## Case 1:14-cv-01044-AWI-SAB Document 1 Filed 07/02/14 Page 1 of 61

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	5	Attorneys for BANK OF THE SIERRA, a California corporation			
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	8	UNITED STATES DISTRICT COURT			
	9	FOR THE EASTERN DISTRICT OF CALIFORNIA			
	10	FRESNO DIVISION			
71	11	* *	* *		
	12	BANK OF THE SIERRA, a California	Case No.		
a 93.	13	corporation,	COMPLAINTED DECLARATION		
Fresno. California 93711	14	Plaintiff,	COMPLAINT FOR DECLARATORY RELIEF; INJUNCTIVE RELIEF; AND INTERPLEADER OF FUNDS		
Ö Ö	15	VS.			
Fresr	16	PICAYUNE RANCHERIA OF THE CHUKCHANSI INDIANS, a federally			
	17	recognized Indian tribe; and CHUKCHANSI ECONOMIC DEVELOPMENT			
	18	AUTHORITY, a wholly owned economic arm of the Tribe,			
	19	,			
	20	Defendants.			
	21				
	22	Plaintiff BANK OF THE SIERRA, a California corporation ("BANK"			
	23	"Plaintiff"), hereby alleges for its Complaint against the defendants as follows:			
	24	I			
	25	JURISDICTION AND VENUE			
	26	1. The subject matter of this action involves a federal question arising			
	27	under the Constitution, laws, or treaties of the United States. As such, this Court has origin			
	28	jurisdiction over this action pursuant to 28 U.S.C. section 1331. This Court also has			

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supplemental jurisdiction over this action pursuant to 28 U.S.C. section 1367, subsection (a).

2. Venue in this district is proper under 28 U.S.C. section 1391, subsection (b), because a substantial part of the events giving rise to the causes of action set forth herein occurred, and/or a substantial part of property that is the subject of this action is situated, in this district.

### II

### **PARTIES**

- 3. Plaintiff is a California corporation and a state-chartered bank. Plaintiff's principal place of business is located in Porterville, Tulare County, California.
- 4. Plaintiff is informed and believes, and thereon alleges, that the defendant PICAYUNE RANCHERIA OF THE CHUKCHANSI INDIANS is a federally recognized Indian tribe (hereinafter, "PICAYUNE" or "TRIBE").
- 5. Plaintiff is further informed and believes that two opposing factions contend that each of them constitutes the lawful tribal council and governing body of the TRIBE, one of which is led by Nancy Ayala and/or Tex McDonald (hereinafter, the "AYALA FACTION") and the other of which is led by Reggie Lewis (hereinafter, the "LEWIS FACTION"). As used throughout this Complaint and when not otherwise indicated herein, the term "TRIBE" shall collectively refer to the TRIBE as allegedly controlled by the AYALA FACTION and as allegedly controlled by the LEWIS FACTION.
- 6. Plaintiff is informed and believes, and thereon alleges, that CHUKCHANSI ECONOMIC DEVELOPMENT AUTHORITY ("CEDA") is a wholly owned economic arm of the TRIBE.
- 7. Defendants TRIBE and CEDA shall hereinafter sometimes be referred to collectively as "Defendants."

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#### III

### FACTUAL BACKGROUND

### **The Tribal Dispute and Warring Factions**

- 8. Plaintiff is informed and believes, and thereon alleges, that sometime after December of 2010, an internal dispute arose among members of the TRIBE. Plaintiff is further informed and believes, and thereon alleges, that ever since that time, the true and lawful tribal council and governing body of the TRIBE has been the subject of great controversy and dispute, including several actions filed in the United States District Court for the Eastern District of California, Fresno Division.
- 9. Plaintiff is informed and believes, and thereon alleges, that both the AYALA FACTION and the LEWIS FACTION (collectively, the "Factions") claim to be the true and lawful tribal council and governing or adjudicative body of the TRIBE. Plaintiff is further informed and believes, and thereon alleges, that each of the Factions claims to have control over CEDA by virtue of being the purported tribal council of the TRIBE.
- 10. Despite the long-standing dispute between the Factions, Plaintiff is informed and believes, and thereon alleges, that the lawful tribal council of the TRIBE has not been conclusively determined by any governing body that possesses the necessary authority to make such determination. Although the Bureau of Indian Affairs, Pacific Region ("BIA"), recently issued a February 11, 2014 decision finding that it would conduct business with the last uncontested tribal council elected in December 2010 (the "February 11th BIA Decision"), Plaintiff is informed and believes, and thereon alleges, that the February 11th BIA Decision has been appealed and is not yet final. Plaintiff is further informed and believes, and thereon alleges, that the February 11th BIA Decision only extends to the BIA's recognition of a lawful tribal council for purposes of its government-to-government relations with the TRIBE. A true and correct copy of the February 11th BIA Decision is attached hereto as Exhibit "1" and incorporated herein by this reference.

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11. Plaintiff is further informed and believes, and thereon alleges, that both of the Factions claim to have established their own tribal courts since the onset of the above-referenced dispute. Because of the unresolved nature of the underlying dispute between the Factions, it is unclear which of the purported tribal courts, if either, has the authority to act as such.

### **The Banking Relationship**

- 12. In or about January of 2014, the BANK opened three deposit accounts for the TRIBE (collectively, the "Deposit Accounts"). The Deposit Accounts were opened at the BANK's branch located at 636 E. Shaw Ave., Fresno, California 93710. All transactions involving the Deposit Accounts must be initiated by the TRIBE at a bank branch, through an automated teller machine, or remotely (i.e., via the internet, telephone, written correspondence, etc.). The BANK does not maintain any branches or otherwise offer any inperson or automated teller services on the TRIBE's reservation or other TRIBE-owned lands.
- 13. The Deposit Accounts are governed by certain terms and conditions set forth in an agreement entitled "Terms and Conditions of Your Account" (hereinafter, the "Account Agreement"), a true and correct copy of which is attached hereto as Exhibit "2" and incorporated herein by this reference. The Account Agreement specifically provides that it shall be "subject to applicable federal laws, laws of the state of California and other applicable rules such as the operating letters of the Federal Reserve Banks and payment processing system rules (except to the extent that [the Account Agreement] can and does vary such rules or laws)." The Account Agreement does *not* provide for the application of tribal law or otherwise subject the BANK to the jurisdiction of any tribal courts.
- 14. The authorized signers on each of the Deposit Accounts consist of the following individuals: Nancy Ayala, Amanda Ramirez, Charles J. Sargosa, Lynda L. Appling, Donna M. Featherstone, Vernon J. King, and Tex McDonald (collectively, the "Authorized Account Signers").

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15. The Authorized Account Signers were placed on the Deposit Accounts in accordance with a signed resolution presented to the BANK, a true and correct copy of which is attached hereto as Exhibit "3" and incorporated herein by this reference.

### **The Tribal Court Lawsuit**

- 16. On or about June 16, 2014, the BANK was provided with a copy of a purported Order Re Ex Parte Application for Temporary Restraining Order and Order to Show Cause Re Preliminary Injunction (the "Ex Parte TRO"). The Ex Parte TRO was signed by the "Honorable Jack Duran, Jr., Tribal Court Judge," and purports to enjoin the BANK from, among other things, providing a deposit account to the "McDonald Faction" in the name of the TRIBE and issuing checks at the behest of the "McDonald Faction." The Ex Parte TRO further orders the BANK to freeze all deposit accounts in the name of the TRIBE and to contact the "lawful Interim Tribal Council as recognized by both the Tribe and the federal government, and as led by Chairman Reggie Lewis, to effectuate a proper and lawful transfer of these accounts." Pursuant to the Ex Parte TRO, the BANK is also ordered to provide copies of all documents relating to all accounts held in the name of the TRIBE to the "lawful Interim Tribal Council as recognized by both the Tribe and the federal government, and as led by Chairman Reggie Lewis." A true and correct copy of the Ex Parte TRO is attached hereto as Exhibit "4" and incorporated herein by this reference.
- 17. On or about June 17, 2014, the BANK was provided with a copy of a purported Complaint for Declaratory Relief and Injunctive Relief and Damages that was filed by the TRIBE and CEDA against the BANK (the "Complaint"), as well as various pleadings in support of the Ex Parte TRO. The Complaint was filed in the purported "Tribal Court of the Picayune Rancheria of Chukchansi Indians," Case No. 2014-002 (the "Tribal Court Lawsuit"). Plaintiff is informed and believes, and thereon alleges, that the Complaint was filed by the LEWIS FACTION acting on behalf of the TRIBE and CEDA. A true and correct copy of the Complaint is attached hereto as Exhibit "5" and incorporated herein by this reference.

18. As a direct and proximate result of having been served with the Complaint, Ex Parte TRO, and other pleadings in the Tribal Court Lawsuit, the BANK has been forced to incur attorneys' fees and costs. The Account Agreement specifically provides that any fees or expenses, including attorneys' fees, incurred by the BANK in responding to any legal action may be charged against the Deposit Accounts. As such, the BANK is entitled to deduct all of its attorneys' fees and costs incurred in connection with the Tribal Court Action and this lawsuit from the Deposit Accounts in accordance with the express terms of the Account Agreement.

### III

### FIRST CLAIM FOR RELIEF

### **Declaratory Relief (Against All Defendants)**

- 19. Plaintiff incorporates paragraphs 1 through 18 above as though fully set forth herein.
- Defendants over whether Plaintiff, through its banking relationship with the TRIBE, is subject to the tribal court jurisdiction of the TRIBE. Specifically, Plaintiff contends that any and all disputes arising out of the Deposit Accounts are governed by applicable federal and state of California laws only and are in no way governed by tribal laws. Plaintiff further contends that it has not consented, and is not otherwise subject to, the jurisdiction of any tribal courts of the TRIBE. Plaintiff also contends that any and all purported orders and/or judgments entered against Plaintiff in the Tribal Court Action, including, without limitation, the Ex Parte TRO, whether now or in the future, are, and hereinafter shall be, null and void. Plaintiff is informed and believes, and thereon alleges, that Defendants dispute the foregoing.
- 21. Plaintiff now desires a judicial determination regarding the abovereferenced dispute and whether Plaintiff is subject to the tribal court jurisdiction of the TRIBE.

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22. Such declaratory relief is necessary and appropriate at this time in
order that Plaintiff may ascertain whether it is required to appear and defend itself in the
Tribal Court Action. If this Court does not determine the above-referenced dispute at this
time, Plaintiff may be forced to appear and defend itself in a court that does not have
jurisdiction over it. Having to do so would lead to unnecessary court proceedings and a
multiplicity of lawsuits in the event the Defendants were to obtain any orders and/or
judgments against Plaintiff in the Tribal Court Action.

23. If declaratory relief is not granted as requested herein, Plaintiff is informed and believes, and thereon alleges, that it will suffer irreparable harm, including, without limitation, being forced to defend itself in the Tribal Court Action and being subjected to a multiplicity of proceedings.

#### IV

### **SECOND CLAIM FOR RELIEF**

### **Injunctive Relief (Against All Defendants)**

- 24. Plaintiff incorporates paragraphs 1 through 23 above as though fully set forth herein.
- 25. Defendants have sued Plaintiff in a purported tribal court of the TRIBE and obtained issuance of the Ex Parte TRO against Plaintiff—all without Plaintiff's knowledge or consent. Plaintiff is informed and believes, and thereon alleges, that Defendant is continuing to prosecute claims against it in the Tribal Court Action.
- 26. Unless restrained, Defendants' actions will cause Plaintiff great and irreparable injury for which pecuniary compensation would not be adequate in that various orders and/or judgments may be entered against Plaintiff in a court that does not have jurisdiction over Plaintiff. Further, unless injunctive relief is granted, a multiplicity of actions may ensue to set aside orders and/or judgments that are null and void.
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27. Accordingly, Plaintiff seeks an injunction from this Court preventing Defendants from prosecuting, or continuing to prosecute, the Tribal Court Action against Plaintiff and further enjoining Defendants from enforcing, or attempting to enforce, any orders and/or judgments obtained against Plaintiff in the Tribal Court Action or any other action before a purported tribal court of the TRIBE.

### THIRD CLAIM FOR RELIEF

### **Interpleader (Against All Defendants)**

- 28. Plaintiff incorporates paragraphs 1 through 27 above as though fully set forth herein.
- 29. Immediately prior to interpleading funds with this Court, as set forth below, the funds on deposit in the Deposit Accounts, after deducting the BANK's attorneys' fees and costs incurred through June 30, 2014 in the amount of \$14,509.00, totaled \$392,407.01 (the "Deposit Account Funds"). Plaintiff is informed and believes, and thereon alleges, that Defendants, and each of them, claim to possess all rights, title, and interest to the Deposit Account Funds.
- 30. Plaintiff is unable to determine the validity of the above conflicting claims made by the Defendants, and each of them, as aforesaid, and cannot determine to whom the Deposit Account Funds belong. As such, Plaintiff is exposed to double or multiple claims that may give rise to double or multiple liability.
  - 31. Plaintiff claims no interest in the Deposit Account Funds.
- 32. Concurrently or shortly after the filing of this Complaint, Plaintiff will deposit the aforesaid Deposit Account Funds with the clerk of this Court pursuant to Federal Rule of Civil Procedure 22 and United States District Court, Eastern District of California, Local Rule ("L.R.") 150.

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33. Plaintiff has incurred attorneys' fees and costs, and will continue to			
ncur attorneys' fees and costs, in connection with Defendants' competing claims to the			
Deposit Account Funds and these related proceedings, all in an amount to be established by			
way of a subsequent declaration to be filed with this Court.			

#### VI

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as follows:

### On the First Claim Relief:

- 1. For a Judgment declaring as follows:
- a. Plaintiff is not subject to the jurisdiction of any tribal courts of the TRIBE; and
- b. Any and all purported orders and/or judgments entered against Plaintiff in the Tribal Court Action, including, without limitation, the Ex Parte TRO, whether now or in the future, are, and hereinafter shall be, null and void;

### On the Second Claim for Relief:

- 2. For an order enjoining Defendants, and each of them, together with their agents and employees, from taking any of the following actions:
- a. Prosecuting, or continuing to prosecute, any action against Plaintiff in the tribal court(s) of the TRIBE, including, without limitation, the Tribal Court Action; and
- b. Enforcing, or attempting to enforce, any orders and/or judgments obtained against Plaintiff in the Tribal Court Action or any other action before a purported tribal court of the TRIBE;

### On the Third Claim for Relief:

3. That Defendants, and each of them, be ordered to interplead and litigate their claims to the Deposit Account Funds described in this Complaint;

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# POWELL & POOL, LLP 7522 N. Colonial Avenue, Suite 100 Fresno. California 93711

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1	4.	That Plaintiff be discharged from liability to each of said Defendants		
2	with respect to said De	respect to said Deposit Account Funds; and		
3	5.	That Plaintiff be awarded costs and reasonable attorneys' fees to be		
4	paid to Plaintiff from	om the funds deposited with the court clerk as aforementioned, all in		
5	accordance with Federal Rule of Civil Procedure 22 and L.R. 150; and			
6	On All Claims for Relief:			
7	6.	For attorneys' fees and costs; and		
8	7.	For such other and further relief as this Court may deem just and proper.		
9	Dated: July 2, 2014	POWELL & POOL, LLP		
10				
11		By /S/ Don J. Pool		
12		DON J. POOL, Attorneys for BANK OF THE SIERRA		
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# EXHIBIT 1



### United States Department of the Interior

### BUREAU OF INDIAN AFFAIRS Pacific Regional Office 2800 Cottage Way Sacramento, California 95825

**Tribal Operations** 

FEB 1 7 2014

Robert A. Rosette, Attorney
Rosette, LLP
for Lewis Faction
565 West Chandler Boulevard, Suite 212
Chandler, Arizona 85225
CERTIFIED WAIL NO.: 7013 0600 0001 1876 6925
RETURN RECEIPT REQUESTED

John Peebles, Actorney
Fredericks Peebles & Morgan LLP
For Reid Faction
2020 L Street, Suite 250
Sacramento, California 95825
CERTIFIED MAIL NO:: 7013 0660 0001 1876 6932
RETURN RECEIPT REQUESTED

Lester J. Warston, Attorney
Law Offices of Rapport and Marston
for Ayala Faction
405 W. Perkins Street
Uklah, California 95482
CERTIFIED MAIL NO:: 7013 0600 0001 1876 6949
RETURN RECEIPT REQUESTED

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, 2015, October 3, 2015, 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 requestis 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.



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, Chalipperson; Reggle Lewis, Vice-Chairperson; Tract Brechbuel, Secretary; Karen Wynn, Treasurer; Chance Alberta, Member-at-Large; Charles Sargosa, Member-at-Large; and Carl Buzz Bushman, Wember-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 Reggle 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 clies 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". falled 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, decision<sup>1</sup>. 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 relience upon Picayune Ranclieria 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 Chakehans; Indians; Morris Reid, Dara 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

On November 13, 2013, the Pacific Regional Office received the Reld Faction's Motion to Dismiss the furtimely" Notice of Appeal filed by the Ayala Faction. In a fetter dated Desember 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 apportunity to submit their Notice of an Appeal until October 47, 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 resplied 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, Lexercised 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 issued?

The leadership of the Picayune Rancheria of Chukchansi Indians has been embrolled in disputes since the December 3, 2011, effection. The hold-over officers (individuals not up for election and whose terms had not expired) that remained on the Tribal Council were Mancy Ayala, Jennifer Stanley and Nokomis Hernandez<sup>3</sup>. 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, Dixle Jackson and Harold Hammond, Sr., received the highest number of votes in the election. 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 requirements. The appears 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 Reld 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

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<sup>&</sup>lt;sup>2</sup> 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.

<sup>&</sup>lt;sup>3</sup> The record reflects that Nokomis Hernandez was appointed by the Tribal Council to replace Patrick Hammond, III.

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

<sup>&</sup>lt;sup>5</sup> See February 1, 2013, Administrative Record, Tab F, 59,60,64,63, and 65.

Lewis Faction held a General Council meeting on March 10, 2012<sup>5</sup>, 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 Dominque 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 of Election Committee (due to the Reid Faction) suspending Dominique Carrillo, Dana Hall and Orlanna Walker from their positions on the Election Committee"). 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 Weeting, 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

<sup>&</sup>lt;sup>6</sup> See February 1, 2013, Administrative Record, Tab F. 6.

<sup>7</sup> See February 1, 2013, Administrative Record, Tab F. 35.

response to this Office's December 10, 2013, letter. The Lewis/Reld 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." 

Correspondence, as a single contract application for your consideration."

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, attorneys for both factions submitted correspondence arguing the invalidity of the other faction's elections. Pespite 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 Winneapolis Area Director, 30 IBIA 130, 145 (1996) (emphasis added). A sorollary 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 tesponsibilities for carrying on government relations with a tribe and providing necessary day-to-day services. BIA may not effectively create a histosia 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. 1988)."

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 availd 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,

One of the second of the requirements set forth in 25 OFR § 900, Subpart C, has been submitted for consideration by the Lewis/Reid Faction.

Although the Lewis and Relid factions have apparently reconciled and are now working together, the Reld . Haction 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 Triba October 22, 1988, is the Triba's supreme governing document. However, the record reflects numerous instances where the Election Ordinance was amended by the various compositions of the opposing factions; in purportedly in accordance with the Triba'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 Triba's Constitution or federal law that provides the BIA with the authority to determine which of the opposing factions interpretation of the Triba'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 Triba's permanent leadership. The record does not reflect whether recent tribal elections were conducted in accordance with tribal governing documents. Assuch, Lafflum 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 histus 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 Council 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 of 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 Department's In addition to

<sup>&</sup>lt;sup>10</sup> 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).

<sup>&</sup>lt;sup>11</sup> See Acting Governor Leslie Werdrie-Herjo, Cheyenne and Ampano Tribes V. Southern Plains Regional Director, 58 IBIA 121, 124 (2011)

<sup>12</sup> 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 operation. 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 filling 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 malled 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,

amy h Clutschlor
Regional Director

cc: See Attached Distribution list

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

Michael Black, Director Bureau of Inclian Affairs 1849 C Street, N.W. MS - 4606 MIB Washington, DC 20240

Troy Burdick, Superintendent Bureau of Indian Affairs Central California Agency 650 Capital Mall, Suite 8-500 Sacramento, CA 95814

Congressman Jeff Denham United States Congress 1730 Longworth HOB Washington, DC 20515

Congressman Tom McClintock
United States Congress
434 Cannon House Office Building
Washington, DC 20515

Carolyn O'Nell, Administrator

U.S. Department of Housing and Urban Development
Southwest Office of Native American Programs

1 North Central Avenue, Suite 600
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John Anderson, Sheriff Madera County Sheriff's Office 14143 Road 28 Madera, CA 93628

Paula Hart, Director
Office of Indian Gaming, Indian Affairs
MS = 3657 = MIB
1849 C Street, NW
Washington; DC 20240

Interior Board of Indian Appeals
United States Department of the Interior
801 North Quincy Street; NS 300 QC
Arlington, VA 22203

Office of the Selicitor
Pacific Southwest Region
United States Department of Interior
2800 Cottage Way, Room E-1712
Sacramento, CA 95825

Senator Diame Feinstein United States Senate 331 Hart Senate Office Building Washington, DC 20510

Office of the Governor Edmund G. Brown, Ir ATTM: Jacob Appelsmith, Senior Advisor to the Governor c/o State Capitol, Suite 1173 Sacramento, CA 95814

Denise Zvanovec, Grants Management Officer
Management & Technical Services Division
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street, W/S ORC-2
San Prancisco, CA 94105

Board of Supervisors County of Madera Madera County Government Center 200:West Fourth Street Madera, CA 93637

National Indian Gaming Commission ATTN: Maria Geoff, Senior Attorney 1441 L Street NW, Suite 9100 Washington, DC 20005

# EXHIBIT 2

### Terms and Conditions of Your Account

Agreement. This document, along with any other documents we give you pertaining to your account(s), is a contract that establishes rules which control your account(s) with us. Please read this carefully and retain it for future reference. If you sign the signature card or open or continue to use the account, you agree to these rules. You will receive a separate schedule of rates, qualifying balances, and fees if they are not included in this document. If you have any questions, please call us.

This agreement is subject to applicable federal laws, the laws of the state of California and other applicable rules such as the operating letters of the Federal Reserve Banks and payment processing system rules (except to the extent that this agreement can and does vary such rules or laws). The body of state and federal law that governs our relationship with you, however, is too large and complex to be reproduced here. The purpose of this document is to:

- summarize some laws that apply to common transactions;
- establish rules to cover transactions or events which the law does not regulate;
- establish rules for certain transactions or events which the law regulates but permits variation by agreement;
   and
- give you disclosures of some of our policies to which you may be entitled or in which you may be interested.

If any provision of this document is found to be unenforceable according to its terms, all remaining provisions will continue in full force and effect. We may permit some variations from our standard agreement, but we must agree to any variation in writing either on the signature card for your account or in some other document.

As used in this document the words "we," "our," and "us" mean the financial institution and the words "you" and "your" mean the account holder(s) and anyone else with the authority to deposit, withdraw, or exercise control over the funds in the account. However, this agreement does not intend, and the terms "you" and "your" should not be interpreted, to expand an individual's responsibility for an organization's liability. If this account is owned by a corporation, partnership or other organization, individual liability is determined by the laws generally applicable to that type of organization. The headings in this document are for convenience or reference only and will not govern the interpretation of the provisions. Unless it would be inconsistent to do so, words and phrases used in this document should be construed so the singular includes the plural and the plural includes the singular.

Liability. You agree, for yourself (and the person or entity you represent if you sign as a representative of another) to the terms of this account and the schedule of charges. You authorize us to deduct these charges, without notice to you, directly from the account balance as accrued. You will pay

any additional reasonable charges for services you request which are not covered by this agreement.

Each of you also agrees to be jointly and severally (individually) liable for any account shortage resulting from charges or overdrafts, whether caused by you or another with access to this account. This liability is due immediately, and can be deducted directly from the account balance whenever sufficient funds are available. You have no right to defer payment of this liability, and you are liable regardless of whether you signed the item or benefited from the charge or overdraft.

You will be liable for our costs as well as for our reasonable attorneys' fees, to the extent permitted by law, whether incurred as a result of collection or in any other dispute involving your account. This includes, but is not limited to, disputes between you and another joint owner; you and an authorized signer or similar party; or a third party claiming an interest in your account. This also includes any action that you or a third party takes regarding the account that causes us, in good faith, to seek the advice of an attorney, whether or not we become involved in the dispute. All costs and attorneys' fees can be deducted from your account when they are incurred, without notice to you.

Deposits. We will give only provisional credit until collection is final for any items, other than cash, we accept for deposit (including items drawn "on us"). Before settlement of any item becomes final, we act only as your agent, regardless of the form of indorsement or lack of indorsement on the item and even though we provide you provisional credit for the item. We may reverse any provisional credit for items that are lost, stolen, or returned. Actual credit for deposits of, or payable in, foreign currency will be at the exchange rate in effect on final collection in U.S. dollars. We are not responsible for transactions by mail or outside depository until we actually record them. We will treat and record all transactions received after our "daily cutoff time" on a business day we are open, or received on a day we are not open for business, as if initiated on the next business day that we are open. At our option, we may take an item for collection rather than for deposit. If we accept a third-party check for deposit, we may require any third-party indorsers to verify or guarantee their indorsements, or indorse in our presence.

#### Withdrawals.

Generally. Unless clearly indicated otherwise on the account records, any of you, acting alone, who signs to open the account or has authority to make withdrawals may withdraw or transfer all or any part of the account balance at any time. Each of you (until we receive written notice to the contrary) authorizes each other person who signs or has authority to make withdrawals to indorse any item payable to you or your order for deposit to this account or any other transaction with us.

Postdated Checks. A postdated check is one which bears a date later than the date on which the check is written. We may properly pay and charge your account for a postdated check even though payment was made before the date of the check, unless we have received written notice of the postdating in time to have a reasonable opportunity to act. Because we process checks mechanically, your notice will not be effective and we will not be liable for failing to honor your notice unless it precisely identifies the number, date, amount and payee of the item.

Checks and Withdrawal Rules. If you do not purchase your check blanks from us, you must be certain that we approve the check blanks you purchase. We may refuse any withdrawal or transfer request which you attempt on forms not approved by us or by any method we do not specifically permit. We may refuse any withdrawal or transfer request which is greater in number than the frequency permitted, or which is for an amount greater or less than any withdrawal limitations. We will use the date the transaction is completed by us (as opposed to the date you initiate it) to apply the frequency limitations. In addition, we may place limitations on the account until your identity is verified.

Even if we honor a nonconforming request, we are not required to do so later. If you violate the stated transaction limitations (if any), in our discretion we may close your account or reclassify it as a transaction account. If we reclassify your account, your account will be subject to the fees and earnings rules of the new account classification.

If we are presented with an item drawn against your account that would be a "substitute check," as defined by law, but for an error or defect in the item introduced in the substitute check creation process, you agree that we may pay such item.

See the funds availability policy disclosure for information about when you can withdraw funds you deposit. For those accounts to which our funds availability policy disclosure does not apply, you can ask us when you make a deposit when those funds will be available for withdrawal. We may determine the amount of available funds in your account for the purpose of deciding whether to return an item for insufficient funds at any time between the time we receive the item and when we return the item or send a notice in lieu of return. We need only make one determination, but if we choose to make a subsequent determination, the account balance at the subsequent time will determine whether there are insufficient available funds.

Overdrafts. You understand that we may, at our discretion, honor withdrawal requests that overdraw your account. However, the fact that we may honor withdrawal requests that overdraw the account balance does not obligate us to do so later. So you can NOT rely on us to pay overdrafts on your account regardless of

how frequently or under what circumstances we have paid overdrafts on your account in the past. We can change our practice of paying overdrafts on your account without notice to you. You can ask us if we have other account services that might be available to you where we commit to paying overdrafts under certain circumstances, such as an overdraft protection line-of-credit or a plan to sweep funds from another account you have with us. You agree that we may charge fees for overdrafts. For consumer accounts, we will not charge fees for overdrafts caused by ATM withdrawals or one-time debit card transactions if you have not opted-in to that service. We may use subsequent deposits, including direct deposits of social security or other government benefits, to cover such overdrafts and overdraft fees.

Multiple Signatures, Electronic Check Conversion, and Similar Transactions. An electronic check conversion transaction is a transaction where a check or similar item is converted into an electronic fund transfer as defined in the Electronic Fund Transfers regulation. In these types of transactions the check or similar item is either removed from circulation (truncated) or given back to you. As a result, we have no opportunity to review the check to examine the signatures on the item. You agree that, as to these or any items as to which we have no opportunity to examine the signatures, you waive any requirement of multiple signatures.

Notice of Withdrawal. We reserve the right to require not less than 7 days' notice in writing before each withdrawal from an interest-bearing account other than a time deposit, or from any other savings account as defined by Regulation D. (The law requires us to reserve this right, but it is not our general policy to use it.) Withdrawals from a time account prior to maturity or prior to any notice period may be restricted and may be subject to penalty. See your notice of penalty for early withdrawal.

Ownership of Account and Beneficiary
Designation. These rules apply to this account depending
on the form of ownership and beneficiary designation, if
any, specified on the account records. We make no
representations as to the appropriateness or effect of the
ownership and beneficiary designations, except as they
determine to whom we pay the account funds. As used in
this agreement "party" means a person who, by the terms of
the account, has a present right, subject to request, to
payment from a multiple-party account other than as an
agent.

**Individual Account.** This is an account in the name of one person.

**Joint Account.** This account or certificate is owned by the named parties. Upon the death of any of them, ownership passes to the survivor(s).

Joint Account of Husband and Wife with Right of Survivorship. This account or certificate is owned by

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the named parties, who are husband and wife, and is presumed to be their community property. Upon the death of either of them, ownership passes to the survivor.

Community Property Account of Husband and Wife. This account or certificate is the community property of the named parties who are husband and wife. The ownership during lifetime and after the death of a spouse is determined by the law applicable to community property generally and may be affected by a will.

Tenancy in Common Account. This account or certificate is owned by the named parties as tenants in common. Upon the death of any party, the ownership interest of that party passes to the named pay-on-death payce(s) of that party, or, if none, to the estate of that party.

P.O.D. Account with Single Party. This account or certificate is owned by the named party. Upon the death of that party, ownership passes to the named pay-on-death payee(s).

P.O.D. Account with Multiple Parties. This account or certificate is owned by the named parties. Upon the death of any of them, ownership passes to the survivor(s). Upon the death of all of them, ownership passes to the named pay-on-death payee(s).

Totten Trust Account (subject to this form). If two or more of you create this account, you own the account jointly with survivorship. Beneficiaries cannot withdraw unless: (1) all persons creating the account die, and (2) the beneficiary is then living. If two or more beneficiaries are named and survive the death of all persons creating the account, such beneficiaries will own this account in equal shares, without right of survivorship. The person(s) creating either of these account types reserves the right to: (1) change beneficiaries, (2) change account types, and (3) withdraw all or part of the account funds at any time.

Trust Account Subject to Separate Agreement. We will abide by the terms of any separate agreement which clearly pertains to this account and which you file with us. Any additional consistent terms stated on this form will also apply.

Business, Organization and Association
Accounts. Earnings in the form of interest, dividends, or credits will be paid only on collected funds, unless otherwise provided by law or our policy. You represent that you have the authority to open and conduct business on this account on behalf of the entity. We may require the governing body of the entity opening the account to give us a separate authorization telling us who is authorized to act on its behalf. We will honor the authorization until we actually receive written notice of a change from the governing body of the entity.

Stop Payments. Unless otherwise provided, the rules in this section cover stopping payment of items such as checks and drafts. Rules for stopping payment of other types of transfers of funds, such as consumer electronic fund transfers, may be established by law or our policy. If we have not disclosed these rules to you elsewhere, you may ask us about those rules.

We may accept an order to stop payment on any item from any one of you. You must make any stop-payment order in the manner required by law and we must receive it in time to give us a reasonable opportunity to act on it before our stop-payment cutoff time. Because stop-payment orders are handled by computers, to be effective, your stop-payment order must precisely identify the number, date, and amount of the item, and the payee.

You may stop payment on any item drawn on your account whether you sign the item or not. Generally, if your stoppayment order is given to us in writing it is effective for six months. Your order will lapse after that time if you do not renew the order in writing before the end of the six-month period. If the original stop-payment order was verbal your stop-payment order will lapse after 14 calendar days if you do not confirm your order in writing within that time period. We are not obligated to notify you when a stoppayment order expires. A release of the stop-payment request may be made only by the person who initiated the stop-payment order.

If you stop payment on an item and we incur any damages or expenses because of the stop payment, you agree to indemnify us for those damages or expenses, including attorneys' fees. You assign to us all rights against the payee or any other holder of the item. You agree to cooperate with us in any legal actions that we may take against such persons. You should be aware that anyone holding the item may be entitled to enforce payment against you despite the stop-payment order.

Our stop-payment cutoff time is one hour after the opening of the next banking day after the banking day on which we receive the item. Additional limitations on our obligation to stop payment are provided by law (e.g., we paid the item in cash or we certified the item).

Telephone Transfers. A telephone transfer of funds from this account to another account with us, if otherwise arranged for or permitted, may be made by the same persons and under the same conditions generally applicable to withdrawals made in writing. Unless a different limitation is disclosed in writing, we restrict the number of transfers from a savings account to another account or to third parties, to a maximum of six per month (less the number of "preauthorized transfers" during the month). Other account transfer restrictions may be described elsewhere.

Amendments and Termination. We may change any term of this agreement. Rules governing changes in interest rates are provided separately in the Truth-in-Savings disclosure or in another document. For other changes, we will give you reasonable notice in writing or by any other

method permitted by law. We may also close this account at any time upon reasonable notice to you and tender of the account balance personally or by mail. Items presented for payment after the account is closed may be dishonored. When you close your account, you are responsible for leaving enough money in the account to cover any outstanding items to be paid from the account. Reasonable notice depends on the circumstances, and in some cases such as when we cannot verify your identity or we suspect fraud, it might be reasonable for us to give you notice after the change or account closure becomes effective. For instance, if we suspect fraudulent activity with respect to your account, we might immediately freeze or close your account and then give you notice. You agree to keep us informed of your current address at all times. Notice from us to any one of you is notice to all of you. If we have notified you of a change in any term of your account and you continue to have your account after the effective date of the change, you have agreed to the new term(s).

#### Statements.

Your Duty to Report Unauthorized Signatures, Alterations and Forgeries. You must examine your statement of account with "reasonable promptness." If you discover (or reasonably should have discovered) any unauthorized signatures or alterations, you must promptly notify us of the relevant facts. As between you and us, if you fail to do either of these duties, you will have to either share the loss with us, or bear the loss entirely yourself (depending on whether we used ordinary care and, if not, whether we contributed to the loss). The loss could be not only with respect to items on the statement but other items with unauthorized signatures or alterations by the same wrongdoer.

You agree that the time you have to examine your statement and report to us will depend on the circumstances, but will not, in any circumstance, exceed a total of 30 days from when the statement is first sent or made available to you.

You further agree that if you fail to report any unauthorized signatures, alterations or forgeries in your account within 60 days of when we first send or make the statement available, you cannot assert a claim against us on any items in that statement, and as between you and us the loss will be entirely yours. This 60-day limitation is without regard to whether we used ordinary care. The limitation in this paragraph is in addition to that contained in the first paragraph of this section.

Your Duty to Report Other Errors. In addition to your duty to review your statements for unauthorized signatures, alterations and forgeries, you agree to examine your statement with reasonable promptness for any other error - such as an encoding error. You agree that the time you have to examine your statement and report to us will depend on the circumstances. However, such time period shall not exceed 60 days. Failure to examine your statement and report any such errors to us

within 60 days of when we first send or make the statement available precludes you from asserting a claim against us for any such errors on items identified in that statement and as between you and us the loss will be entirely yours.

Errors Relating to Electronic Fund Transfers or Substitute Checks (For consumer accounts only). For information on errors relating to electronic fund transfers (e.g., computer, debit card or ATM transactions) refer to your Electronic Fund Transfers disclosure and the sections on consumer liability and error resolution. For information on errors relating to a substitute check you received, refer to your disclosure entitled Substitute Checks and Your Rights.

Direct Deposits. If we are required for any reason to reimburse the federal government for all or any portion of a benefit payment that was directly deposited into your account, you authorize us to deduct the amount of our liability to the U.S. Government from the account or from any other account you have with us, without prior notice and at any time, except as prohibited by law. We may also use any other legal remedy to recover the amount of our liability.

Temporary Account Agreement. If this option is selected, this is a temporary account agreement. Each person who signs to open the account or has authority to make withdrawals (except as indicated to the contrary) may transact business on this account. However, we may at some time in the future restrict or prohibit further use of this account if you fail to comply with the requirements we have imposed within a reasonable time.

Set-Off. We may (without prior notice and when permitted by law) set off the funds in this account against any due and payable debt you owe us now or in the future, by any of you having the right of withdrawal, to the extent of such persons' or legal entity's right to withdraw. The amount of the set-off may be further limited by applicable law. If the debt arises from a note, "any due and payable debt" includes the total amount of which we are entitled to demand payment under the terms of the note at the time we set off, including any balance the due date for which we properly accelerate under the note.

This right of set-off does not apply to this account if prohibited by law. For example, the right of set-off does not apply to this account if: (a) it is an Individual Retirement Account or similar tax-deferred account, or (b) the debt is created by a consumer credit transaction under a credit card plan (but this does not affect our rights under any consensual security interest), or (c) the debtor's right of withdrawal only arises in a representative capacity. We will not be liable for the dishonor of any check when the dishonor occurs because we set off a debt against this account. You agree to hold us harmless from any claim arising as a result of our exercise of our right of set-off.

Check Processing. We process items mechanically by relying solely on the information encoded in magnetic ink along the bottom of the items. This means that we do not individually examine all of your items to determine if the item is properly completed, signed and indorsed or to determine if it contains any information other than what is encoded in magnetic ink. You agree that we have not failed to exercise ordinary care solely because we use our automated system to process items and do not inspect all items processed in such a manner. Using an automated process helps us keep costs down for you and all account holders.

Check Cashing. We may charge a fee for anyone that does not have an account with us who is cashing a check, draft or other instrument written on your account. We may also require reasonable identification to cash such a check, draft or other instrument. We can decide what identification is reasonable under the circumstances and such identification may be documentary or physical and may include collecting a thumbprint or fingerprint.

Truncation, Substitute Checks, and Other Check Images. If you truncate an original check and create a substitute check, or other paper or electronic image of the original check, you warrant that no one will be asked to make payment on the original check, a substitute check or any other electronic or paper image, if the payment obligation relating to the original check has already been paid. You also warrant that any substitute check you create conforms to the legal requirements and generally accepted specifications for substitute checks. You agree to retain the original check in conformance with our internal policy for retaining original checks. You agree to indemnify us for any loss we may incur as a result of any truncated check transaction you initiate. We can refuse to accept substitute checks that have not previously been warranted by a bank or other financial institution in conformance with the Check 21 Act. Unless specifically stated in a separate agreement between you and us, we do not have to accept any other electronic or paper image of an original check.

Remotely Created Checks. Like any standard check or draft, a remotely created check (sometimes called a telecheck, preauthorized draft or demand draft) is a check or draft that can be used to withdraw money from an account. Unlike a typical check or draft, however, a remotely created check is not issued by the paying bank and does not contain the signature of the account owner (or a signature purported to be the signature of the account owner). In place of a signature, the check usually has a statement that the owner authorized the check or has the owner's name typed or printed on the signature line. For example, if a person provides an account number in response to a telephone solicitation, the telephone solicitor can use the account number to issue a remotely created check to withdraw money from that account.

You warrant and agree to the following for every remotely created check we receive from you for deposit or collection: (1) you have received express and verifiable authorization to

create the check in the amount and to the payee that appears on the check; (2) you will maintain proof of the authorization for at least 2 years from the date of the authorization, and supply us the proof if we ask; and (3) if a check is returned you owe us the amount of the check, regardless of when the check is returned. We may take funds from your account to pay the amount you owe us, and if there are insufficient funds in your account, you still owe us the remaining balance.

Unlawful Internet Gambling Notice. Restricted transactions as defined in Federal Reserve Regulation GG are prohibited from being processed through this account or relationship. Restricted transactions generally include, but are not limited to, those in which credit, electronic fund transfers, checks, or drafts are knowingly accepted by gambling businesses in connection with the participation by others in unlawful Internet gambling.

ACH and Wire Transfers. This agreement is subject to Article 4A of the Uniform Commercial Code - Fund Transfers as adopted in the state in which you have your account with us. If you originate a fund transfer and you identify by name and number a beneficiary financial institution, an intermediary financial institution or a beneficiary, we and every receiving or beneficiary financial institution may rely on the identifying number to make payment. We may rely on the number even if it identifies a financial institution, person or account other than the one named. You agree to be bound by automated clearing house association rules. These rules provide, among other things, that payments made to you, or originated by you, are provisional until final settlement is made through a Federal Reserve Bank or payment is otherwise made as provided in Article 4A-403(a) of the Uniform Commercial Code. If we do not receive such payment, we are entitled to a refund from you in the amount credited to your account and the party originating such payment will not be considered to have paid the amount so credited. If we receive a payment order to credit an account you have with us by wire or ACH, we are not required to give you any notice of the payment order or credit.

Facsimile Signatures. Unless you make advance arrangements with us, we have no obligation to honor facsimile signatures on your checks or other orders. If we do agree to honor items containing facsimile signatures, you authorize us, at any time, to charge you for all checks, drafts, or other orders, for the payment of money, that are drawn on us. You give us this authority regardless of by whom or by what means the facsimile signature(s) may have been affixed so long as they resemble the facsimile signature specimen filed with us, and contain the required number of signatures for this purpose. You must notify us at once if you suspect that your facsimile signature is being or has been misused.

Authorized Signer (Individual Accounts only). A single individual is the owner. The authorized signer is merely designated to conduct transactions on the owner's behalf. The owner does not give up any rights to act on the account,

and the authorized signer may not in any manner affect the rights of the owner or beneficiaries, if any, other than by withdrawing funds from the account. The owner is responsible for any transactions of the authorized signer. We undertake no obligation to monitor transactions to determine that they are on the owner's behalf. The owner may terminate the authorization at any time, and the authorization is automatically terminated by the death of the owner. However, we may continue to honor the transactions of the authorized signer until: (a) we have received written notice or have actual knowledge of the termination of authority, and (b) we have a reasonable opportunity to act on that notice or knowledge. We may refuse to accept the designation of an authorized signer.

Fictitious Business Name Accounts. If the name in which the account is held is fictitious, each account holder represents that one or more of the account holders have the right to use that name and have fulfilled all legal requirements for using and or doing business under that name.

Restrictive Legends. The automated processing of the large volume of checks we receive prevents us from inspecting or looking for special instructions or "restrictive legends" on every check. Examples of restrictive legends placed on checks are "must be presented within 90 days" or "not valid for more than \$1,000.00." For this reason, we are not required to honor any restrictive legend placed on checks you write unless we have agreed in writing to the restriction. We are not responsible for any losses, claims, damages, or expenses that result from your placement of these or other special instructions on your checks.

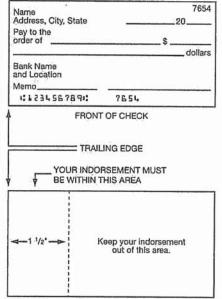
Unclaimed Property. Your property may be transferred to the appropriate state if no activity occurs in the account within the time period specified by state law.

Account Transfer. This account may not be transferred or assigned without our prior written consent.

Indorsements. We may accept for deposit any item payable to you or your order, even if they are not indorsed by you. We may give cash back to any one of you. We may supply any missing indorsement(s) for any item we accept for deposit or collection, and you warrant that all indorsements are genuine.

To ensure that your check or share draft is processed without delay, you must indorse it (sign it on the back) in a specific area. Your entire indorsement (whether a signature or a stamp) along with any other indorsement information (e.g., additional indorsements, ID information, driver's license number, etc.) must fall within 1 1/2" of the "trailing edge" of a check. Indorsements must be made in blue or black ink, so that they are readable by automated check processing equipment.

As you look at the front of a check, the "trailing edge" is the left edge. When you flip the check over, be sure to keep all indorsement information within 1 1/2" of that edge. .



BACK OF CHECK

It is important that you confine the indorsement information to this area since the remaining blank space will be used by others in the processing of the check to place additional needed indorsements and information. You agree that you will indemnify, defend, and hold us harmless for any loss, liability, damage or expense that occurs because your indorsement, another indorsement, or information you have printed on the back of the check obscures our indorsement. These indorsement guidelines apply to both personal and business checks.

Death or incompetence. You agree to notify us promptly if any person with a right to withdraw funds from your account(s) dies or becomes legally incompetent. We may continue to honor your checks, items, and instructions until: (a) we know of your death or incompetence, and (b) we have had a reasonable opportunity to act on that knowledge. You agree that we may pay or certify checks drawn on or before the date of death or legal incompetence for up to ten (10) days after your death or legal incompetence unless ordered to stop payment by someone claiming an interest in the account.

Fiduciary Accounts. Accounts may be opened by a person acting in a fiduciary capacity. A fiduciary is someone who is appointed to act on behalf of and for the benefit of another. This account may be opened and maintained by a person or persons named as a trustee under a written trust agreement, or as executors, administrators, or conservators under court orders. You understand that by merely opening such an account, we are not acting in the capacity of a trustee in connection with the trust nor do we undertake any obligation to monitor or enforce the terms of the trust or letters.

Credit Verification. You agree that we may verify credit and employment history by any necessary means, including preparation of a credit report by a credit reporting agency.

. .

Legal Actions Affecting Your Account. If we are served with a subpoena, restraining order, writ of attachment or execution, levy, garnishment, search warrant, or similar order relating to your account (termed "legal action" in this section), we will comply with that legal action. Or, in our discretion, we may freeze the assets in the account and not allow any payments out of the account until a final court determination regarding the legal action. We may do these things even if the legal action involves less than all of you. In these cases, we will not have any liability to you if there are insufficient funds to pay your items because we have withdrawn funds from your account or in any way restricted access to your funds in accordance with the legal action. Any fees or expenses we incur in responding to any legal action (including, without limitation, attorneys' fees and our internal expenses) may be charged against your account. The list of fees applicable to your account(s) provided elsewhere may specify additional fees that we may charge for certain legal actions.

**Security.** It is your responsibility to protect the account numbers and electronic access devices (e.g., an ATM card) we provide you for your account(s). Do not discuss, compare, or share information about your account number(s) with anyone unless you are willing to give them full use of your money. An account number can be used by thieves to encode your number on a false demand draft which looks like and functions like an authorized check. If you furnish your access device and grant actual authority to make transfers to another person (a family member or coworker, for example) who then exceeds that authority, you are liable for the transfers unless we have been notified that transfers by that person are no longer authorized. Your account number can also be used to electronically remove money from your account. If you provide your account number in response to a telephone solicitation for the purpose of making a transfer (to purchase a service or merchandise, for example), payment can be made from your account even though you did not contact us directly and order the payment. You must also take precaution in safeguarding your blank checks. Notify us at once if you believe your checks have been lost or stolen. As between you and us, if you are negligent in safeguarding your checks, you must bear the loss entirely yourself or share the loss with us (we may have to share some of the loss if we failed to use ordinary care and if we substantially contributed to the loss).

You agree that if we offer you services appropriate for your account to help identify and limit fraud or other unauthorized transactions against your account, such as positive pay or commercially reasonable security procedures, and you reject those services, you will be responsible for any fraudulent or unauthorized transactions which could have been prevented by the services we offered, unless we acted in bad faith or to the extent our negligence contributed to the loss.

Telephonic Instructions. Unless required by law or we have agreed otherwise in writing, we are not required to act

upon instructions you give us via facsimile transmission or leave by voice mail or on a telephone answering machine.

Claim of Loss. If you claim a credit or refund because of a forgery, alteration, or any other unauthorized withdrawal, you agree to cooperate with us in the investigation of the loss, including giving us an affidavit containing whatever reasonable information we require concerning your account, the transaction, and the circumstances surrounding the loss. You will notify law enforcement authorities of any criminal act related to the claim of lost, missing, or stolen checks or unauthorized withdrawals. We will have a reasonable period of time to investigate the facts and circumstances surrounding any claim of loss. Unless we have acted in bad faith, we will not be liable for special or consequential damages, including loss of profits or opportunity, or for attorneys' fees incurred by you. You agree that you will not waive any rights you have to recover your loss against anyone who is obligated to repay, insure, or otherwise reimburse you for your loss. You will pursue your rights or, at our option, assign them to us so that we may pursue them. Our liability will be reduced by the amount you recover or are entitled to recover from these other sources.

Early Withdrawal Penalties (and involuntary withdrawals). We may impose early withdrawal penalties on a withdrawal from a time account even if you don't initiate the withdrawal. For instance, the early withdrawal penalty may be imposed if the withdrawal is caused by our setoff against funds in the account or as a result of an attachment or other legal process. We may close your account and impose the early withdrawal penalty on the entire account balance in the event of a partial early withdrawal. See your notice of penalty for early withdrawals for additional information.

Address or Name Changes. You are responsible for notifying us of any change in your address or your name. Unless we agree otherwise, change of address or name must be made in writing by at least one of the account holders. Informing us of your address or name change on a check reorder form is not sufficient. We will attempt to communicate with you only by use of the most recent address you have provided to us. If provided elsewhere, we may impose a service fee if we attempt to locate you.

Resolving Account Disputes. We may place an administrative hold on the funds in your account (refuse payment or withdrawal of the funds) if it becomes subject to a claim adverse to (1) your own interest; (2) others claiming an interest as survivors or beneficiaries of your account; or (3) a claim arising by operation of law. The hold may be placed for such period of time as we believe reasonably necessary to allow a legal proceeding to determine the merits of the claim or until we receive evidence satisfactory to us that the dispute has been resolved. We will not be liable for any items that are dishonored as a consequence of placing a hold on funds in your account for these reasons.

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Waiver of Notices. You waive any notice of non-payment, dishonor or protest regarding any items credited to or charged against your account.

Additional Terms.

Terms and Conditions-CA Bankers Systems<sup>tv</sup> Wolters Kluwer Financial Services <sup>©</sup> 2010, 2012

# EXHIBIT 3



### Picayune Rancheria of the

### CHUKCHANSI INDIANS

46575 Road 417 · Coarsegold, CA 93614 · (559) 683-6633 · FAX (559) 683-0599

### **RESOLUTION 2013-184**

## DESIGNATE CHECK SIGNERS FOR THE PICAYUNE RANCHERIA OF THE CHUKCHANSI INDIANS/(PRCI)

- WHEREAS, the Picayune Rancheria of the Chukchansi Indians (the "Tribe") is a sovereign federally recognized Indian tribe; and
- WHEREAS, the Tribal Council of the Picayune Rancheria of the Chukchansi Indians (the "Tribal Council") is authorized by the Tribal Constitution to act and exercise Tribal Authority on behalf of the Picayune General Council; and
- WHEREAS, the Tribal Council, under authority of the Constitution of the Picayune Rancheria of the Chukchansi Indians, Article V (j), to manage tribal funds in accordance with approved resolution, and Article V (m), to manage all economic affairs and enterprises of the Tribe; and
- WHEREAS, the Picayune Rancheria of the Chukchansi Indian tribal bank account requires new check signers because new Tribal Council members were seated on December 23, 2013; and
- WHEREAS, previously authorized check signers Dr. Karen Wynn, Tracey Brechbuehl, Mona Bragdon & Jane Wyatt are hereby removed as Check Signers on all accounts; and
- WHEREAS, two signatures are required on all accounts under the Picayune Rancheria of Chukchansi Indians, and
- WHEREAS, the Tribal Council has designated the following individuals to be Authorized bank signatories for the Picayune Rancheria of Chukchansi Indians (PRCI) tribal bank accounts:

NANCY Ayala

Lyncla Appling

Tex Mc Donald

AMANUA RAGICES

Vervon King

Charles Songosa

DONNA Featherstone

NOW THEREFORE BE IT RESOLVED, that the Tribal Administrator is hereby

Authorized to take such actions as are necessary to designate the following

Tribal Council members as the authorized bank signatories of the Picayune Rancheria of the Chukchansi Indians Nancy Ayala, Ted McDonald, Lynda Appling, Vernon King, Donna Featherstone, Charles Sargosa, and Amanda Ramirez,

### CERTIFICATION

The Tribal Council of the Picayune Rancheria of the Chukchansi Indians does hereby certify that a meeting duly called, noticed and convened on the 23rd day of December 2013, where a quorum was present, do hereby certify that the foregoing resolution was adopted by the Picayune Rancheria of the Chukchansi Indians, by a vote of 7 for, 0 against, 0 abstain, 0 not voting, and 0 absent.

Nancy Ayala, Chairperson	1/9/14 Date
Tex McDonald, Vice Chairperson	1 / 9 // Lf.
Lynda Appling, Secretary	1,9.14 Date
Vernon King, Treasurer	01092014 Date
Amanda Ramirez, Member-At-Large	// 9/2019 Date
Charles Sargosa, Member-at-Large	1-10-14 Date 1-9-14
Donna Featherstone, Member-at-Large	Date

# EXHIBIT 4

Case 1:14-cv-01044-AWI-SAB Document 1 Filed 07/02/04 Fn Person 3:30 pm MWdhae Richard G. Verri (DC Bar 247395) Robert A. Rosette (CA SBN 224437) ROSETTE, LLP 2 ATTORNEYS AT LAW 565 W. Chandler Blvd., Suite 212 3 Chandler, AZ 85225 4 Telephone: (480) 889-8990 Facsimile: (480) 889-8997 5 rverri@rosettelaw.com rosette@rosettelaw.com 6 Attorneys for Plaintiffs The Picayune Rancheria of the Chukchansi Indians, a 8 federally recognized tribe and the Chukchansi Economic Development Authority 9 TRIBAL COURT 10 OF THE 11 PICAYUNE RANCHERIA OF CHUKCHANSI INDIANS 12 13 Case No.: 2014-002 PICAYUNE RANCHERIA OF THE 14 CHUKCHANSI INDIANS, a federally recognized Indian tribe, and CHUKCHANSI EROPOSEO ORDER RE EX PARTE 15 ECONOMIC DEVELOPMENT APPLICATION FOR TEMPORARY AUTHORITY, a wholly-owned economic 16 RESTRAINING ORDER AND ORDER arm of the Tribe, TO SHOW CAUSE RE 17 PRELIMINARY INJUNCTION Plaintiffs, 18 VS. 19 BANK OF THE SIERRA, a banking 20 association, 21 and 22 JOHN DOES 1-100, certain unidentified individuals. 23 24 Defendants. 25 Plaintiff, the Picayune Rancheria of the Chukchansi Indians ("Tribe"), and the 26 Chukchansi Economic Development Authority ("CEDA"), a wholly owned unincorporated 27 ORDER RE EX PARTE APPLICATION AND OSC

entity of the Tribe, having filed a Complaint for Declaratory and Injunctive Relief, Application for Ex Parte Temporary Restraining Order, the Court finds as follows:

- 1. This Court has subject matter jurisdiction over this action pursuant to Tribal Court Code §4, §5.1(a), (b), (c) (d) & (e), and jurisdiction over this matter because this matter involves a nonmember who engaged in "consensual relationships" with the Tribe and its members.
- 2. Plaintiffs have made a sufficient showing that neither written nor oral prior notice need be given to Bank of the Sierra, and John Does 1-100, certain as yet unidentified persons, (collectively the "Defendants"), because it is likely that immediate and irreparable injury, loss or damage will result to the Plaintiffs before the adverse party or their attorney can be heard in opposition. Notice shall not be required before this Order is entered as Defendants may attempt to distribute funds to the unlawful McDonald Faction if Defendants are given advance notice of the Tribe's intention to obtain this Order.
- 3. There is good cause to believe that Defendants will continue to work with the McDonald Faction and continue to maintain and/or seize control of Tribal funds.

IT IS HEREBY ORDERED that Defendants, its officers, agents, employees and attorneys and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise, be and hereby are temporarily restrained directly or indirectly from aiding and abetting the McDonald Faction's continual illegal activities by providing the McDonald Faction with any banking services whatsoever including, but not limited to, providing a deposit account to the McDonald Faction in the name of the Tribe and issuing payroll, per capita, and other checks at the behest of the McDonald Faction; and

IT IS FURTHER ORDERED that Defendants, its officers, agents, employees and attorneys and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise, shall hereby freeze all accounts in the name of the Tribe that are currently on deposit with Defendants, and Defendants shall contact the

lawful Interim Tribal Council as recognized by both the Tribe and the federal government, and as led by Chairman Reggie Lewis, to effectuate a proper and lawful transfer of these accounts; and

IT IS FURTHER ORDERED that Defendants, its officers, agents, employees and attorneys and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise, shall turn over to Plaintiffs copies of all documents related to any accounts held by the Defendants (Bank of the Sierra) in the name of the Tribe and/or its entities including, but not limited to, bank statements, transaction histories, and written communications to the lawful Interim Tribal Council as recognized by both the Tribe and the federal government, and as led by Chairman Reggie Lewis; and

IT IS FURTHER ORDERED that the Plaintiffs shall forthwith file this Temporary Restraining Order with the Clerk of the Court and serve copies of said Order on Defendants; and

IT IS FURTHER ORDERED that Defendants served with a copy of this Order shall forthwith give actual notice of this Order to each of said Defendants' officers, agents, attorneys and to each person acting in active concert or participation with them; and

- (i) That unless this Court rules otherwise, a Hearing to Show Cause as to why this Temporary Restraining Order should not remain in effect shall take place on the 30 day of June 2013, at 11:00 in this Court; and
- (ii) That Defendants shall file any responsive pleadings no later than the 23°4 day of Sunce, 2014 by close of business in this Court; and
- (iii) As a Tribal Government and Tribal Government Enterprise, Plaintiffs are not required to post a bond prior to issuance of this Temporary Restraining Order.

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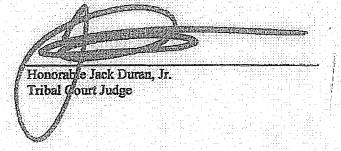
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IT IS HEREBY FURTHER ORDERED THAT parties affected by the Proposed Order can apply to the Court for modification or dissolution on two (2) days' notice or such shorter notice as the Court may allow.

DATED this /c day of しゅし, 2014.



# EXHIBIT 5

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1 2 3 4	Richard Verri (D.C. No. 247395) Robert A. Rosette (CA No. 224437) ROSETTE, LLP 565 W. Chandler Blvd., Suite 212 Chandler, AZ 85225 Telephone: (480) 889-8990 Facsimile: (480) 889-8997 rverri@rosettelaw.com		.11-11-1	6px4:42
6	rosette@rosettelaw.com			
7 8 9	Attorneys for the Plaintiffs, the Picayune Rancheria of the Chukchansi Indians, a federally recognized Indian Tribe, and the Chukchansi Economic Development Authority			
10		rat <i>C</i> ourt		
11 12 13	TRIBAL COURT OF THE PICAYUNE RANCHERIA OF CHUKCHANSI INDIANS			
14· 15 16 17 18 19	PICAYUNE RANCHERIA OF THE CHUKCHANSI INDIANS, a federally recognized Indian tribe, and CHUKCHANSI ECONOMIC DEVELOPMENT AUTHORITY, a wholly-owned economic arm of the Tribe, Plaintiffs, vs.	COMPLAINT INJUNCTIVE  Date: Jung Time: (11;00) Dept:	FOR DECLARAT RELIEF AND DA 30, 2014 AM	MAGES
20 21	BANK OF THE SIERRA, a banking association,			
22	and			
23	JOHN DOES 1-100, certain unidentified individuals,			
24	Marviduais			
25	Defendants.			
26				
27				
28	COMPLAINT FOR DECLARATORY	AND INJUNCTIVE	RELIEF AND DAMA	AGES

## INTRODUCTION

This is a civil action seeking declaratory and injunctive relief, damages, and a request for an ex parte temporary restraining order against Bank of the Sierra, a banking association ("Defendant"), and John and Jane Does 1-100, certain as yet unidentified persons, (collectively referred to as "Defendants"), for facilitating and coordinating with the unlawful faction led by an individual named Tex McDonald, ("McDonald Faction") (previously led by Nancy Ayala, the "Ayala Faction" and, together with the McDonald Faction, the "Faction"). The McDonald Faction is currently purporting to be the Tribal Council of the Picayune Rancheria of the Chukchansi Indians ("Tribe"), in control of the Chukchansi Gold Resort & Casino ("Casino"), and the Defendants are holding funds deposited by the McDonald Faction and processing checks for this Faction in the name of the Tribe or an associated entity of the Tribe. By providing banking services to this unlawful Faction, Defendants are violating tribal law and are usurping the authority and governance of the rightful Tribal Council, as well as the Chukchansi Economic Development Authority ("CEDA"), a wholly owned unincorporated entity of the Tribe.

On February 11, 2014, the Bureau of Indian Affairs ("BIA") issued a decision wherein it identified, on an interim basis, those individuals comprising the Tribal Council with whom it would engage in its government-to-government trust relationship (the "Interim Tribal Council" or "Tribal Council"). That Tribal Council consists of Reggie Lewis, Dora Jones, Chance Alberta, Nokomis Hernandez, Morris Reid, Jennifer Stanley, and Nancy Ayala. See BIA correspondence from Amy Dutschke, Pacific Region Director, dated February 11, 2014, a true and correct copy of which is attached hereto as Exhibit "A" (the "Decision"). Noticeably, not one member of the McDonald Faction's purported "tribal council" is identified as a lawful Tribal Council member, and yet the McDonald Faction nevertheless is inexplicably permitted to continue controlling the Casino and misappropriating Tribal funds. On February 13, 2014, the Interim Tribal Council passed Resolution #2014-11, confirming that, under Tribal law, the composition of the Tribal Council is as set forth by the BIA in its Decision. See Resolution #2014-11, a true and correct copy of which is attached hereto as

Exhibit "B." As such, by February 13, 2014, the composition of the rightful Tribal Council of the Tribe was affirmatively established.

The Constitution of the Picayune Reservation ("Constitution"), Article V, Sections (h), (j), (k), (m), and (o), grants sole responsibility and authority to the Tribal Council to collect, administer, manage, and expend tribal funds for public purposes and to manage all economic affairs of the Triba. Moreover, the Constitution mandates that such expenditures must be made only pursuant to the budget that the Tribal Council has approved or as allowed pursuant to a resolution of the Tribal Council. See id. at Article V, Section (p). Although the true and lawful Tribal Council has been identified, Defendants continue to engage in business with an unlawful Faction in violation of Tribal law. The Tribal Council has not authorized the deposit of Tribal funds with Defendant Bank of the Sierra ("Bank"). Therefore, any existing accounts must be immediately frozen, all records denoting the transaction history of such accounts must be immediately disclosed to the Tribe's lawful Chairman, Reggie Lewis, and all funds must be immediately returned to the control of Chairman Lewis and the Interim Tribal Council.

Plaintiffs seek a declaratory judgment that Defendants have violated tribal law by engaging in business with the McDonald Faction, and further seek an order permanently enjoining and restraining Defendants from participating, facilitating, coordinating, negotiating, colluding, conspiring, or dealing in any manner whatsoever with the McDonald Faction, through stipulations, agreements, forbearances, payments, or otherwise, as such actions are or would be in direct violation of Tribal law and cause permanent and irreparable harm to the legitimate Tribe and CEDA Board. This action further seeks an order restraining Defendants from acting in any manner on behalf of the McDonald Faction in furtherance of its illegal actions, and enjoining Defendants from representing to any individual, party, person (whether naturalized or otherwise) or entity that the McDonald Faction represents the duly elected and rightfully governing Tribal Council and CEDA Board.

The Plaintiffs stand to be harmed severely and irreparably—both financially and as a matter of governance—by not only potentially losing control of the funds held in the Bank of the Sierra accounts,

but also by any additional costs that may be associated with recovery of those funds. To be sure, courts have found that the seizure of tribal assets is sufficient, as a matter of law, to demonstrate irreparable harm for purposes of issuing a preliminary injunction. See Kiowa Indian Tribe of Oklahoma v. Hoover, 150 F.3d 1163, 1171-72 (10th Cir. 1998) (citing Seneca-Cayuga Tribe v. Oklahoma, 874 F.2d 709, 716 (10th Cir. 1989) (holding that the seizure of tribal assets. . . "significantly interferes with the Tribe's self-government."). In addition, CEDA and the Tribe will experience an immediate inability as a sovereign authority to govern itself. Allowing Defendants to act in direct contravention of Tribal law and engage in business with the McDonald Faction poses grave threats for both the public and Tribal interests alike and is certain to disrupt and prevent the provision of vital services to the Tribe's members. It tramples on the Tribe and CEDA's sovereignty and ability to meaningfully engage in its contractual relationships with their business partners. Because granting injunctive relief is in the interest of both the Tribal public and the larger non-Tribal general public, and because the balance of equities tips clearly in Plaintiffs' favor, the Court should immediately grant the Plaintiffs' request for injunctive relief and for an ex parte temporary restraining order that will immediately work to protect those interests.

#### PARTIES

- 1. Plaintiff Picayune Rancheria of the Chukchansi Indians ("Tribe") is a federally recognized Indian Tribe, located in Coarsegold, California.
- 2. Plaintiff the Chukchansi Economic Development Authority ("CEDA") is a wholly owned, unincorporated entity of the Tribe operating as an arm of the Tribe. CEDA owns and operates the Tribe's gaming facility the Chukchansi Gold Resort & Casino ("Casino").
- 3. The Tribal Council and CEDA Board of Directors are currently comprised of the following individuals: Reggie Lewis, Chance Alberta, Nokomis Hernandez, Morris Reid, Jennifer Stanley and Nancy Ayala.
- 4. Defendant Bank of the Sierra, is a bank located at 86 N. Main St., Porterville, California, 93257, holding accounts in the name of the Tribe and/or its Departments and Enterprises.
  - 5. Defendants John Does 1-100 are certain unidentified individuals and entities who will be

identified through discovery, and who have provided professional guidance and advice in supporting Bank of the Sierra and its actions in dealing with the Tribe.

### JURISDICTION AND VENUE

- 6. This Court has subject matter jurisdiction over this action pursuant to Tribal Court Code §4, §5.1(a), (b), (c) (d) & (e), enacted via Tribal Council Resolution #2012-45, on March 8, 2012 and as subsequently amended.
- 7. Plaintiffs have received various communications, either directly or through their agents and attorneys, regarding the past actions and future intentions of Defendants and therefore are informed, believe, and thereon allege that the Defendants have sufficient contact with the events herein alleged as contemplated by Section 5.2 of the Tribal Court Ordinance.
- 8. Venue is proper here as the property, parties, and legal issues which are the subject of this action are located in and inextricably fied with the Tribe and Tribal entities.

## FACTUAL ALLEGATIONS

- 9. The Tribe is a federally recognized Indian tribe with the powers of sovereignty, self-governance, and governmental decision-making. The Tribe is governed by a Constitution adopted in 1988, along with various duly-enacted ordinances, regulations, policies, and bylaws. See Declaration Of Reginald Lewis In Support Of Complaint And Ex Parte Application For Temporary Restraining Order ("Lewis Dec."), filed concurrently herewith, at ¶ 3. The Tribe's Constitution grants the seven-member Tribal Council broad governing authority to carry out its powers. Id. (See Constitution, Article V.).
- 10. On or about June 15, 2001, the Tribal Council passed Resolution No. 2001-11, which enacted an ordinance establishing and governing CEDA (the "CEDA Establishing Ordinance"). Lewis Dec. ¶ 4. Pursuant to this June 15, 2001 Ordinance, the Board of Directors of CEDA (the "CEDA Board") is comprised of the sitting members of the Tribal Council. *Id.* Thus, the members of the CEDA Board and the Tribal Council are identical. *Id.*
- 11. The CEDA establishing Ordinance granted CEDA the power to, among other things, own and operate the Chukchansi Gold Resort and Casino (the "Casino"), which opened in 2003. Lewis Dec. ¶ 5.

- 12. Following a Tribal election held in December 2012, the Tribal Council consisted of Reggie Lewis, Chance Alberta, Carl Bushman, Nancy Ayala, Tracey Brechbuehl, Karen Wynn, and Charles Sargosa. Lewis Dec. ¶ 6. As such, these same individuals also served on the CEDA Board. *Id.*
- 13. In February 2013, the Tribe became embroiled in a well-publicized internal Tribal dispute, where an unrecognized faction of the Tribe, led by Nancy Ayala, attempted a hostile takeover of the Tribe and its Casino and purported to create its own "Tribal Council" and "Tribal Gaming Commission" without the authority or legitimacy of Tribal law. Lewis Dec. ¶ 7.
- 14. The Ayala Faction contended that Ayala was the Tribal Council Chairwoman up until the beginning of 2014, when she was purportedly removed from office and replaced by Tex McDonald ("McDonald"), the current alleged Chairman of the Ayala Faction/McDonald Faction (collectively, the "McDonald Faction"). Lewis Dec. ¶ 8. McDonald now falsely alleges that he has the authority to control CEDA and the Casino. *Id*.
- 15. As set forth above, the Interim Tribal Council as recognized by the BIA in its February 11, 2014 Decision—and with whom the BIA would maintain government to government relations—consists of: Dora Jones, Chance Alberta, Jennifer Stanley, Nancy Ayala, Morris Reid, Reggie Lewis, and Nokomis Hernandez. Lewis Dec. ¶ 9. In issuing its Decision, the BIA recognized that

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 operation. . . Due to these increasing issues, there appears to be several grounds for finding that it would be in the public interest to put this decision into immediate effect.

## See Exhibit A.

- 16. On February 13, 2014, the Interim Tribal Council passed Tribal Council Resolution #2014-11, in which it affirmed the lawful Tribal Council as that identified by the BIA. See Exhibit B.
- 17. Despite the Decision and subsequent February 13, 2014 Resolution, the McDonald Faction continues to illegally holds itself out as the governing authority of the Tribe and to occupy, operate and convert gaming revenue from the Casino. Lewis Dec. ¶ 10.
  - 18. The McDonald Faction unlawfully exercises control over the Casino, converts Plaintiffs'

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casino revenues, hand counts the casino cash and transfers this cash to a small group of individuals without any lawful tribal authority. See Declaration of Richard Verri In Support Of Complaint And Ex Parte Application For Temporary Restraining Order ("Verri Dec."), filed concurrently herewith, at ¶ 5.

- 19. The McDonald Faction occasionally utilizes Loomis Security to transport the illegally seized funds. After Loomis Security receives this cash, Loomis conveys the funds to Defendants (Bank of the Sierra). *Id.*, ¶ 5, 6.
- 20. Upon information and belief, Defendants have received over \$100,000 of tribal funds from the McDonald Faction through Loomis. Verri Aff. ¶ 7.
- 21. Upon information and belief, Defendants have then disbursed all or a portion of these tribal funds in violation of the Tribe's laws at the direction and control of the McDonald Faction. *Id.*
- 22. Because the McDonald Faction is not the Interim Tribal Council, it has no authority to operate, occupy and convert gaming revenue from the Casino and is therefore unlawfully handling all Casino revenues in violation of Tribal law. Accordingly, Defendants' actions of accepting casino funds and then distributing these funds at the behest of the McDonald Faction are therefore unlawful. Prompt award of the relief requested herein is imperative to enable the Interim Tribal Council to preserve Casino revenues, assets, and property and prevent the illegal and unauthorized disbursement of that property at the whim of a group of individuals who have no recognized authority over or rights thereto. Lewis Dec. ¶ 11-13.

#### COUNTI

## INJUNCTIVE RELIEF

- 23. Plaintiffs incorporate by reference paragraphs 9 through 22 above as if fully incorporated herein.
- 24. As set forth above, the Decision identifies the following individuals as constituting the lawful governing body of the Tribe (the Interim Tribal Council) with which the BIA will continue to engage in government to government relations: Dora Jones, Chance Alberta, Jennifer Stanley, Nancy Ayala, Morris Reid, Reggie Lewis, and Nokomis Hernandez.

- 25. As set forth above, through Tribal Council Resolution #2014-11, the Interim Tribal Council confirmed, in accordance with Tribal law, the identity of its membership as set forth in the Decision.
- 26. Yet despite these affirmative declarations by **both** the United States federal government and the General Council of the Tribe, Defendants continue to provide banking services to the illegal McDonald Faction who, in turn, continue to hold themselves out as having authority to act on behalf of the Tribe and exercise dominion over Tribal assets.
- 27. Importantly, *none* of the individuals identified in the Decision or the Resolution currently serves on the McDonald Faction's purported Tribal Council, and therefore the Tribal funds deposited in accounts held by Defendants (Bank of the Sierra) were illegally obtained and transferred.
- As a result of the foregoing, Plaintiffs are entitled to emergency injunctive relief directing the Defendants to immediately freeze any and all accounts currently be held by them in the name of the Tribe and further cease and desist from providing the Faction with any banking services whatsoever which purport to be in the name of or for the benefit of the Tribe or any of its entities.
- As a result of the foregoing, Plaintiffs are also entitled an order compelling Defendants to turn over any and all records, including but not limited to bank statements and written correspondence, concerning all accounts held in the name of the Tribe or any of its entities to the Interim Tribal Council as led by Chairman Reggie Lewis.

#### COUNT II

#### DECLARATORY RELIEF

- 30. Plaintiffs repeat and incorporate as though fully set forth herein each and every allegation in paragraph 9 through 29 above.
- 31. There is a real and actual controversy between Plaintiffs and Defendants concerning whether Defendants have the right to continue providing banking services to members of the McDonald Faction who have opened accounts in the name of the Tribe and/or its entities.
- 32. Upon information and belief, Defendants contend that they are not only entitled, but required, to perform banking services in relation to accounts opened by the McDonald Faction in the

name of the Tribe and/or its entities.

- 33. Plaintiffs contend that the McDonald Faction—an illegal faction purporting to act as the legitimate "tribal council"—is not authorized to open and/or maintain banking accounts in the name of the Tribe and/or its entities, or to otherwise exercise dominion over Tribal assets, including funds. As such, the Defendants are required at law to freeze the accounts and return any funds currently held to the lawful Interim Tribal Council, led by Chairman Reggie Lewis, as recognized by both the federal government and the Tribe itself.
- 34. A judicial determination as to whether the Defendants may accept or disburse funds belonging to the Tribe and its members at the direction of the McDonald Faction is necessary to avoid further unnecessary and irreparable harm to the Tribe and its members.

## COUNT III

## AIDING AND ABETTING: VIOLATION OF THE CONSTITUTION

- 35. Plaintiffs repeat and incorporate as though fully set forth herein each and every allegation in paragraphs 9 through 34 above.
- 36. Tribal members—especially those purporting to act as Tribal Council members on behalf of the Tribe—have a duty to the Tribe and its members to abide by and uphold the Tribe's Constitution.
- 37. The members of the McDonald Faction have violated the Constitution and breached their duty attempting a hostile takeover of the Tribe and by continuing to hold itself out as the legitimate governing body of the Tribe.
- 38. Defendants knew or should have known that the McDonald Faction violated the Tribe's Constitution, as well as state and federal law, when it improperly seized Tribal funds, deposited those funds into accounts held by the Defendants, directed the Defendants to dispense of said funds, and otherwise exercised dominion over funds to which the McDonald faction had no legal right.
- 39. Defendants have knowingly rendered substantial assistance to the McDonald Faction by providing it with open access—i.e., permitting deposits into, and withdrawals from—accounts holding funds rightfully belonging to the Tribe as governed by the tribally and federally-recognized Interim Tribal Council.

- 40. Plaintiffs have been damaged as a direct and proximate result of Defendants' actions in substantially assisting the members of the McDonald Faction in achieving their continued breaches of their duty to the Tribe and its members.
- 41. Pursuant to the Tribal Court Code, §20.1, the Plaintiffs are entitled to, *inter alia*, injunctive relief and compensatory damages in an amount to be determined at trial.

## COUNT IV

## AIDING AND ABETTING: VIOLATION OF THE TRIBAL LAW

- 42. Plaintiffs repeat and incorporate as though fully set forth herein each and every allegation in paragraphs 9 through 41 above.
- 43. Tribal members—especially those purporting to act as Tribal Council members on behalf of the Tribe—have a duty to the Tribe and its members to abide by and uphold Tribal law.
- 44. The McDonald Faction has violated the Tribal law, including but not limited to Resolution #2014-11, and breached its duty by continuing to hold itself out as the lawful Tribal Council and illegally seizing or otherwise exercising dominion over assets rightfully belonging to the Tribe and its members.
- 45. Defendants knew or should have known that the McDonald Faction is acting in violation of Tribal law and in breach of its duty. Defendants have a duty to identify the sizable deposits that were being made and only engage in business with depositors that are lawfully in possession of funds.
- 46. Defendants have knowingly rendered substantial assistance to the McDonald Faction by granting the Faction open access to accounts—including accepting funds for deposit and/or disbursing funds which constitute revenue generated from the Tribe's enterprises and operations, including the Casino—which lawfully belong to the Tribe.
- 47. The McDonald Faction is recognized by neither the Tribe itself, nor the federal government and, therefore, lacks the authority to exercise dominion over these funds. Plaintiffs have been damaged as a direct and proximate result of Defendants' actions.
- 48. Pursuant to the Tribal Court Code, §20.1, the Plaintiffs are entitled to, inter alia, declaratory relief and compensatory damages in an amount to be determined at trial.

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#### COUNT V

## CONVERSION

- 49. Plaintiffs repeat and incorporate as though fully set forth herein each and every allegation in paragraphs 9 through 48 above.
- 50. The Casino generates money on an ongoing basis and, pursuant to federal and tribal law, these revenues belong to the Tribe and its members and are to be administered by the legitimate governing body of the Tribe, or the Interim Tribal Council.
- 51. The McDonald Faction, by its actions as alleged herein, has intentionally exercised dominion and control over funds rightfully and lawfully belonging to the Tribe, thereby severely interfering with the Tribe's right to control those funds—including but not limited to funds generated from the Tribe's Casino.
- 52. By knowingly accepting these funds into deposit from the McDonald Faction, and otherwise disposing of Plaintiffs' assets at the direction of the Faction, the Defendants have also severely interfered, and continue to interfere, with the Tribe's right to control those funds.
  - 53. Plaintiffs have been damaged as a direct and proximate result of the Defendants' actions.
- 54. Pursuant to the Tribal Court Code, §20.1, Plaintiffs are entitled to, *inter alia*, injunctive and declaratory relief and compensatory damages in an amount to be determined at trial.

### PRAYER FOR RELIEF

## WHEREFORE, Plaintiffs pray for relief as follows:

- 1. Grant Plaintiffs injunctive relief requiring Defendants to freeze all accounts used by the McDonald Faction and restraining and enjoining Defendants from providing any banking services to the McDonald Faction or any unlawful group holding itself out as the lawful governing authority of the Tribe or its entities including, but not limited to accepting deposits from the Faction or disbursing funds at the Faction's direction;
- 2. Grant Plaintiffs injunctive relief ordering Defendants to release all information concerning bank accounts held in the name of the Tribe or its entities, including but not limited to bank statements, transaction histories and written communications, to the lawful Interim Tribal Council led by

1	Chairman R	eggie Lewis;			
2	3.	3. Grant Plaintiffs a declaratory judgment declaring that the Interim Tribal Council is the			
3	lawful Tribal Council with authority over funds held in accounts held by the Defendants (Bank of the				
4	Sierra);				
5	4.	Grant Plaintiffs a declaratory judgment declaring that Defendants have facilitated in the			
6	violation of Tribal law through their concerted efforts with the McDonald Faction;				
7	5.	Award Plaintiffs monetary damages in an amount to be determined at trial; and			
8	6.	For such other and further relief as the Court deems just and proper.			
9					
10	Dated: June	RESPECTFULLY SUBMITTED,			
11	·				
12	٠				
13		ROSETTE, LLP			
14		/s/ Richard Verri			
15		Richard Verri			
16		Robert A. Rosette 565 West Chandler Blvd., Suite 212			
17		Chandler, Arizona 85225 (480) 889-8990			
18		(480) 889-8997			
19		Attorneys for Plaintiffs			
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EXHIBIT A



IN REPLY REFER TO:

Tribal Operations

## United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Pacific Regional Office
2800 Cottage Way
Sacramento, California 95825

PEB 1 1:20W

Robert A. Rosetta, Attorney
Rosette, LLP
For Lewis Faction
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Chandler, Arizona 25225
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RETURN RECEIPT REQUESTED

John Peebles, Attorney
Fredericks Peebles & Morgan LLP
For Reid Faction
2020 L Street, Suite 250
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CERTIFIED MAIL NO.: 7013 0600 0001 1876 6932
RETURN RECEIPT REQUESTED

Lester J. Marston, Attorney
Law Offices of Rapport and Marston
for Ayala Faction
405 W. Perkins Street
Ukiah, California 55482
CERTIFIED WAIL NO.: 7018 0600 0001 1876 6949
RETURN RECEIFT REQUESTED

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, 2018, 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.



The Reid Faction, consisting of Morris Reid, Janice Devine, Dirig Jackson, Harold Hammond, and Frank Fernandez, timely filed a Notice of Appeal, dated June 14, 2013, of the Superintendent's Way 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, dimely 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 lark of jurisdiction because of the Reid Faction's appeal pending before the Regional Director. First, the Lewis Faction asserts the Superintendent"... falled to cite any declination criteria, legal basis, or lawful reason for refusing to act upon the Tribe's 658 Contract Proposal." Second, the Lewis Faction asserts"... the IBIA Orders and the applicable law all dearly 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 658 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, decision<sup>1</sup>. The Ayala faction dips 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 practiced from acting upon the Ayala Faction's request due to the Speal pending before the Interior Board of Indian Appeals (IBIA), citing BIA's reliance upon Picajune Renchéric of the Chukchansi Indians; Morris Reid, Dora Jones, Dice 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-Rancherle of the Chukchansi Indians; Morte Reld, Dora Jones,* Dixle Jackson, and Harold Hammond v. Pacific Regional Director, Bureau of Indian Affairs, subra, IBIA (Board) states "without determining whether the pandency of this appeal, under the facts of this

On November 13, 2013, the Pacific Regional Office received the Reld Faction's Notice to Dismise the "untimely" Notice of Appeal filed by the Ayela Faction. In a lefter 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 parted, unless it is a Saturday, a Sunday, or a legal holiday. In which state the period citie and the next day which is not a Saturday, a Sunday, or a legal holiday." Due to the 2013 Government shutdown, from Ostober 1, 2013, to Ostober 17, 2013, the Ayela Faction was not blooded the oppositionity to submit their Nation of an Appeal until October 17, 2013, or the and of the next day following October 7, 2013, when the BIA was responsed.

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 Bancheria of Chukchansi Indians for Fiscal Years 2013-2015.

All the appeals pertain to a request for a new ISDEAA contract for the Picayune Rancherla of Chukchansi Indians for FY 2013-2015. On December 10, 2013, due to the related subject matter of the appeals, and in accordance with Tide 25, Code of Federal Regulations, Part 2.18, Gensolidation 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 issued<sup>2</sup>.

The leadership of the Picayune Rancheria of Chalichansi 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 Hernandez<sup>s</sup>. 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 1995 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 Reld, Dora Jones, Dixle Jackson and Harold Harmoond; Sr., received the highest number of votes in the election<sup>4</sup>. However, multiple endiates runhing in the election appealed to the Election Committee challenging eligibility of Harold Hammond, Sr., to be sasted as a member of the Tribal Council, dalming that Mr. Hammond should have never been qualified to run for office as he did not meet the eligibility requirements. 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 Reld faction claimed to be duly seated at the December 26, 2011, Tribal Council meeting, in accordance with tribal law. The Lawis 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 resord shows the

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

<sup>9</sup> The record reflects (that Nokomis Hamender was experited by the Tribal Council to replace Patrick Hammond, III.

<sup>4</sup> Sea February 1, 2013, Administrative Record, Tab F, 66:

<sup>&</sup>lt;sup>6</sup> See February 1, 2013, Administrative Record, Teb F, 59,60,64,63; and 65.

Lewis Faction held a General Council meeting on Warch 10, 2012°; 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 legitlmate Tribal Council.

It appears the Tribe was still embroiled in an intra-tribal dispute between the field 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, 1938, and the Election Ordinance amended on September 20, 2012. The Tribal Council has stageered 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 Dominque Carrillo on January 3, 2013, the hold-over officers that remained on the Tribal Council were Reagle Lewis, Chance Alberta, Tracey Brachbuel 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 or ballelection because it was not held by the legitimate tribal government or Election Committee (due to the Reid Faction suspending Dominique Carrillo, Dana Hall and Orlanna Walker from their positions on the Election Committee?). 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 Reld Faction daimed 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 Wyori 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 Wyon 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 Fabruary 21, 2519, 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 undear 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 time 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

<sup>6</sup> See February 1, 2013, Administrative Report, Tab F, 6.

<sup>&</sup>lt;sup>7</sup> 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."

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, 1938, 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, 1938, and the Election Ordinance amended on September 23, 2013. Following the December 7, 2013, elections, attorneys for both factions submitted correspondence arguing the ments of their elections, urging BIA recognition of respective elections, and discussing the invalidity of the other faction's election. 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 Twoquins, and Gary Wheeler v Edstein Regional Director, Bureau of Indian Affairs, Docket No. IBIA 12-015, 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, 30 [1992] (emphasis added); see also Ransom v. Babbitt, 69 F. Supp. 2d 141, 151-52 (D.O.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 histus in tribal government by simultaneously recognizing two tribal governments or dealining to recognize any tribal government. Goodface v. Grassrope, 768 F.2d 335,338-39 (8th Cir. 1983)."

In Steven R. Smith v Acting Pacific Regional Director, Buisagu of Indian Affairs, Docket No. 42 IBIA 224, Order Dismissing Appeal, the IBIA states: "... It is well-settled that evalid 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 (2002); Kostauta 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); Villagas v. Sacramento Area Director, 24 IBIA 150,

ONO formal request maching the regularments set forth in 25 CFR § 200, Subport C, has been submitted for corelderation by the Levisifield Paotion.

Although the Lewis and Reid factions have apparently regardled and are now working legither, the Reid Faction has two appares pariding before the ISIA elaiming to be the legitimate governing body of the Picayuna Renchena, 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 Ordinans's was amended by the various compositions of the opposing factions, to 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 difficult the Superintendent's decision to recognize the results of the December 1, 2012, election.

The situation at the Picayune Rancheria of Chulchansi Indians has deteriorated to a point that recogniden of a government is essential for the purpose of contracting under the ISDEAA, and to prevent any further histus of this government-to-government relationship with the Picayune Rancheria of Chulchansi Indians. Therefore, the Bureau of Indian Affairs, Pacific Region, will conduct business, on an Interim basis, with the last uncontested Tribal Council<sup>11</sup> elected December 2010, consisting of: Dora Jones, Chance Alberta, Jennifer Stanley, Nancy Ayala, Morris Reid, Reggle 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 insensince 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 Department<sup>22</sup>. In addition to

<sup>&</sup>lt;sup>10</sup> While this Office has received a copy of two of the vareions of the amended Election Ordinance, the other vareions have been addressed by the factions in various opinispondence. (See Suptember 10, 2013, letter from Deminique Carille 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)

<sup>&</sup>lt;sup>11</sup> Sea Aoting:Governor Leslie Weretie-Herjo, Chayenna and Arapaho Tribes V. Southern Plaint Regional Director, 53 IBIA 121, 124 (2011)

<sup>&</sup>lt;sup>12</sup> As Indicated by the February 27, 2013, Siena Star article titled 'Tribal Leadership Split At Picayuna' Rencheria

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 operation<sup>13</sup>; 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 filling a motion with the ISIA 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 MB, U.S. Department of the interior, 1249 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

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ce: See Attached Distribution List

See Picayune Rancheria of Chukohansi Indians, et al, v. Sendra B Hennquez, et al, No. CV-13-01917-PHI-DGC, Order, December 30, 2013, at Page 8 Lipe 5

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EXHIBIT B



## Picayone Rencheria of the Chiukchansi Indians

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### RESOLUTION # 2014-11

AFFIRMATION AND ADOPTION OF GENERAL COUNCIL RESOLUTIONS #2013-01 THROUGH \$2013-07 BY THE DULY ELECTED AND INSTALLED TRIBAL COUNCIL AS IDENTIFIED IN THE BUREAU OF INDIAN AFFAIRS ("BIA") LUTTER DATED FEERUARY 11, 2014

- WHEREAS, the Picayune Rancheria of Chukchansi Indians (the 'Tribe') is a sovereign, federally recognized Indian Tribe organized under the Constitution of the Tribe which was ratified on October 22, 1985; and
- WHEREAS, pursuant to Article IV, Section 2 of the Constitution of the Picayune Rancheria (the "Constitution"), the Tribal Council of the Triba (the "Tribal Council") is the governing body of the Tribe and is duly authorized to exercise governmental authority on behalf of the Tribe; and
- WHEREAS, pursuant to Article V (a), (b), (c), (m) and (x) of the Constitution, the Tribal Council has the authority and duty "to promulgate and enforce bylaws and ordinances necessary to carry out its powers", "to promulgate and enforce ordinances governing the conduct of the members of the Tribe", "to safeguard the peace, safety, morals, and general welfine of the Tribe", "to manage all economic affairs and enterprises of the Tribe" and "to exercise such further powers, consistent with the Constitution, as needed to carry out the powers listed herein;" and
- WHEREAS, the Tribal Council recognizes that illegal actions by a mob faction (the "Ayala Rection") of the Triba attempted an illegal, unconstitutional take-over the government and CEDA operations on February 21, 2013; and
- WHEREAS, the Tribal Council identified in the BIA letter dated February 11, 2014 (Chairman Lewis, Treasurer Alberta, Dora Jones, Morris Reid, Nokomis Hernandez, Jennifer Stanley and Namcy Ayala) finds that it is in the best interests of the Tribe and its membership to approve pursuant to Tribal Council Bylaws, Section 10, as codified in Tribal Council Resolution 2012-53 adopted on March 31, 2012, the adoption by emergency measure with the force of law General Council Resolutions #2013-01, #2013-02, #2013-03, #2013-04, #2013-05 and #2013-05 adopted by the General Council on September 14, 2013 and General Council #2013-07 adopted by the General Council is the Tribal Council the BIA recognized in its February 11, 2014 decision attached hereto as Bribit A.

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NOW THEREFORE, BE IT RESOLVED that the Tribal Council identified in the BIA letter dated February 11, 2014 (Chairman Lewis, Treasurer Alberta, Dora Jones, Morris Reid, Nokomis Hemandez, Jennifer Stanley and Nancy Ayala) finds that it is in the best interests of the Tribe and its membership to approve pursuant to Tribal Council Bylawa, Section 10, as codified in Tribal Council Resolution 2012-53 adopted on March 31, 2012, the adoption by emergency measure with the force of law General Council Resolutions #2013-01, #2013-02, #2013-03, #2013-04, #2013-05 and #2013-06 adopted by the General Council on September 14, 2013 and General Council #2013-07 adopted by the General Council on December 14, 2013 with the modification that the Tribal Council is the Tribal Council the BIA recognized in its February 11, 2014 decision attached hereto as Exhibit A.

## CERTIFICATION

Registeris, Chaiman

ATTEST:

And Elder

Modis Reid, Secretary

Chance Alberta, Treasurer

74. Welsonia Wemindley Nokomis Hamandez, Member