



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
SUITE 300
ARLINGTON, VA 22203

| | | |
|-------------------------------------|---|---------------------------------|
| PICAYUNE RANCHERIA OF THE |) | Order Making Decision Effective |
| CHUKCHANSI INDIANS |) | Immediately |
| (Ayala/McDonald Councils), CITIZENS |) | |
| AND HARDWICK MEMBERS OF |) | |
| THE PICAYUNE RANCHERIA, |) | |
| PATRICK HAMMOND III, AND |) | |
| PICAYUNE RANCHERIA OF THE |) | |
| CHUKCHANSI INDIANS (Lewis/Reid |) | Docket Nos. IBIA 14-065 |
| Council), |) | 14-071 |
| Appellants, |) | 14-073 |
| |) | 14-079 |
| v. |) | |
| |) | |
| PACIFIC REGIONAL DIRECTOR, |) | |
| BUREAU OF INDIAN AFFAIRS, |) | |
| Appellee. |) | February 9, 2015 |

Two groups claiming to constitute the lawful Tribal Council of the Picayune Rancheria of the Chukchansi Indians (Tribe)—a McDonald Council¹ and a 2013 Lewis/Reid Council;² a group identifying itself as Citizens and Hardwick Members of the

¹ The composition of the McDonald Council appears to have changed during the proceedings, but as of April 8, 2014, it consisted of Tex McDonald, Lynda Appling, Vernon King, Donna Featherstone, Charles Sargosa, and Amanda Ramirez. The McDonald Council contends that it is the lawful successor, through a tribal election conducted in December 2013, to the “Ayala Quorum Council” (identified as a co-appellant), which is a reference to four individuals—Nancy Ayala, Tracey Brechbuehl, Karen Wynn, and Charles Sargosa—acting as a quorum of what began as an 2012 Ayala/Lewis Council that included Reggie Lewis, Chance Alberta, and Carl Bushman.

² The Lewis/Reid Council, consists of Reggie Lewis, Morris Reid, Chance Alberta, Carl Bushman, Dixie Jackson, David Castillo, and Melvin Espe, and reflects the result of another December 2013 tribal election, held cooperatively by the “former” Lewis and “former” Reid factions. Lewis[/Reid] Council Reply Brief (Br.), May 30, 2014, at 15; *see* Notice of Appeal of 2013 Elected Council (Lewis/Reid Council), Mar. 14, 2014, at 2 n.1; 2013 Lewis/Reid Council Opening Br., Apr. 28, 2014, at 5 & n.1. The Lewis/Reid Council
(continued...)

Tribe (Citizens); and Patrick Hammond III (Hammond), have appealed to Board of Indian Appeals (Board) from a February 11, 2014, decision (Decision) of the Pacific Regional Director (Regional Director), Bureau of Indian Affairs (BIA), involving a governmental dispute within the Tribe.³ Pending resolution of the dispute by the Tribe, the Regional Director determined that BIA could not accept, as properly authorized, Indian Self-Determination and Education Assistance (ISDA) contract proposals submitted in 2012 by three competing Councils composed of or controlled by the then-existing “Lewis,” “Reid,” and “Ayala” factions.⁴ Instead, the Regional Director concluded that, for conducting government-to-government business with the Tribe, BIA would recognize the last undisputed Tribal Council, which the Regional Director identified as the Council as constituted following a tribal election in 2010, with one change (“2010 Council”).⁵

Supplemental Brief in Support of Expedited Consideration and Responses to Supplemental Brief

Briefing on the merits of the appeals has concluded. Pending before the Board is a Supplemental Brief in Support of Request for Expedited Consideration (Supplemental Brief), filed by the 2010 and Lewis/Reid Councils.

The 2010 and Lewis/Reid Councils contend that an armed takeover of casino premises by agents of the McDonald Council in October 2014 resulted in a closure of the casino, default on the Tribe’s debt obligations, and Federal court injunctive relief against McDonald and his followers for threatening the public safety. Thus, according to the 2010 and Lewis/Reid Councils, the Tribe now lacks funding from either ISDA funding or casino

(...continued)

variously refers to itself as the “2013 Elected Tribal Council” (Notice of Appeal, Mar. 14, 2014) and as the “2013 Lewis Tribal Council” (2013 Lewis Tribal Council Opening Br., Apr. 28, 2014).

³ The Board’s references to actions taken by or on behalf of the Tribe, tribal entities, or tribal officials, and the Board’s use of titles claimed by various individuals, shall not be construed as expressing any view on the underlying merits of the dispute.

⁴ Under tribal law, the Tribal Council consists of seven members, and a quorum consists of four members.

⁵ Hammond, who was elected to the Council in 2010, appeals from the Regional Director’s acceptance of his subsequent removal from the Council and replacement with Nokomis Hernandez. As identified in the Decision, the 2010 Council consists of Dora Jones, Chance Alberta, Jennifer Stanley, Nancy Ayala, Morris Reid, Reggie Lewis, and Nokomis Hernandez. The 2010 Council has appeared as a respondent in this appeal in support of the Decision, but also supports recognition of the 2013 Lewis/Reid Council.

revenue, and is unable to provide any services to tribal members. The 2010 and Lewis/Reid Councils also contend that their two Councils and the 2012 “Ayala/Lewis” Council, *see supra* note 1,⁶ which the McDonald Council supports in these proceedings as entitled to BIA interim recognition,⁷ have reconciled and appointed a “Unification Council” to govern the Tribe and administer tribal programs. It appears that among the members of the 2012 Ayala/Lewis Council, Ayala, Brechbuehl, and Wynn (three of the four members of the Ayala Quorum Council) have realigned themselves with Lewis, Alberta, and Bushman. Thus, according to the 2010 and Lewis/Reid Councils, there is no longer any dispute between the two Councils that have been identified, respectively, by each Appellant Council in these proceedings as entitled to BIA interim recognition.

The McDonald Council supports the supplemental request for expedited consideration because it believes that the National Indian Gaming Commission (NIGC) will recognize, as the governing body of the Tribe, the Council that is recognized through these appeal proceedings involving BIA’s decision on ISDA proposals. The McDonald Council contends, however, that the Unification Council is not the lawful governing body of the Tribe and that the McDonald Council is the lawful successor to the Ayala Quorum Council. The McDonald Council also takes issue with allegations that members of the McDonald Council committed crimes and contends that closure of the casino was because of violent acts of the Unification Council and its agents. Although the McDonald Council is notably silent on the apparent alignment between majorities on the 2010 Council and the 2012 Ayala/Lewis Council, it reiterates its position that the 2012 Ayala/Lewis Council was elected in accordance with tribal law. *See McDonald Council’s Response to Request for Expedited Consideration*, Dec. 22, 2014, at 7, 13.

Appellant Citizens contends that none of the Councils—2010, 2011, 2012, 2013, McDonald, Unification—have legal standing because none meet the constitutional requirements of membership. Citizens argues that exigent circumstances exist, but suggests that the Board should grant authority to a Tribal Council approved by Citizens.

Appellant Hammond disputes the legitimacy of the Unification Council, but does not address the issue of expedited consideration.

⁶ The 2012 Ayala/Lewis Council, which was disputed by the Reid faction, consisted of Nancy Ayala, Reggie Lewis, Tracey Brechbuehl, Karen Wynn, Charles Sargosa, Chance Alberta, and Carl Bushman.

⁷ *See Ayala Quorum Council/McDonald Council Opening Br.*, Apr. 28, 2014, at 2, 41; *Ayala Quorum Council/McDonald Council Answer Br.*, May 30, 2014, at 22; *Ayala Quorum Council/McDonald Council Reply Br.*, June 18, 2014, at 4.

The Regional Director supports expedited consideration, but also reiterates her support for making the Decision effective immediately. *See* Regional Director's Response in Support of Expedited Consideration, Dec. 19, 2014, at 10.⁸

A group identifying itself as the "Reid Faction," which has not previously appeared in these proceedings, also filed a response to the Supplemental Brief.⁹ The Reid Faction does not identify its members, or the basis for its standing to intervene, but based on the arguments raised, it appears that the Reid Faction consists of a minority block on the 2010 Council (Morris Reid and Dora Jones), and a minority block on the 2013 Lewis/Reid Council (Morris Reid and Dixie Jackson).¹⁰ The Reid Faction argues that because of substantial changes in factual circumstances, an apparent reference to the realignment within the 2010 Council, the Decision to recognize the 2010 Council on an interim basis should no longer be upheld and the matter should be referred to the Assistant Secretary – Indian Affairs. According to the Reid Faction, the "Lewis/Ayala Faction" does not "constitute" the Tribal Council for any of the years of the Councils that the 2010 and 2013 Lewis/Reid Council now contend have united. The Reid Faction contends that the Lewis/Ayala Faction "only constitutes the Lewis/Ayala Faction's disputed version" of those various Councils' compositions. Reid Faction's Response, Dec. 23, 2014, at 1.

Order Placing Decision into Immediate Effect

None of the parties, while still lobbing blame at each other, disputes the premise of the Supplemental Brief: that factual circumstances have changed markedly from when the Board denied the Regional Director's initial motion to place the Decision into immediate effect, and in particular that without any source of revenue from either ISDA or the Tribe's casino, the Tribe's government (regardless of which Council may be recognized) is unable to function and unable to provide services to Tribal members. In addition, while making the Decision effective in April 2014 would have altered a de facto "status quo" of sorts, that

⁸ Earlier in the proceedings, the Board denied a motion by the Regional Director, which was opposed by the McDonald Council, to place the Decision into effect. *See* Order Denying Motion, Apr. 15, 2014.

⁹ *Cf.* 2013 Lewis/Reid Council Opening Br., Apr. 28, 2014, at 14 n.14 (dispute between the "Lewis and Reid Factions . . . was resolved by the 2013 Election").

¹⁰ The Reid Faction disputes the composition of the 2013 Lewis/Reid Council, arguing that it only consisted of four individuals, Reggie Lewis, Morris Reid, Chance Alberta, and Dixie Jackson, and not the three additional members previously identified by Appellant Lewis/Reid Council. *But see* Notice of Appeal of 2013 Elected Council (Lewis/Reid Council), Mar. 14, 2014, at 2 n.1; 2013 Lewis/Reid Council Opening Br., Apr. 28, 2014, at 5 & n.1.

apparently would no longer be the case, given the shutdown of the casino and apparent shutdown of tribal government services.

Although the Supplemental Brief is presented as a renewed motion to expedite a decision by the Board on the merits, the Board has decided, instead, to make the Decision effective immediately, based on the exigent circumstances presented. The Board finds that doing so has now been shown, on this record, to be in the public interest.

The Board is persuaded to make the Decision effective, rather than expedite consideration, in part by the apparent realignment of majorities on the 2010 Council and the 2012 Ayala/Lewis Councils. The realignment is a recent development that possibly could have an impact on the Board's consideration of the merits of the appeals, but also at present appears relevant to making the Decision effective immediately. Appellant 2013 Lewis/Reid Council has not opposed interim recognition of the 2010 Council (i.e., upholding the Decision), and Appellant McDonald Council has argued that if interim recognition is appropriate, it should be extended to the 2012 Ayala/Lewis Council as the last undisputed Council. If majorities on both the 2010 and 2012 Ayala/Lewis Councils are now cooperating, then making the Decision effective immediately would not appear to impermissibly intrude into tribal affairs, at least when measured by the litigating positions of the two Appellant Councils in these proceedings. Making the Decision effective provides an immediate result that is less than each Appellant Council argues should be the ultimate resolution of the appeal, but one that is arguably consistent with their "interim recognition" arguments.¹¹

In making the Decision effective immediately, the Board emphasizes that it makes no determination about whether, once the 2010 Council is recognized by BIA on an interim basis, an ISDA proposal from that Council will meet the applicable requirements in order for the Tribe to resume contracting programs and services from BIA. That is a separate determination that BIA must make, upon receipt of a proposal. The Board also makes no determination about whether it is permissible for any entity other than the 2010 Council, e.g., the Unification Council, to "administer" a contract between BIA and the Tribe through the 2010 Council. Similarly, although the parties now appear to agree that BIA's interim recognition of the 2010 Council for government-to-government purposes will likely be accepted by NIGC and other entities for their dealings with the Tribe, the

¹¹ Because the Board is placing the Decision to recognize the 2010 Council on an interim basis into effect, it is unnecessary to address the Reid Faction's argument that the subsequent Councils' compositions only reflected the Lewis/Ayala faction's "disputed" version of those Councils, nor need the Board address the Reid Faction's standing to appear in these proceedings. The Board notes that no party has disputed the membership of Morris Reid and Dora Jones on the 2010 Council.

Board's determination to make the Decision 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 the qualifications or disqualifications of any individuals (e.g., based on allegations of illegal conduct), in relation to dealings between BIA or third parties and the 2010 Council or its agents.

For the reasons discussed above, the Board makes the Decision effective immediately.

// original signed
Steven K. Linscheid
Chief Administrative Judge

//original signed
Thomas A. Blaser
Administrative Judge

Distribution: See attached list.