

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

9 Attorney for Defendant(s)
10 Picayune Rancheria of Chukchansi Indians

11 **UNITED STATES DISTRICT COURT**
12 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
13 **(FRESNO DIVISION)**

14 STATE OF CALIFORNIA,)
15)
16 Plaintiff,) Case No. 14-CV-01593 LJO-SAB
17)
18 Vs.)
19) **MOTION FOR ORDER TO SHOW**
20 PICAYUNE RANCHERIA OF) **CAUSE WHY 2010 TRIBAL COUNCIL**
21 CHUKCHANSI INDIANS OF CALIFORNIA,) **SHOULD NOT BE HELD IN CONTEMPT**
22 A FEDERALLY RECONIZED TRIBE OF) **FOR VIOLATING PRELIMINARY**
23 INDIANS,) **INJUNCTION**
24)
25 Defendant(s).)
26)
27)
28)

29 COMES NOW, the attorney for the Picayune Rancheria of Chukchansi Indians
30 (Distributee(s)) and moves this Honorable Court for an Order to Show Cause why the so-called
31 2010 Tribal Council should not be held in contempt for violating this Court's Preliminary
32 Injunction, issued on October 29, 2014, based upon the following:

- 33 1. The so-called 2010 Tribal Council is recognized solely for the purpose of P.L. 93-
34 638 contracting to provide services to tribal members and absolutely nothing more.¹

35 ¹ 25 U.S.C. §450 et seq.; 25 CFR §900 et seq. – also referred to as ISDEA contracting.

1 2. The Interior Board of Indian Appeals (IBIA) indicated that although the Area
2 Director's Decision of February 11, 2014 was to be given immediate effect – the Board
3 recognized the so-called 2010 Tribal Council was to be recognized for the sole purpose of P.L.
4 93-638 contracting and stated that:

5 [B]oard's determination to make the Decision immediately effective
6 **shall not be construed, in any respect, as a determination on the ability**
7 **of the 2010 Council to execute the Tribe's obligations**, or on qualifications
8 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)

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

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

13 [T]here is no provision in the Tribe's Constitution or federal law that
14 provides the BIA with the authority to determine which of the opposing factions
15 interpretation of the Tribe's law is correct, disputes regarding leadership of
16 Picayune Ranches 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)

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

18 4. The so-called 2010 Tribal Council's activities at the Chukchansi Gold Resort and
19 Casino in recent weeks, i.e. job fair, executing management agreement(s), posting security
20 guards, constitute a violation of this Court's Preliminary Injunction, which states:

21 Attempting to disturb, modify or otherwise change the circumstances that were in
22 effect at the Casino as of the afternoon of October 8, 2014. This prohibition includes,
23 without limitation, attempting to repossess, or take control of the Casino in whole or
in part.

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

25 5. Further, the so-called 2010 Tribal Council is paying out funds from the cash cage
26 which have been depleted by their mis-use is again in violation of the preliminary injunction, which
27 states: "...[No] discretionary payments shall be made to any group claiming to be the duly
28 constituted tribal council or claiming control over tribal matters." Id.

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

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

8 8. According to previously decided matters - no agency of the federal government has
9 the authority to recognize any governing body when there exists competing factions and only a legally
10 recognized *governing body* of a federally recognized tribe is legally authorized to operate a class III
11 Indian gaming facility. (*See*, 25 U.S.C. §2710 (d)).²

12 9. Furthermore, the Picayune Rancheria of Chukchansi Indians has carried on
13 constitutionally required elections since the 2010 Tribal Council election – however, tainted the
14 membership of those candidates may have been and continue to be as *none* of the membership
15 has ever substantiated their “special relationship” with the Tribe to qualify for constitutionally
16 approved membership.

17 10. Based upon the foregoing the Picayune Rancheria of Chukchansi Indians
18 (Distributee(s)) believe in good faith that the so-called Defendant 2010 Tribal Council are in contempt
19 of the Preliminary Injunction issued on October 29, 2014, by this Honorable Court.

22
23 ² “[T]he determination of tribal leadership is quintessentially an intra-tribal matter raising issues of tribal
24 sovereignty, and, therefore the Department should defer to tribal resolution of the matter through an appropriate tribal
25 forum, including the normal electoral process.” *See, Hamilton v. Acting Sacramento Area Director*, 29 IBIA 122, 123
26 (1996); In *Goodface v. Grassrope*, 708 F.2d 335, 338-39(8th Cir. 1983) the Federal District Court indicated, “We
27 conclude that the district court possessed jurisdiction only to order the BIA to recognize, conditionally, either the new
28 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.

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

DATED this 2nd day of October, 2015.

RESPECTFULLY SUBMITTED,

 /s/Gary Montana
Gary J. Montana, PHV
Attorney for Defendant(s)
Picayune Rancheria of Chukchansi Indians
(Distributee(s))