Docket No. 16-15096

**UNITED STATES COURT OF APPEALS**
**FOR THE NINTH CIRCUIT**

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STATE OF CALIFORNIA,
Plaintiff - Appellee,

v.

PICAYUNE RANCHERIA OF CHUKCHANSI INDIANS
OF CALIFORNIA, a Federally Recognized Tribe,
Defendant - Appellant.

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Appeal From The United States District Court
For The Eastern District of California
Case No. 1:14-cv-01593-LJO-SAB

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# APPELLANT'S REPLY BRIEF

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Gary J. Montana
MONTANA & ASSOCIATES, PLLC
N 12923 N Prairie Rd.
Osseo, Wisconsin 54758
(715) 597-6464

Attorney for Appellant Picayune Rancheria of Chukchansi Indians

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## INTRODUCTION

This case is about the Picayune Rancheria of Chukchansi Indians (hereinafter referred to as "Tribe") right to self-government, without the interference of a federal court or federal agencies. Nearly four years ago the Tribe's Tribal Council voted to create a Tribal Court system pursuant to Resolution No. 2012-45, which included the approval of the first Ordinance relating to the judiciary of the Picayune Rancheria of Chukchansi Indians. (AECF 36, Exhibit 3).[1]

Since its creation the Tribal Court has issued numerous decisions, which have included cases involving the intra-tribal dispute that currently plagues the Tribe. The Appellants, Picayune Rancheria of Chukchansi Indians have continued to utilize the tribal judiciary to assist in issues involving enrollment and elections. The Tribal Court recently issued another Temporary Restraining Order relating to the attempt by what has been termed the so-called "New Tribal Council's" efforts to disenroll individual members who they deem do not support their agenda – this action has included the original family who re-established the Tribe under the *Tillie Hardwick* case.[2]

[1] AECF – Appellant's referral back to lower court docket.
[2] In 1979, class action lawsuit filed in Northern District of California to challenge termination of trust relationship under the California Rancheria Act. *Tillie Hardwick et al. v. United States*, No. C-79-1710 SW (N.D. Cal. 1979) ("*Hardwick*").

The issue before this Court is whether – after numerous of years of unrest and internal turmoil over leadership, enrollment and election issues and despite the determination regarding the government-to-government recognition of an interim governing body to implement 93-638 contracting – should the Tribe's longstanding determination regarding their leadership through honestly conducted elections be undermined by the federal court and the Bureau of Indian Affairs (hereinafter referred to as "BIA")? And further, should the Tribe be denied the right to establish their own judiciary and be guided by that judiciary regarding their internal governmental issues? For at least the last 40 years, the guiding principle of federal Indian policy has been self-determination. This policy recognizes that Indian tribes have a right to govern their own affairs, and make and enforce their own laws, including the right to establish their own judiciary. The basic principal and tenet of self-determination is that tribal governments shall be empowered to govern their members and their reservation lands, and that the heavy hand of the federal government and state government should no longer prevent tribes from controlling their own affairs. The policy of tribal self-government has been followed by every administration since President Nixon, who first articulated the policy.[3]

[3] "Special Message to the Congress on Indian Affairs," 213 PUB. PAPERS 564 (July 8, 1970); H.R. REP. NO. 91-361 (1970), reprinted in 116 CONG> REC. 23,

This federal Indian policy of self-determination provides an important backdrop to the present matter before this Court. The Tribe here is seeking to determine final resolution of an intra-tribal dispute and ensuring that elections are conducted in constitutional manner pursuant tribal judiciary processes, which according to the case law is the only manner by which a final resolution of the intra-tribal dispute can be achieved. The BIA, federal district court, State of California and an illegally elected faction of the Tribe are seeking to replace the Tribe's self-determination with its own in a manner that denigrates and is in derogation of the policy of Tribal self-determination – reverting to the discredited prior federal practice of paternalistic control over tribes by the BIA and other federal agencies.

In the present matter before the Court, the underlying question is simple and straightforward – will the right of the Tribe to resolve the present intra-tribal dispute through their own judiciary be ignored by the federal court, federal

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258 (1970); see also President Lyndon Johnson's Special Message to Congress on the Problems of the American Indians: "The Forgotten American," 113 PUB. PAPERS 335 (Mar. 6, 1968). See, e.g., Memorandum for the Executive Departments and Agencies on Tribal Consultation, 74 Fed. Reg. 57, 881 (Nov. 5, 2009) (President Obama); Proclamation No. 7500, 66 Fed. Reg. 57,641 (Nov. 12, 2001)(President George W. Bush); Exec. Order No. 13,175, 65 Fed. Reg. 67,249 (Nov. 6, 2000) (President Clinton); Statement by President George H.W.. Bush "Reaffirming the Government-to-Government Relationship between the Federal Government and Tribal Governments," 1991 PUB. PAPERS 662 (June 14, 1991); Statement of President Ronald W. Reagan on Indian Policy, 1983 PUB. PAPERS 96 (Jan. 24, 1983).

agencies and the State of California? Or will the federal court and BIA not be permitted to take right away, contrary to tribal law, despite the passage of time and despite the final Interior Department ruling upholding the BIA's arbitrary determination regarding its handpicked selection of an interim tribal government?

## II

## REPLY ARGUMENT

### C. Reply to State of California's – Appellee's Response Brief

#### 3. The Appellant Did Not Fail To Object to the District Court's Findings of Fact and Conclusions of Law.

The State of California, Appellee would like to persuade this Court by attempting to lead the Court away from the undisputed fact that throughout the lower court proceedings, the Appellant's Attorney and others directed the lower district court to the tribal court proceedings, which resolved the intra-tribal dispute. The lower district court and other parties completely ignored the issue and failed to respond substantively to any of the arguments that directed the lower court to the tribal judiciary's resolution of any and all of the issues surrounding the intra-tribal dispute.

The Appellee now asserts that the findings of fact and conclusions of law were not objected to, either in the lower court or before this court. Previously the Appellant attempted to appeal to this Court, subsequent to the lower court's denial

of their Motion for an Order to Show Cause, but voluntarily dismissed said matter. Appellants were instructed that pursuant to 28 U.S.C. §1292(a) that interlocutory appeals did not address denials of an order to show cause in matters involving a Preliminary Injunction.[4]

The Appellant in their opening brief argued continuously throughout said brief that the lower court abused its discretion by finding that the "New Tribal Council" was the legal governing body of the Tribe and had the authority to pass legislative initiatives, hold unconstitutional elections and reopen the gaming facility. The Appellants mentioned the abuse of discretion of the lower court in recognition of the so-called "New Tribal Council"[5] not less than 12 times. Further, the conclusion of the opening brief states the following:

> For reasons discussed above, the district court's decision to issue the Judgment and Permanent Injunction based upon the findings of fact and conclusions of law by the district court should be reversed and held to be an abuse of discretion.

Appellant's Opening Brief, pg. 48.

The Appellant, Picayune Rancheria of Chukchansi Indians did object

[4] See, *State of California v. Picayune Rancheria of Chukchansi Indians*, Ninth Circuit Case No. 15-17345.

[5] An identifying label the district court attached to a group of illegally elected individuals on October 3, 2015, in an election determined to be unconstitutional by the Tribal Court in case no. 2015-034 (See, Appellant's Excerpt of Record-AER6-108(8).

to the issuance of the Judgment and Permanent Injunction, which was based upon the joint request of the illegally elected so-called "New Tribal Council" and the Appellee, State of California. The Appellants filed an objection not only based upon the issue of the geographic distance set out in the Order by the lower court, but as well stated as follows:

1. The attorney for the Picayune Rancheria of Chukchansi Indians [New] Tribal Council elected on October 3, 2015, has with the State of California filed a *Notice of Anticipated Filing* and subsequently an *Application for Ex Parte Order of Judgment and Permanent Injunction*, which clearly accentuates the present *de facto* activity of the illegally elected Tribal Council and their predecessor the 2010 Tribal Council relating to their activities at the Chukchansi Gold Resort and Casino. (*See*, AECF 98)

2. Those activities which continue to occur at the Chukchansi Gold Resort and Casino have previously been alleged to be in direct violation of this Court's *Preliminary Injunction*; however, those activities have been allowed to continue unabated. In fact it would seem as if absolutely no Preliminary Injunction had ever been issued. This activity is being conducted by an illegally and unconstitutionally sanctioned group of alleged members of the Tribe who are openly operating in clear violation of said injunction:

> …[T]his prohibition includes, without limitation, attempting to repossess, or take control of the Casino in whole or in part. Payments in the ordinary course of business, including mandatory fees to the gaming commission actually supervising the Casino's operations on October 8, 2014, and per capita tribal distributions based upon the Tribe's membership list as of December 1, 2010, that are made in equal amounts, are not violative of this Injunction. No discretionary

> payments shall be made to any group claiming to be the duly constituted tribal council or claiming control over tribal matters.
>
> Preliminary Injunction, Dated: October 29, 2015, pg. 9, ¶1.

2. Although it is the legal position of the Picayune Rancheria Distributee(s) that violations of the Preliminary Injunction have occurred and continue to occur, which includes *inter alia* – the theft of between eight (8) and ten (10) million dollars from the gaming facility cage; no remedy seems to be available to curb the excessive and unfettered theft of tribal property.

3. The *de facto* Tribal Council and the State of California are now attempting through the *Ex Parte Joint Request* to convince this Court that the present *intra tribal* dispute has somehow been concluded based upon the decision of the Bureau of Indian Affairs Pacific Region's Area Director recognizing the 2010 Tribal Council for purposes of P.L. 93-638 and the rubber stamp granted that decision by the IBIA.

5. However, previously presented on numerous occasions to this Court – absolutely nothing substantively contained in the decision of the Regional Director or the Interior Board of Indian Appeals (hereinafter referred to as "IBIA") would indicate that either decision is to be interpreted as recognition of the "permanent government" of the Picayune Rancheria of Chukchansi Indians and dispelling of the present *intra tribal* dispute.

AECF No. 101, Pg 2-3/AER 6-80,81

More importantly the very fact that the State of California has been and continues to work closely with the "New Tribal Council" recognized by the

lower district court is a telling fact. A joint filing is just that, and proves that the State of California made a conscious decision regarding the identity of which of the factions it felt representative of the permanent governing body of the Tribe, ultimately by inference deciding the intra-tribal dispute with the lower district court.

The State of California and the lower district court did not stay neutral as required by the law relating to intra-tribal disputes, and never once during the lower district court proceedings address the tribal court orders issued by the Picayune Rancheria's Tribal Court.

4. **Notification Was Accorded the District Court on Numerous Occasions that the Tribal Court Had Ruled on the Intra-tribal Dispute and On The Validty of the Election Held on October 3, 2015**.

The Appellant's Attorney first raised the issue orally of a Tribal Court decision regarding the intra-tribal dispute on October 29, 2014 and the judge questioned the issue and then it was never discussed again even though the tribal court rulings were presented numerous times to the lower district court. (*See*, Excerpt of Record, Appellant "New Tribal Council", AECF 53, pg. 31-36. However, even though the district court was made aware of the tribal court proceedings there was absolutely no further discussion of the legal mandate to remand the issue back to the Tribal Court for further proceedings.

Appellant through-out the district court proceedings presented the lower court with arguments relating to resolution of the intra-tribal dispute based upon tribal court decisions. Even the attorney for the McDonald faction presented from the beginning of the proceedings in the lower court argument and exhibits supporting the fact that tribal court had issued decisions deciding the intra-tribal dispute. Mr. Marston, attorney for McDonald faction indicated in his declaration submitted to the district court (AECF No. 39-1):

> 1. I was the lead counsel for the Tribe in *Picayune Rancheria of Chukchansi Indians v. Rabobank, et al.*, Picayune Tribal Court Case No. 2013-00[4] and in *Picayune Rancheria of Chukchansi Indians v. Yosemite Bank, et al.,* Picayune Rancheria Tribal Court Case No. 2013-005. *Id*. pg 3.
>
> 10. On Friday, March 29, 2013, the Tribal Court held a hearing on the Tribe's motion for preliminary injunction. At the hearing, counsel for the Tribe appeared in person at the Tribal Court on the Picayune Rancheria; Thomas Gede and Colin West appeared by telephone on behalf of Rabobank. Despite legal counsel for Lewis, Alberta and Bushman being provided with conference call number and pass code which would have permitted them to appear by telephone, no one appeared on behalf of the defendants Lewis, Alberta and Bushman. *Id.* pg. 5
>
> 11. Following the hearing on March 29, 2013, the Tribal Court entered an order granting the Tribe's motion for a preliminary injunction. A true and correct copy of the Tribal Court's March 29, 2013, preliminary injunction is attached hereto as Exhibit A. *Id.* pg. 5
>
> 33. The Tribal Court Judge is the Honorable Robert Moeller. Judge Moeller worked for the Office of the Solicitor, Department of Interior for 35 years, primarily in the area of Federal Indian

> law. He has no personal or financial connection to the Picayune Rancheria of Chukchansi Indians beyond the judicial services contract with the Tribe, pursuant to which he carries out his functions as judge of the Tribal Court. *Id.* pg 8.

From the beginning it was conveyed to the district court – orally as well as substantively that a tribal court existed on tribal lands held in trust for the benefit of the Tribe and that it had issued orders. No party, including the district court responded to those pleadings, which included the pleadings submitted by the Appellant's attorney regarding the Motion and Order to Show Cause, AECF No. 83, Exhibit #4, (Final Decision in *Picayune Rancheria of Chukchansi Indians v. Yosemite Bank, et al.,* Tribal Court No. 2013-05), AER – 5-25(2).

Nor did the lower district court respond to the fact that what the court labeled as the "New Tribal Council" were according to the Tribal Court been unconstitutionally elected. In the face of those Tribal Court decisions the lower district court and the State of California, Appellee, chose to ultimately, without any legal authority to decide the intra-tribal dispute under the guise of the Judgment and Permanent Injunction.

The Appellee argues that the Appellant waived its right on appeal to argue that the Tribal Court rulings should have been deferred and remanded back to the Tribal Court by the lower district court. The Appellee, cites to *Conservation Northwest v. Sherman*, 715 F.3d 1181 (9th Cir. 2013) as supportive of its argument.

*Northwest* dealt squarely with the issue of certain procedural matters surrounding a consent decree, which had been approved between the plaintiff and certain Agencies named as party defendants. A third party intervened arguing that 1) the consent decree conflicted with applicable law and 2) that its application to lands violated the terms of certain Acts. This Court agreed with the Intervenor regarding it's first argument, but denied relief on the second indicating that the Intervenor had waived its second argument. This Court indicated that:

> "We apply a general rule against entertaining arguments on appeal that were not presented or developed before the district court." *In re Mercury Interactive Corp. Sec. Litig.*, 618 F.3d 988, 992 (9th Cir. 2010). "This principal accords to the district court the opportunity to reconsider its rulings and correct its errors." *Id*. This rule also ensures that issues raised for the first time on appeal are not decided where "there may be facts relevant to the issue which were not developed in the record." *Bolker v. Commissioner*, 760 F.2d 1039, 1042 (9th Cir. 1985). *Id.* at 1188.

In the present matter the Appellant raised the issue of Tribal Court rulings and decisions regarding not only the intra-tribal dispute, but as well the election that occurred on October 3, 2015, which allegedly elected the so-called "New Tribal Council", but to no avail. The Appellant believes that they argued the issue of Tribal Court rulings sufficiently to warrant a discussion by the lower district court and the Appellee, State of California as to why the Tribal Court rulings should or should not be deferred to and followed.

In reiteration, the District Court in *Winnemucca Indian Colony v. DOI*, 837 F.Supp. 2d, 1184 (D. Nev. 2011) stated that:

> [A]nd the Court need not address tribal law or political disputes themselves made, which is quite different. It is akin to the difference between registering a foreign judgment and interpreting foreign law. The latter is inappropriate in the Indian law context, but the former is perfectly appropriate. The Court may, without wading into the merits of tribal law or political disputes, identify that a tribal court has ruled such-and-such and that the BIA must respect that ruling lest it abuse its discretion under the APA. The will therefore preliminary enjoin the BIA from interfering with activities on colonial land by Wasson and his agents. Until some tribal court says otherwise…*Id.*

As indicated in the Appellant's Opening Brief - it is well established that intra-tribal disputes are to be resolved by a tribal forum, specifically by a tribal court. The federal courts have encouraged self-government and have stated that [if] a dispute is an intra[-]tribal matter, the Federal Government should not interfere. *See R.J. Williams Co. v. Fort Belknap Hous. Auth.,* 719 F. F.2d 979 (9th Cir. 1983); *Milan v. U.S. Dep't of Interior* 2d 979, 983 (9th Cir. 1983); *Potts v. Bruce,* 533 F.2d 527, 529-30 (10th Cir.), cert. denied, 429 U.S. 1002 (1976); *Wheeler v. BIA*, 811 F.2d 549, 553 (10th Cir. 1987) (citing *Goodface v. Grassrope*, 798 F.2d 335, 337-39 (10th Cir. 1983); *See, also Wasson v. Pyramid Lake Paiute*

*Tribe*, 782 F.Supp. 2d, 1144, 1147-48 (D. Nev.2011).[6]

Clearly, the district court abused its discretion by recognizing the so-called "New Tribal Council", which was then recognized as the legally sanctioned body of the Tribe – allowed to reopen the gaming facility and utilize tribal funds without any recourse or restrictions. Interim agency recognition should not be boot strapped to the level of legal recognition of a permanent tribal governing body without any substantive legal underpinnings.

If the Tribal Court of the Tribe is not allowed to judicially rectify the internal issues of the Tribe, then the constant bickering will continue and the Tribe will deteriorate from within from the continuing chaos and oppression.

Again, in reiteration this case deals with the inherent sovereign authority of Indian tribe. Indian tribes can be viewed as independent sovereign communities that have lost some aspects of sovereignty. See, e.g. *United States v. Wheeler*, 435 U.S. 313, 322-23 (1978):

> The sovereignty that the Indian tribes retain is of a unique and limited character. It exists only at the sufferance of Congress and is subject to the complete defeasance. But until Congress acts, the tribes retain

[6] *Winnemucca Indian Colony v. U.S. Dep't. of the Interior*, 837 F.Supp.2s 1184 (D.Nev. 2011) (**holding that Interior and the court had to accept the determination of the tribal court as to who was the Colony's governing body, but noting that the case "would be more difficult" where there was not tribal court**.) (emphasis added).

> their existing sovereign powers. In sum, Indian tribes still possess those aspects of sovereignty not withdrawn by treaty or statute, or by implication as a necessary result of their dependent status.

Id. at 323. The Supreme Court has recognized that "both the tribes and the Federal Government are firmly committed to the goal of promoting tribal self-government, a goal embodied in numerous federal statutes." *New Mexico v. Mescalero Apache Tribe*, 464 U.S. 324-35 (1983). Moreover, "[t]ribal courts paly a vital role in tribal self-government,…and the Federal Government has consistently encouraged their development." *Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9, 14-15 (1987).

The Picayune Rancheria of Chukchansi Indians should be allowed to determine resolution of its internal matters based upon the Tribe's inherent sovereign authority exercised through its tribal judiciary.

## B. Reply to Appellant, the So-Called "New Tribal Council".

### 5. The Alleged Appellant, New Tribal Council's Filing should be Stricken from the Docket, as They are Not the Appellant in this Matter and Have Not Filed A Brief In Support of Their Motion to File An Amicus Curiae.

The Appellant, New Tribal Council did not file an Appeal and has not filed until just recently a motion to be heard as an amicus curiae. The answering brief was filed late and no continuance was granted the New Tribal Council to allow for their taking part in this appeal.

In addition, the New Tribal Council has not filed a brief in support of their motion to file an amicus as required by F.R.A.P. 29(b) and requirements of said rule contained in their Motion To Amend Caption should not suffice as a brief as required by the rule. Appellant's adamantly object to the insertion of the New Tribal Council into this appeal at this late date.

Assuming the New Tribal Council is allowed to proffer arguments before this Court as an amicus, the Appellant, Picayune Rancheria of Chukchansi Indians makes the following rebuttal arguments.

6. **The Appellants Have Standing and the Issues of Standing and the Alleged Non-Existent Tribal Court Argument Should Have Been Raised in the Lower District Court Proceedings**.

The Appellant, New Tribal Council did not raise the issue of standing in the lower district court proceedings. This fact is undisputed as nowhere in the substantive filings in the lower district court did the Appellant, New Tribal Council argue that the Appellant, Picayune Rancheria of Chukchansi Indians did not have standing to be a party to the lower court proceedings. Nor did Appellant, the so-called New Tribal Council argue on word about their allegations that the Picayune Rancheria of Chukchansi Indians did not have a functioning Tribal Court. Those arguments should now be considered waived. See, *Bolker*, *supra* at 1042.

There is absolutely no discussion or response as mentioned, to the Appellant's presentment of the Picayune Rancheria's Tribal Court decisions by the so-called "New Tribal Council" or their predecessor the "Interim Tribal Council" recognized by the Bureau of Indian Affairs for 93-638 contracting purposes. All the tribal factions that were involved in the district court proceedings were represented by legal counsel, yet none of them presented even a *scintilla* of response during the lower court proceedings in relationship to the issue of the Tribal Court decisions – again all parties, except for the McDonald Faction disregarded said evidence.

Based upon the foregoing that the Appellant, New Tribal Council waived its right to argue that the Appellant, Picayune Rancheria of Chukchansi Indians does not have standing and that there is no existing Tribal Court for said Tribe.

**7. <u>Agency Action – Temporary (Interim) Recognition is for 93-638 Contracting And Does Not Settle The Intra-Tribal Dispute</u>.**

The Appellant New Tribal Council would like this Court to accept their argument that the BIA, State of California and the lower district court's recognition of that *de facto* body, somehow legitimizes it as the permanent governing body – settling the intra-tribal dispute. Nothing could be further from the truth, the interim recognition by the BIA Area Director, stated the following:[7]

[7] Area Director Dutschke, Decision February 11, 2014.

> [T[here is no provision in the Tribe's Constitution or federal law that provides the BIA with the authority to determine which of the opposing 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**. (emphasis added) (AECF 70-10)
>
> Therefore, the Bureau of Indian Affairs, Pacific Region, will conduct business, on **interim basis**, with the last uncontested Tribal Council elected December, 2010…*Id.* (emphasis added).

The IBIA gave immediate effect to the decision of February 11, 2014, but reiterated that the –

> [B]oard's determination to make the Decision immediately effective Shall not be construed in any respect, as a determination on the ability of the 2010 Council to execute the Tribe's obligations, or on qualification or disqualifications of any individual (e.g., based upon allegations of illegal conduct), in relation to dealings between the BIA or third parties and the 2010 Council or its agents.[8]

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

The expressed language of the BIA decision does not indicate by any substantive means that a resolution of the intra-tribal dispute has been reached by that agency. The BIA, nor the National Indian Gaming Commission (hereinafter

[8] ER 5-2 – Cited in Memorandum in Support of Order to Show Cause. AECF 83 (4).

referred to as "NIGC") have absolutely no authority, either statutory or otherwise that grants those agencies the authority to recognize th permanent governing body of the Tribe.[9] Recognition on an "interim basis" is not recognition of the permanent governing body and any attempt to equate temporary recognition is not supported by the law or any other legal mechanism.

8. **Legal Avenues Existed for the So-called New Tribal Council to Explore if They Believed That No Tribal Court Existed Or Was Illegally Constituted**.

Clearly, there were and are legal avenues by which the Appellant, New Tribal Council could have followed, if they believed that the existing Tribal Court established by the 2012 Tribal Council was illegal or had no judicial authority.[10] Obviously, not answering complaints filed against those factions in tribal court was and is not the avenue to prove the Tribal Court of the Picayune Rancheria was not legally established. The Appellants, Picayune Rancheria of Chukchansi Indians have always followed the law and filed suit in the Tribal Court created in 2012 by the Reggie Lewis Tribal Council for relief in several areas, i.e. enrollment,

[9] NIGC agreed to accept approximately $20,000,000.00 to allow the so-called "New Tribal Council" to reopen the gaming facility.

[10] The 2012 Reggie Lewis Tribal Council was represented on the "Interim Tribal Council" by four members (4) Reggie Lewis, Nancy Ayala, Jennifer Stanley and Chance Alberta all sat on the 2012 Tribal Council, as well as the "Interim Tribal Council". Those individuals created and established the Tribal Court and should not be allowed previously to argue that said Tribal Court was illegally established. A quorum of the Tribal Council voted to approve Resolution 2012-45.

elections, Tribal Council sanctions, etc. All the Interim Tribal Council, Unification Council and New Tribal Council had to do was file answers and exhaust their remedies and bring forth their arguments to show why or why not the Tribal Court was illegal in federal court.

The law is clear that exhaustion of tribal court remedies is required in cases where the defendant or defendants believe subject matter and/or personal jurisdiction does not exist. See, *Iowa Mut. Ins. Co., v. LaPlante, et al.*, 480 U.S. 9, 13, 14 (1987); *National Farmers Union Insurance Cos. et al.,* 471 U.S. 845, 857 (1985). This avenue of relief was always available to the "New Tribal Council" and previous factions that failed to respond to Tribal Court complaints and decisions. Not responding is not the solution or arguing the tribal court does not exist.

In all the matters that came before the Tribal Court of the Picayune Rancheria of Chukchansi Indians all parties were granted adequate notice and in some cases the judge adjourned to allow the party not appearing or answering additional time to appear. If the party does not appear the Tribal Court acted accordingly and legally. Questions of legality relating to the establishment of the Tribal Court by the Reggie Lewis Faction in 2012 should have been litigated by

exhaustion of tribal court remedies and then brought to the federal court for review if subject matter or personal jurisdiction did not exist.

Failure to respond is no legal determination that a tribal court does not exist at the Picayune Rancheria of Chukchansi Indians. Again the Appellant Picayune Rancheria of Chukchansi Indians repeats its objection to the Appellant New Tribal Council's brief in chief, as all the arguments contained in said brief were never argued in the lower district court and should be considered by this Court as waived.

## III

## CONCLUSION

The Appellee contends that the lower district court did not interfere in the intra-tribal dispute, but it is undisputed that the Judgment and Permanent Injunction substantive provisions – whether findings of fact or conclusions of law gave the so-called New Tribal Council the proverbial green light to govern the Tribe. No federal court, state court or federal agency has the statutory authority to determine the outcome of an intra-tribal dispute, only a tribal forum has that authority.

Should the lower district court's Judgment and Permanent Injunction be allowed to stand it will result in a severe blow to the self-governing and

determination right of the Picayune Rancheria of Chukchansi Indians.

DATED this 14th day of September, 2016.

RESPECTFULLY SUMITTED,

By: /s/Gary J. Montana_____
Gary J. Montana

*Attorney for the Picayune Rancheria of Chukchansi Indians – Distributees*

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1. This brief complies with the type-volume limitations of Fed. R. App. P. 32(a)(7)(B):
   The brief contains 5,674 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(iii).
2. The brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6):
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Signature: /s/Gary J. Montana_____
Gary J. Montana

Attorney for: Picayune Rancheria of Chukchansi Indians (Distributees)

Date: September 14, 2016

9th Circuit Case Number(s) 16-15096

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