

# Judge grants preliminary injunction to keep Chukchansi casino closed

By Marc Benjamin

David Leibovitz, representing the Tex McDonald leadership faction of the Pickayune Rancheria tribe, talks to the Bee following a hearing in federal court about the closure of the tribe's Chukchansi Gold casino and hotel. Related story: [http://www.fresnobee.com/2014/10/29/4204917\\_judge-to-rule-on-state-request.html](http://www.fresnobee.com/2014/10/29/4204917_judge-to-rule-on-state-request.html) THE FRESNO BEE

A federal judge in Fresno on Wednesday issued a [preliminary injunction](#) requested by the state Attorney General that will keep Chukchansi Gold Resort & Casino closed indefinitely.

Meanwhile, audits that were required to be filed to the federal government showed that the Chukchansi operation and its parent agency, Chukchansi Economic Development Authority, had a “fund deficit of \$49.6 million” at the end of 2013.

A federal gaming commission official said the deficit is not necessarily an indication of missing money.

“It could mean they are cash short,” said Daniel Catchpole, a Portland, Ore.-based audit manager with the National Indian Gaming Commission. “I don’t know exactly what it is.”

He said that, typically, a fund deficit occurs when liabilities exceed assets.

U.S. District Court Judge Lawrence J. O’Neill presided over an hour-long hearing Wednesday about the closure, triggered Oct. 9 when an armed group representing one tribal leadership faction [raided the hotel-casino](#) in search of documents related to late audits that had not been filed with the federal government. In the hearing, O’Neill made it clear that the warring factions had made little or no progress in settling their disputes.

The preliminary injunction will remain in effect until “resolution of the case by settlement or judgment or the court’s further order.” No court date has been set for the next hearing.

The major issue behind the confrontation on Oct. 9 was a search for audit information. The audits for the hotel-casino for 2012 and 2013 had not been filed with the National Indian Gaming Commission, which demanded them on Oct. 7 under threat of temporary closure on Oct. 27 if the audits were not filed.

[The audits](#) were filed Monday. Christinia Thomas, acting chief of staff for the NIGC in Washington, D.C., said the agency is sorting through the tribe’s paperwork. Following a staff review, she said, it will go to the commission’s general counsel and acting chairman, Jonodev Chaudhuri, who authored the letter closing down the casino.

The McDonald Council, spokesman David Leibowitz said, wants the NIGC to immediately launch a full investigation of the \$49.6 million “fund deficit.”

“This audit and the so-called ‘fund deficit’ shows why our tribal council sent our police chief and officers to regain control of the tribal gaming commission,” he said. “With nearly \$50 million deficient on their watch, Lewis, (Chance) Alberta, (Nancy) Ayala, their fake council and their lawyers owe the Chukchansi people and our bondholders an explanation immediately.”

In the ongoing tribal council battle, O’Neill said, there are no signs pointing to progress being made by the factions — especially the McDonald and Lewis-Ayala groups, whose security forces battled each other nearly three weeks ago. The casino was closed by orders by the state Attorney General and the National Indian Gaming Commission because safety of patrons and employees could not be assured.

“If ever there were irrefutable proof of the need for the injunction to continue, it would be the opposition documents received from the McDonald faction,” the judge wrote in his 10-page order issued at noon Wednesday. “The McDonald faction argues that its incursion was a lawful effort to evict ‘trespassers’ from the casino, namely members of the Lewis-Ayala faction and the ‘mercenary’ private security service.”

O’Neill said he had hoped a settlement conference last week in front of a judge magistrate could find common ground.

But, the judge said, “I have not seen one piece of evidence or have heard what I consider a legitimate argument to believe that anyone’s position has changed from the day before the raid that brought this court into this case. The emotional keg that was present emotionally the day before the incident is present now. What have I missed?”

He said the McDonald faction’s view “belies any semblance of truth or reasonableness” and “is simply an admission that the emotional and explosive keg that existed the day before the armed and illegal takeover that occurred Oct. 9, 2014, still exists.”

O’Neill said the McDonald faction’s actions “constituted the worst sort of street injustice.”

He described the McDonald group as “illegal aggressors,” who “continue to claim their misbehavior was both legal and responsible. It is that faction ... that continues to be the threat to public safety.”

When the McDonald security forces entered on Oct. 9, there were about 500 patrons and employees inside the 1,800-slot, 40-table casino and hotel.

James Qaquandah, who represents the Morris Reid group, told the judge that talks among the groups are ongoing, but he said a leadership group needs to be named because the tribe has to interact with other government agencies.

Wednesday’s hearing also signaled the re-emergence of a fourth faction representing the original tribal landholders, known as the distributees. They are a group of 46 tribal members and their families, who claim to be the original Chukchansi. They filed a lawsuit seeking recognition as tribal leadership in 2012. It was dismissed in 2013, which led to a February 2013 tribal council takeover led by Ayala against the Lewis group. Gary Montana, their lawyer, said the judge has been “presented with misinformation” about tribal leadership.

The judge’s ruling Wednesday backed up the state Attorney General’s Office, which [filed a request](#) that O’Neill extend the closure until the tribe can ensure that weapons are kept away from the Coarsegold casino and that patrons, employees and tribal members are safe.

At Wednesday’s hearing, Lewis-Ayala faction lawyer Rob Rosette described the McDonald group as having “unclean hands,” referring to their armed entry into the casino. He said the McDonald faction used their entry to earn legal standing.

During the hearing, the judge referred to a declaration filed by Deputy Attorney General William Torngren indicating that at least one member of the Lewis-Ayala security forces was armed with a gun. Other guns were found on the casino grounds, too, in the possession of the Lewis-Ayala faction’s security forces, the declaration said.

The McDonald faction had sole control of the casino for most of 2014 until Aug. 24, when members of the Lewis group entered the casino in the wee hours and holed up in offices and suites in the hotel’s 10th and 11th floors. The McDonald group then entered the casino on Oct. 9 in an attempt to gain control of gaming commission offices to unearth audit information.

Rosette told the judge that when financing was restructured two years ago that the financial backers trusted Lewis and Ayala as the leaders of the tribe. He said by keeping the Lewis-Ayala faction in place it would ensure that the casino, as collateral for the \$270 million in financing, “stays open and operative.” The judge said it was not within his

jurisdiction to make a determination on leadership of the tribe.

When operating, the casino generates an average of about \$2 million per week in revenues. With Friday the three-week point in the closure, about \$6 million in revenues will have been lost.

Rosette suggested that O'Neill issue an order to recognize the "status quo" that existed prior to the McDonald group entering the hotel, which would place the casino-hotel in control of the Lewis-Ayala faction. The judge refused.

O'Neill reminded all sides that they represent tribal members and employees who are suffering because of faction leaders' behavior. There are "many people terribly affected by what's going on at this casino; their livelihoods are at stake."

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