received allotments of public land under the General Allotment Act of 1887, 25 USC §331 et seq., as listed on any official roll of the Bureau of Indian Affairs.

[6] California Rancheria Termination Act, Public Law 85-671 (72 Stat. 619); see, also, *Tillie Hardwick, et al. v. United States of America, et al.*, Case No. C-79-1710-SW.

[7] *See*, *Cloverdale Rancheria v. Cloverdale Rancheria of Pomo Indians of California, et al., Plaintiffs v. Salazar, et al.*, 2012 WL 1669018. "In the years following restoration of the Cloverdale Rancheria, several competing groups purported to hold tribal elections and to form tribal governments. *See id.* at 246–52. On April 1, 1997, the Interior Board of Indian Appeals ("IBIA")[1] vacated decisions of the Bureau of Indian Affairs ("BIA") that had recognized two separate tribal governments at different points in time. *See id.* at 262. The IBIA remanded the matter and directed the BIA to facilitate resolution of the dispute between the Tribe's members. *See id.* at 262. On remand, the BIA concluded that under the *Hardwick* settlement only distributees (and their successors) of the Cloverdale Rancheria's assets were eligible to participate in organization of a tribal government. *See Alan–Wilson v. Acting Sacramento Area Director* (*"Alan–Wilson II"*), 33 IBIA 55, 55 (1998). The BIA sent notices to 127 individuals that it determined were eligible to vote, inviting them to a meeting regarding organization of the Tribe. *See id.*

F.3d 1225, 1226 (9th Cir.2013). The Court's TRO which included language that all those enrolled in 2010 should receive per capita payments is the primary basis for the political division, which presently exists between certain members of the so-called 2010 Tribal Council.

Although the present and past intra-tribal disputes involving the Picayune Rancheria of Chukchansi Indians is primarily derived from enrollment issues, only the Rancheria's tribal forums have the authority to sort through these struggles – not the BIA or federal courts.

C. Violations of the Preliminary Injunction

The Distributee(s) believe the preliminary injunction is presently being violated by the so-called 2010 Tribal Council and their employees and agents based upon their activities to prepare the casino for opening sometime in October, 2015. These activities obviously violate the intent and substantive restraints placed upon all Defendant(s) based upon the explicit language of the Preliminary Injunction. Further, the 2010 Tribal Council have absconded with and illegally used gaming funds located in the cage of the casino for personal purposes. Approximately six to eight million dollars, probably more, which previously was located in the cashier's cage of the Casino on the date of the closure have never been accounted for and are apparently missing. Accordingly, funds are only to be paid out for mandatory fees and only for regulatory purposes; however, it is apparent that the so-called 2010 tribal Council are paying certain wages to themselves and others in violation of the substantive provisions of the preliminary injunction, which states: "[N]o discretionary payments shall be made to any group claiming to be the duly constituted tribal council or claiming control over tribal matters." *See*, Preliminary Injunction, pg. 9, Dated: October 29, 2014. Payment of salaries, wages, travel expenses and other costs to the so-called 2010 Tribal Council constitute indisputably payments being made to - *a group claiming to be the duly constituted tribal council or claiming control over tribal matters*. Id.

II

VIOLATIONS OF PRELIMINARY INJUNCTION

A. Tribal Court Resolution

Undoubtedly, the intra-tribal dispute has not been settled and there are now apparently at least four (4) factions vying for leadership recognition. In the beginning of this intra-tribal dispute, if the BIA and federal courts would have adhered to the decisions of the Tribal Court of the Picayune Rancheria, this intra-tribal dispute would and should have been concluded years ago.[8] However, in contrast if it is determined that no tribal forum exists then the BIA and federal courts are authorized in a limited fashion to interject their rulings. Where there is no functional tribal court, and the dispute is in danger never of being sorted out internally within the tribe, the BIA, and then a federal district court, may have to address the merits of the dispute. *See, Wheeler v. BIA*, 811 F.2d 549, 553 (10th Cir.1987) (citing *Goodface v. Grassrope*, 708 F.2d at 339; *Milam v. U.S. Dep't of Interior,* 10 Indian L. Rep. 3013, No. 82–3099 (D.D.C. Dec. 23, 1982)). In the present intra-tribal dispute the Picayune Rancheria has a functioning tribal Court located on trust property of the Tribe, which has already decided the issue in 2013. That decision should have finalized the issue of who is and who is not recognized as the governing body; however, that decision does not settle the issue of who is and who is not legally enrolled in the Picayune Rancheria. (*See*, attached Exhibit No. 2).

Any argument that a Tribal Court could exist in Fresno, California as the Lewis Faction previously argued is without legal merit – as lands located in Fresno are not lands that are to be

[8] Along with these factors listed above, the Court is mindful of two other significant principles that have not been abrogated by the Supreme Court: (1) the federal policy of promoting tribal self-government, which necessarily encompasses the development of a functioning tribal court system, *Iowa Mut. Ins. Co.*, 480 U.S. at 16–17, 107 S.Ct. 971; and (2) because "tribal courts are competent law-applying bodies, the tribal court's determination of its own jurisdiction is entitled to 'some deference.' " *Water Wheel Camp Recreational Area, Inc. v. LaRance*, 642 F.3d 802, 808 (9th Cir.2011) (quoting *FMC v. Shoshone–Bannock Tribes*, 905 F.2d 1311, 1313 (9th Cir.1990)).

considered and defined as "Indian County" per 18 U.S.C. §1151. The Supreme Court in *Alaska v. Village of Venetie*, 522 U.S. 520 (1998), held that because the Tribe's ANCSA lands were not "Indian country" within the meaning of 18 U.S.C. § 1151(b), the Tribe lacked the power to impose a tax upon nonmember contractors and the Tribal Court that attempted to decide the issue had no jurisdiction whatsoever over a contractor who had built a school for the Village.

In reviewing the factual basis of any intra-tribal dispute Court should be mindful of two (2) other significant principles that have not been abrogated by the Supreme Court: (1) the federal policy of promoting tribal self-government, which necessarily encompasses the development of a functioning tribal court system, *Iowa Mut. Ins. Co.*, 480 U.S. at 16–17, 107 S.Ct. 971; and (2) because "tribal courts are competent law-applying bodies, the tribal court's determination of its own jurisdiction is entitled to 'some deference.' " *Water Wheel Camp Recreational Area, Inc. v. LaRance*, 642 F.3d 802, 808 (9th Cir.2011) (quoting *FMC v. Shoshone–Bannock Tribes*, 905 F.2d 1311, 1313 (9th Cir.1990)).

Here, the tribal court has determined that it has jurisdiction over the claims against what was previously the Lewis Faction. Upon any independent examination of the jurisdictional question, no Court may discern error in the tribal court's analysis. " '[A] tribe's right to define its own membership for tribal purposes has long been recognized as central to its existence as an independent political community.' " *Cahto Tribe of Laytonville Rancheria v. Dutschke*, 715 F.3d 1225, 1226 (9th Cir.2013) (quoting *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 72n. 32, 98 S.Ct. 1670, 56 L.Ed.2d 106 (1978)). In view of the importance of tribal membership decisions and as part of the federal policy favoring tribal self-government, matters of tribal enrollment are generally beyond federal judicial scrutiny. See, *Lewis v. Norton*, 424 F.3d 959, 961 (9th Cir.2005).

Based upon the foregoing and the issuance of a valid Court Order from the Picayune Rancheria's Tribal Court this matter should have been settled months and even years ago if the law was followed.

B. Bureau of Indian Affairs and National Indian Gaming Commission Interjections

To complicate the issues surrounding governance even more and without any substantive authority the National Indian Gaming Commission (NIGC) is attempting through some unwritten statutory authority to decided who has the legal authority to open and operate the gaming facility. NIGC has no more authority to solve governmental dilemma and decide who is the legitimate governing body of the Tribe then does the federal courts, BIA or the State of California. NIGC like all other federal other agencies have no authority to determine which faction is the lawful governing body of the Tribe and which is not the lawful governing body. Certainly, the granting of immediate effect to the Bureau of Indian Affairs, Pacific Regional Director's decision of February 11, 2014, by the Interior Board of Indian Appeals (IBIA) that the so-called 2010 Tribal Council should be recognized for purposes of ISDEA, P.L. 93-638 contracting purposes, does not settle the intra-tribal dispute. That decision only compounded and enhanced the amount of confusion over who is and who is not the legally sanctioned leadership of the Tribe and was certainly arbitrary and capricious and not based upon the chronological facts presented to the Area Director.

The Interior Board of Indian Appeals (IBIA) indicated that although the Area Director's Decision of February 11, 2014 is to be granted immediate effect – the Board recognized the so-called 2010 Tribal Council is to be recognized for the sole purpose of P.L. 93-638 contracting and stated that:

> [B]oard's determination to make the Decision immediately effective **shall not be construed**, **in any respect, as a determination on the ability of the 2010 Council to execute the Tribe's obligations**, or on qualifications or disqualifications of any individuals (e.g., based upon allegations of illegal conduct), in relation to dealings between BIA or third parties and the 2010 Council or its agents. (emphasis added)

(*See*, IBIA Decision, Dated: February 9, 2015, Pg. 6)

The so-called 2010 Tribal Council is recognized solely for the purpose of ISDEA P.L. 93-

638 contracting to provide services to tribal members and absolutely nothing more.[9]

The IBIA's determination to make effective the Area Director's Decision of February 11, 2014, requires the substantive whole of the Area Director's decision to take effect, which states:

> [T]here 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 Ranched a 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.** Pg. 6 (emphasis added)

(See, Area Director Decision, Dated February 11, 2014)

It is clear that the IBIA decision to up-hold the decision of the Area Director did not in any manner resolve the inter-tribal dispute and which faction is to be recognized as the permanent leadership of the Tribe. In addition, to further complicate matters – the issue now arises as to whether all the legislative actions that have taken place since 2010 are binding and legal? And who is to decide which legislative act to accept and which not to accept as legal and binding relating to the legislative actions of the subsequent Tribal Councils during the period from some unknown date in 2010 and the present, which will be a daunting task to say the least. Many contracts and agreements were executed and based upon the recognition of the so-called 2010 Tribal Council many of these contracts and agreements may be deemed to be illegal and non-binding depending upon which tribal council members approved said documents.

Now that the BIA and NIGC have illegally inserted themselves into the issue of enrollment and membership of the Tribe; a laundry list of legislative tribal council actions that have been approved subsequent to the 2010 Tribal Council leaving office will now be exposed to questioning as to their legality and enforceability. One cannot pick and choose which legislative acts to abide by and which ones not to be follow; it would seem it is all or nothing. This means that the sanctions imposed upon certain members of the 2010 Tribal Council, minus Jennifer

[9] 25 U.S.C. §450 et seq.; 25 CFR §900 et seq. – *also* referred to as ISDEA contracting.

Stanley are to be followed by the BIA, NIGC, IBIA and the Tribe.

Irrelevant of the position of NIGC, the 2010 Tribal Council cannot just do as they would like and begin operations without some form of modification to the Preliminary Injunction. As well, NIGC has no statutory authority to decide which governing faction claiming legitimacy should be allowed to reopen the gaming facility. According to previously decided matters - no agency of the federal government has the authority to recognize any governing body when there exists competing factions and only a legally recognized *governing body* of a federally recognized tribe is legally authorized to operate a class III Indian gaming facility. (*See*, 25 U.S.C. §2710 (d)(1)(A)(i), (C), (D).[10]

It is substantively clear that NIGC must recognize a tribal "governing body" to allow any type of Class III gaming to be conducted within the confines of Indian country. Presently based upon the intra-tribal dispute there is no avenue by which NIGC may legally justify their recognition of any group claiming to be the rightful tribal governing body, including the so-called 2010 Tribal Council who is authorized only to enter ISDEA P.L. 93-638 contracting.

C. <u>Membership Dispute – 2010 Tribal Council</u>

Furthermore, there is seemingly a division amongst the so-called 2010 Tribal Council as who is qualified to vote in the up-coming election. Three (3) members of the 2010 Tribal Council believe those individuals should not be counted for membership and retain voting privileges and four (4) members believe they should be allowed to receive benefits and be allowed to vote in the

[10] "[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." See, *Hamilton v. Acting Sacramento Area Director*, 29 IBIA 122, 123 (1996); In *Goodface v. Grassrope*, 708 F.2d 335, 338-39(8th Cir. 1983) the Federal District Court indicated, "We conclude that the district court possessed jurisdiction only to order the BIA to recognize, conditionally, either the new or old council so as to permit the BIA to deal with a single tribal government. That recognition should continue only so long as the dispute remains unresolved by a tribal court. Moreover, the district court in deciding which council to recognize as a preliminary matter could, by applying equitable principles, determine that the newly elected council, whose successful election received certification from the tribal election board, should govern in the interim period until the dispute reaches initial resolution by a tribal court.

scheduled election in October, 2015.[11] The up-coming election will be tainted by the fact that individuals who are not qualified are being allowed to vote. No certification of membership is being allowed; consequently, those voting may not be eligible voters. (*See*, Exhibit Nos. 3, 4)

Further no notification as to which laws are being utilized by the so-called 2010 Tribal Council relative to up-coming election has been provided the membership. Irrelevant of the lack of notification, any tribal election will, as mentioned will be tainted as the so-called 2010 Tribal Council has allegedly voted to grant 2010 disenrolled members the right to vote and many of the candidates that will be running for office have been sanctioned and are not eligible to run for office i.e. Chance Alberta, Morris Reid, Dora Jones, Nancy Ayala and Reginald Lewis. These sanctions were legislative acts of the Tribal Council's subsequent to the 2010 Tribal Council and the BIA and NIGC have no authority to overturn those legislative actions. (*See*, attached Exhibit No. 5)

III

CONCLUSION

The so-called 2010 Tribal Council's activities at the Chukchansi Gold Resort and Casino in recent weeks, i.e. job fair, executing management agreement(s), posting security guards, borrowing funds, preparing the Casino, spending funds on salaries and other unknown disbursements, constitute a violation of this Court's Preliminary Injunction, which states:

> Attempting to disturb, modify or otherwise change the circumstances that were in effect at the Casino as of the afternoon of October 8, 2014. This prohibition includes, without limitation, attempting to repossess, or take control of the Casino in whole or in part…..[N]o discretionary payments shall be made to any group claiming to be the duly constituted tribal council or claiming control over tribal matters.

See, Preliminary Injunction, pg. 9, Dated: October 29, 2014.

[11] The issue of the 2010 disenrolled members being allowed to vote was clearly precipitated by the Court ordering that all members as of 2010 are to be paid per capita.

These activities have caused a heightened tension between the governing factions and could or may lead to further hostility among tribal members who support differing factions.

Whether the National Indian Gaming Commission (NIGC) and/or the State of California recognize the so-called 2010 Tribal Council should not be a precursor to dissolving the present Preliminary Injunction or allow said group to begin taking steps to give the impression to the public that they themselves have some unknown and unidentified authority to ignore the expressed substantive restrictions contained within the four corners of the injunction.

According to previously decided matters – no agency of the federal government has the authority to recognize any governing body when there exists competing factions and only a legally recognized *governing body* of a federally recognized tribe is legally authorized to operate a Class III Indian gaming facility. (*See*, 25 U.S.C. §2710 (d) et seq.).[12]

Furthermore, the Picayune Rancheria of Chukchansi Indians has carried on constitutionally required elections since the 2010 Tribal Council election – however, tainted the membership of those candidates may have been and continue to be as *none* of the membership has ever substantiated their "special relationship" with the Tribe to qualify for constitutionally approved membership.[13] Furthermore, since elections have occurred the issue of dispute over past electoral issues in now moot.[14]

Based upon the foregoing the Picayune Rancheria of Chukchansi Indians (Distributee(s))

---

[12] "[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." See, *Hamilton v. Acting Sacramento Area Director*, 29 IBIA 122, 123 (1996); In *Goodface v. Grassrope*, 708 F.2d 335, 338-39(8th Cir. 1983) the Federal District Court indicated, "We conclude that the district court possessed jurisdiction only to order the BIA to recognize, conditionally, either the new or old council so as to permit the BIA to deal with a single tribal government. That recognition should continue only so long as the dispute remains unresolved by a tribal court. Moreover, the district court in deciding which council to recognize as a preliminary matter could, by applying equitable principles, determine that the newly elected council, whose successful election received certification from the tribal election board, should govern in the interim period until the dispute reaches initial resolution by a tribal court.

[13] According to previously decided IBIA matters it is clear that any subsequent election that is conducted in accordance with tribal law "moots" any further dispute over leadership. As well according an enrollment audit conducted by the Tribe there currently exists approximately 860 tribal members that do not meet the requirements for membership, pursuant to Article III, Section 1 (A)(2), of the Picayune Rancheria of Chukchansi Indians.

[14] The doctrine of mootness is closely related to the issue of standing, another core ingredient of the Article III "case and controversy" requirement. If facts develop subsequent to the filing of a case that resolve the dispute, the case should be dismissed. As noted by the Supreme Court, "mootness [is] the 'doctrine of standing in a time frame. The requisite personal interest that must exist at the commencement of the litigation (standing) must, continue throughout its existence (mootness)." United States Parole Comm'n v. Geraghty, 445 U.S. 388 (1980).

believe in good faith that the so-called 2010 Tribal Council is in contempt of the Preliminary Injunction issued on October 29, 2014, by this Honorable Court.

The Distributee (s) of the Chukchansi Indian assert that to allow the reopening of the gaming facility and hotel at this date or until a constitutionally authorized election has occurred and all enrollment issues have been clarified the public will be further endangered, including specifically the patrons and residents of the trust lands surrounding the casino. The factional dispute remains unresolved and the intra-tribal dispute continues even now the 2010 Tribal Council is divided on membership issues and who is qualified to vote and who is not. More importantly according to tribal law none of the members of the 2010 Tribal Council, with the exception of Jennifer Stanley are eligible to hold office, irrelevant of the enrollment issues as they have been sanctioned for acts in violation of tribal law.

The Court has inherent authority to enforce its orders through institution of civil contempt proceedings. *See, e.g., United States v. United Mine Workers of Am.*, 330 U.S. 258, 294 (1947); *PrimusAuto Fin. Servs., Inc. v. Batarse*, 115 F.3d 644, 648 (9th Cir. 1997). "Intent is not an issue in civil contempt proceedings." *Donovan v. Mozzola*, 716 F.2d 1226, 1240 (9th Cir. 1993). In advancing its request for an order to show cause re contempt, the Distributee(s) contend that the so-called 2010 Tribal Council has violated the Court's order in two ways: first, by making attempts to open the gaming facility and secondly, by using gaming funds to pay their tribal council members and only a selected few members of their group for wages and other consideration.

DATED this 2nd day of October, 2015.

Respectfully Submitted,

/s/ Gary Montana

Gary J. Montana, Senior Attorney
Montana & Associates, LLC
Picayune Rancheria of Chukchansi Indians