

JOHN M. PEEBLES  
JAMES QAQUNDAH  
**FREDERICKS PEEBLES & MORGAN LLP**  
2020 L Street, Suite 250  
Sacramento, CA 95811  
Telephone: (916) 441-2700  
Facsimile: (916) 441-2067

**Attorneys for Intervenor Defendants**  
Picayune Rancheria of the Chukchansi Indians (Reid Council)

**UNITED STATES DISTRICT COURT**  
**FOR THE EASTERN DISTRICT OF CALIFORNIA**

PICAYUNE RANCHERIA OF  
CHUKCHANSI INDIANS,

Plaintiff,

v.

YOSEMITE BANK, et al.,

Defendants.

Case No. 1:13-cv-00831-LJO-MJS

**REPLY TO LEWIS FACTION'S  
OPPOSITION OF REID COUNCIL'S  
MOTION TO INTERVENE**

Date: July 26, 2013  
Time: 9:30 am  
Court: 6  
Judge: Hon. Michael J. Seng

**I. INTRODUCTION**

In its Opposition (Doc. 13), the Lewis Faction argues that the Reid Council should not be allowed to intervene because of the Lewis Faction's belief that its own claims are true and correct.<sup>1</sup> However, the Lewis Faction is putting the cart before the horse. The Lewis Faction's claims have not been established before this Court, any other Court, or any other Tribunal. In addition, two out of the three factions in the Tribal leadership dispute disagree with the Lewis Faction's claims. Nonetheless, the Lewis Faction's opposition misses the point of the Motion to Intervene. The issue for purposes of this intervention motion is not to prove to this Court who is the legitimate Tribal government. Rather, the point is that there are three separate factions involved in the Tribal leadership dispute, all three claim a significantly protectable interest in the subject matter of this case, and therefore all three should be represented in the instant action.

<sup>1</sup> The Ayala Faction joined the Lewis Faction's Opposition. See Docket No. 14.

1 It must be noted that the Reid Council's acknowledgment of the Lewis and Ayala Factions  
2 and their respective positions should not be misconstrued as a concession to any of their claims.

3 Significantly, the arguments raised by the Lewis Faction are the same as those raised by the  
4 Ayala Faction in opposition to the Lewis Faction's intervention, and those arguments were already  
5 rejected by the Honorable Michael J. Seng and this Court in the related case *Picayune Rancheria of*  
6 *Chukchansi Indians v. Rabobank* ("Rabobank"), No. 13-cv-00609-LJO-MJS (E.D. Cal. filed April  
7 25, 2013). Moreover, Defendants United Security Bank and Premier Valley Bank dba Yosemite  
8 Bank ("Banks") support intervention by the Reid Council. *See* Statement of Non-Opposition to  
9 Motion to Intervene (Doc. 12) ("The Banks prefer that the entirety of the Tribe, and each of its  
10 Factions, is represented in the instant action to avoid the possibility of multiple suits against the  
11 Banks seeking to obtain control of the same accounts."). For the same reasons this Court granted the  
12 Lewis Faction's motion to intervene in *Rabobank*, it should grant the Reid Council's Motion to  
13 Intervene in the instant case.

## 14 **II. ARGUMENT**

### 15 **A. The Lewis Faction's "Facts" section is riddled with argument, flaws, and falsities.**

#### 16 **1. Objection to Verri Declaration**

17 The declaration of Richard Verri, attorney for the Lewis Faction, should be stricken in its  
18 entirety. Mr. Verri did not establish that he had personal knowledge of any of the factual statements  
19 he asserted. Merely stating that she has worked with the Lewis Faction "for a number of years" does  
20 not establish personal knowledge of asserted facts. In addition, Mr. Bazzazieh's declaration contains  
21 numerous legal arguments, which are improper, and inaccurate and misleading statements.  
22 Accordingly, the Reid Council objects to the entirety of Mr. Verri's declaration.

#### 23 **2. Objection to Rosette Declaration**

24 The Reid Council further objects to the Declaration of Robert Rosette in its entirety. First,  
25 Mr. Rosette's Declaration contains false statements. For example, Mr. Rosette states that "On May  
26 16, 2013 . . . [BIA Agency Superintendent] Burdick issued a final agency action Decision (the  
27 'Burdick Decision'). . . ." Rosette Declaration, at ¶ 4. This is patently false. In fact, the Burdick  
28 Decision was not a final agency action because a decision by a BIA official does not become final

1 action for the agency unless it is not appealed within the appeal period. *See* 25 C.F.R. Part 2. The  
 2 Reid Council appealed the Burdick Decision on June 14, 2013, and therefore it is not final agency  
 3 action. *See* Notice of Appeal of Superintendent Burdick's May 16, 2013 Decision (June 14, 2013),  
 4 Declaration of James Qaqundah in Support of Reply Brief ("Qaqundah Declaration"), **Exhibit A**.  
 5 Mr. Rosette was provided notice of the Reid Council's appeal. *Id.* Indeed, due to the Reid Council's  
 6 appeal, the Burdick Decision never went into effect and therefore has no weight whatsoever, another  
 7 fact Mr. Rosette knew or should have known. *See* 25 C.F.R. Part 2. Thus, the Burdick Decision is  
 8 irrelevant to the instant action.

9 The Reid Council further objects to Mr. Rosette's description of statements by Superintendent  
 10 Burdick. First, as discussed above, the Burdick Decision has no legal effect and is therefore  
 11 irrelevant. In addition, Superintendent Burdick's comments are hearsay offered for the truth of the  
 12 matter and not subject to any hearsay exceptions. Further, Mr. Rosette's description of the  
 13 conversation is ambiguous and does not recount Mr. Burdick's actual statements.

14 Accordingly, Mr. Rosette's declaration should be stricken in its entirety.

### 15 **3. Objection to "Facts" Section.**

16 The Lewis Faction describes several purported actions and documents to claim that it has  
 17 been ratified or otherwise legitimized as the Tribe's governing body. Each of these purported actions  
 18 and documents is false or otherwise invalid, and provides no support to the Lewis Faction's  
 19 opposition to the instant Motion to Intervene. Moreover, to the extent the Lewis Faction claims to  
 20 establish itself as the Tribe's government, this Court – as Judge Seng recognized in *Rabobank* – shall  
 21 not undertake to resolve who legitimately governs and speaks for the Tribe. If this Court does intend  
 22 to adjudicate the Tribe's leadership dispute, the Reid Council asks that it allow briefing on the matter.

23 Although the Reid Council objects to the entirety of the Lewis Faction's "facts" section as  
 24 irrelevant, it addresses the more egregious inaccuracies here.

25 First, the Lewis Faction asserts as a purported factual assertion that "it is clear under federal  
 26 law and policy that in the event of an election dispute, the Tribal Council elected and installed in the  
 27 last uncontested election continues as the legally constituted governing body of the Tribe . . . ."  
 28 Opposition (Doc. 13), at 2; *see also* Verri Declaration, at ¶ 4. This is a misstatement of fact and law.

1 “The practice of recognizing certain individuals as tribal officials when necessary for government-to-  
 2 government purposes is normally applied by continuing to recognize the last undisputed officials. . . .  
 3 That practice, however, is not invariably required.” *Alturas Indian Rancheria*, 54 IBIA 1, 11 (2011)  
 4 (emphasis added) (citations omitted).

5 The Lewis Faction asserts that the Bureau of Indian Affairs (“BIA”) recognized purported  
 6 Tribal elections that occurred in December 2012. This is not true. While the BIA may have  
 7 acknowledged receipt of information presented by the Lewis/Ayala Faction,<sup>2</sup> it never recognized any  
 8 purported Tribal election conducted in December 2012. An acknowledgment of the receipt of  
 9 election results is not a recognition of those purportedly elected. Rather, “such an acknowledgment  
 10 would not be an Agency decision subject to appeal, but instead just acknowledges receipt of  
 11 information.” Letter from Superintendent Troy Burdick letter to Patrick Hammond III, Qaqundah  
 12 Declaration, **Exhibit B**.

13 As discussed above, Superintendent Burdick did issue a decision on May 16, 2013.<sup>3</sup> The  
 14 Lewis and Ayala Factions dispute the meaning of the Burdick Decision. However, the Burdick  
 15 Decision is irrelevant because it never went into effect and therefore carries no weight. *See* 25 C.F.R.  
 16 § 2.6. The Reid Council appealed Superintendent Burdick’s decision on June 14, 2013. *See* Notice  
 17 of Appeal, Qaqundah Declaration, **Exhibit A**. The appeal is currently in the briefing stage before  
 18 Pacific Regional Director Amy Dutschke. *See* Statement of Reasons, Qaqundah Declaration, **Exhibit**  
 19 **C**. The Reid Council is confident that the Burdick Decision will be overturned. However, once the  
 20 Regional Director makes a decision, that decision likely will be appealed to the Interior Board of  
 21 Indian Appeals.

22 The Lewis Faction presents a purported “General Council Resolution” and a purported Tribal  
 23 “Referendum,” claiming that both of those purported documents ratify or otherwise legitimize the  
 24 Lewis Faction’s claims. However, neither of these purported documents is valid as a factual matter  
 25 or a matter of Tribal law.

26 \_\_\_\_\_  
 27 <sup>2</sup> The Lewis Faction did not provide any documentation from Superintendent Burdick to support its claim that he  
 acknowledged receipt of the Lewis Faction’s purported December 2012 election. Instead, the Lewis Faction provided its  
 own documents it sent to Superintendent Burdick.

28 <sup>3</sup> Superintendent Burdick’s May 16, 2013 decision recognized a purported “election” held by the Lewis/Ayala Faction,  
 which no longer exists.

Contrary to the Lewis Faction's assertion, the so-called "General Council resolution" was not adopted by the General Council at a duly-called General Council meeting or otherwise. Rather, on March 10, 2012, the Lewis/Ayala Faction staged an event to mimic a General Council meeting, paying certain Tribal members to attend and "vote" while hiring armed and masked guerrillas to exclude many other Tribal members. Once in the so-called "meeting," the Lewis/Ayala Faction prevented those in attendance from reading any of the "resolutions" to be voted on, despite several Tribal members asking to be fully informed of the contents. *See* Declaration of Morris Reid in Support of Motion to Intervene (Doc. 10-4), at ¶¶ 16-18.

In addition, the Lewis Faction's purported "Referendum" is also invalid as a matter of Tribal law. Once again, there were multiple reports that the Lewis Faction gained the signatures of several Tribal members through direct coercion, refusing to give Tribal members their Per Capita payments unless and until they signed the Lewis Faction's "referendum." However, even if the Lewis Faction's "referendum" were valid, the Lewis Faction fails to point out that the signatures are only the first step in the Tribe's Referendum process. Once the required signatures of 30% of Tribal members are collected, the Election Committee must still call a Special Election regarding the subject of the referendum, and then a majority of voting Tribal members must affirm the referendum. *See* Election Ordinance, § 6.<sup>4</sup> No such special election has occurred. Accordingly, the purported "Referendum" and "General Council resolution" are invalid and lend no support to the Lewis Faction's claims.

The Lewis Faction presents a letter from counsel for the Banks, asserting the letter supports the Lewis Faction's legitimacy. The Lewis Faction's contention is erroneous and undermined by several factors. First and foremost, the Banks expressly support the Reid Council's intervention in this case. *See* Statement of Non-Opposition to Motion to Intervene (Doc. 12) ("The Banks prefer that the entirety of the Tribe, and each of its Factions, is represented in the instant action to avoid the possibility of multiple suits against the Banks seeking to obtain control of the same accounts."). In

---

<sup>4</sup> The Tribe's Election Ordinance is attached as Exhibit B to the Declaration of Morris Reid in support of Picayune Rancheria of the Chukchansi Indians (Reid Council)'s Motion to Intervene. A Special Election may be avoided only if the Tribal Council acts to adopt all of the provisions of the referendum. Election Ordinance, § 6(a). The Lewis Faction does not even assert that it acted to adopt its referendum. Even if it had, however, an entity cannot rule on the document by which it itself was purportedly created or ratified. *See Ransom v. Babbitt*, 69 F.Supp.2d 141, 152 (D.D.C. 1999) ("[A]n incongruity exists when a court rules on the validity of a document by which it itself was created.").

1 addition, the Banks never recognized the Lewis Faction as being the legitimate governing body of the  
 2 Tribe. Rather, the Banks only “concluded that . . . the Lewis/Ayala Faction remains in control of the  
 3 Tribal Council, Chukchansi, Inc., and related businesses, as well as the various accounts at the  
 4 banks.” This recognition of the fact that the Lewis and Ayala Factions retained *de facto* control over  
 5 the Tribe and its assets through unlawful means does not in any way endorse the Lewis/Ayala Faction  
 6 (or either of the two separate factions) as the legitimate Tribal government. Further, the Banks stated  
 7 that their letter was sent after the Lewis and Ayala Factions submitted arguments in favor of their  
 8 positions. The Reid Council was not afforded the same opportunity. This is significant because the  
 9 Lewis and Ayala Factions clearly mischaracterized certain documents, as they have in this case. The  
 10 Banks’ letter relied in part on “the November 21, 2012 decision of the Bureau of Indian Affairs.”  
 11 The November 21, 2012 decision referred to by the Banks is a decision by Pacific Regional Director  
 12 Amy Dutschke in an appeal filed by the Reid Council. The Reid Council appealed the Regional  
 13 Director’s decision to the IBIA, and that appeal remains pending. Therefore, the November 21, 2012  
 14 decision never went into effect and therefore was erroneously relied upon by the Lewis and Ayala  
 15 Factions and the Banks.

16 The Lewis Faction finally asserts in its facts section that the “Reid Faction has filed numerous  
 17 appeals before the Interior Board of Indian Appeals” and that “[n]one of these appeals have  
 18 recognized the Reid Faction as the lawful Tribal Council.” Lewis Faction Opposition (Doc. 13) at 6.  
 19 The Reid Council has indeed filed two appeals before the IBIA, each challenging the BIA’s failure to  
 20 issue a written decision recognizing any Tribal faction for government-to-government purposes. *See*  
 21 IBIA Docket Nos. 13-045 & 13-081. The Reid Council has also appealed Superintendent Burdick’s  
 22 May 16, 2013 Decision, as discussed above, and a series of communications between the BIA  
 23 Superintendent and the National Indian Gaming Commission. All of those appeals remain pending,  
 24 meaning none are complete. Thus, while the Lewis Faction is correct that none of the appeals have  
 25 recognized the Reid Council, those appeals also have not recognized the Lewis Faction or the Ayala  
 26 Faction.

27 Rather, the only existing decision with any effect is an Order by the New York Supreme  
 28 Court. On July 3, 2013, the Supreme Court of the State of New York, New York County issued a

1 Preliminary Injunction in a case involving the parties to this case titled *Wells Fargo Bank v.*  
 2 *Chukchansi Economic Development Authority*, Case No. 652140/2013. *See* New York Court Order,  
 3 Declaration of James Qaquandah (“Qaquandah Decl.”), **Exhibit D**. In the Order, the New York Court  
 4 stated that neither the Lewis Faction nor the Ayala Faction are authorized to control or access the  
 5 Casino revenues or the Tribe’s Rabobank bank accounts. *See id.* at 3-4 (ordering funds in all bank  
 6 accounts transferred to Rabobank accounts and then closed, and then ordering that neither the Lewis  
 7 nor Ayala Faction shall have access to Rabobank or the Casino funds). Thus, if a decision by another  
 8 tribunal is to govern this matter, as recommended by the Lewis Faction, only the Reid Council is  
 9 justified as a party this case.

10 **B. The Reid Council established that it meets the four elements to justify**  
 11 **intervention in its Memorandum in Support of its Motion to Intervene.**

12 The Reid Council established that it meets the four elements to justify intervention in its  
 13 Memorandum in Support of its Motion to Intervene, and it only addresses certain points asserted by  
 14 the Lewis Faction here.

15 **1. The Reid Council’s significantly protectable interest in the instant action**  
 16 **will be substantially impaired.**

17 The Reid Council established that it has a significantly protectable interest in the subject  
 18 matter of this action that will be substantially impaired by disposition of this action in its  
 19 Memorandum in Support of its Motion to Intervene. In fact, the protectable interest that the Reid  
 20 Council possesses is the same as the interest Lewis Faction claims to possess.

21 The Reid Council does not move to intervene as individual Tribal members, but rather in its  
 22 capacity as the legitimate government of the Tribe. The Reid Council is engaged in a battle over  
 23 control of the Tribe with the Lewis and Ayala Factions. The dispute over the Tribal leadership  
 24 involves the Tribe’s government, its management, its business, and its millions of dollars of net  
 25 revenues. Specifically, it involves the subject matter of the instant litigation, the funds remaining in  
 26 the Tribal accounts held by Rabobank. The Reid Council has been involved in the Tribal leadership  
 27  
 28



1 dispute since it first arose in December 2011, and in fact is the only faction that has been involved  
2 throughout the entire dispute, because the Lewis/Ayala Faction dissolved into two distinct factions.<sup>5</sup>

3 The Lewis Faction's argument is hinged on its assertion that the Reid Council's claims to  
4 represent the Tribe are erroneous. The Reid Council obviously disagrees. However, this Court  
5 cannot decide that issue at this stage of this litigation. Moreover, for purposes of a motion to  
6 intervene, the Court is to "take all well-pleaded, non-conclusory allegations in the motion to  
7 intervene, the proposed complaint or answer in intervention, and declarations supporting the motion  
8 as true absent sham, frivolity or other objections." *Southwest Center for Biological Diversity v. Berg*,  
9 268 F.3d 810, 820 (9th Cir. 2001) (citations omitted). Regardless of the Lewis Faction's  
10 disagreement with the Reid Council's position, this Court should take the Reid Council's well-pled  
11 allegations as true for purposes of this Motion to Intervene. The Lewis Council does not argue or  
12 establish that the Reid Council's allegations are not well pled, conclusory, a sham, or frivolous.  
13 Certainly, the Lewis Faction does not consider a sham or frivolous the documents included in the  
14 Reid Council's moving papers – the Tribe's Constitution and Election Ordinance; the Election  
15 Results certified by Dominique Carrillo, who also certified the Lewis Faction's purported election  
16 results, as well as an independent observer; news articles; and correspondence.<sup>6</sup> Thus, based upon  
17 the Reid Council's well-pled allegations in its moving papers, which this Court should accept as true,  
18 the Reid Council possesses a significantly protectable interest of the subject matter at issue in these  
19 proceedings.

## 20 **2. The Lewis Faction cannot and will not adequately represent the Reid** 21 **Council's interests.**

22 In his Findings and Recommendations regarding the Lewis Faction's motion to intervene in  
23 *Rabobank*, Judge Seng wrote: "Clearly, the position of the Ayala and Lewis Factions are so  
24 diametrically opposed that no one can suggest the former could represent the latter's interests."

25 <sup>5</sup> The Reid Council has been engaged in discussions with the Bureau of Indian Affairs since December 2011 regarding the  
26 leadership dispute. In addition, after discussions with the BIA did not produce appropriate action by the BIA, the Reid  
27 Council has been litigating multiple administrative appeals before the Pacific Regional Director and the Interior Board of  
28 Indian Appeals since June 19, 2012. See Notice of Appeal to Pacific Regional Director, dated June 19, 2012, Qaqandah  
Declaration, **Exhibit E**. The administrative actions are still pending.

<sup>6</sup> Moreover, the basis of the Lewis Faction's opposition is that its own allegations are true, which is not the standard  
provided by the Ninth Circuit. Instead, the Reid Council's allegations are to be taken as true.



1 Findings and Recommendations (Doc. 26), at 8. Similarly, it is absurd to suggest that the Lewis  
2 Faction or the Ayala Faction could or would represent the Reid Council's interests.

3 **III. CONCLUSION**

4 For the reasons expressed above and in the Motion to Intervene and supporting papers, the  
5 Reid Council respectfully requests this Court to grant its Motion to Intervene.

6 Dated: July 19, 2013

Respectfully submitted,

7 **FREDERICKS PEEBLES & MORGAN LLP**

8  
9 By: /s/ James Qaqundah

10 James Qaqundah

11 Attorneys for Plaintiffs  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28