



INTERIOR BOARD OF INDIAN APPEALS

Picayune Rancheria of the Chukchansi Indians (Ayala Quorum Council and McDonald Council), Citizens and Hardwick Members of the Picayune Rancheria, Patrick Hammond III, and Picayune Rancheria of Chukchansi Indians (Lewis-Reid Council) v. Pacific Regional Director, Bureau of Indian Affairs

62 IBIA 103 (01/21/2016)

Related Board cases:

58 IBIA 255

58 IBIA 259



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 Dismissing Appeals
CHUKCHANSI INDIANS (Ayala)	
Quorum Council and McDonald)	
Council), CITIZENS AND HARDWICK)	
MEMBERS OF THE PICAYUNE)	
RANCHERIA, PATRICK HAMMOND)	
III, AND PICAYUNE RANCHERIA OF)	
THE CHUKCHANSI INDIANS (Lewis-)	Docket Nos. IBIA 14-065
Reid Council),)	14-071
Appellants,)	14-073
)	14-079
v.)	
)	
PACIFIC REGIONAL DIRECTOR,)	
BUREAU OF INDIAN AFFAIRS,)	
Appellee.)	January 21, 2016

These consolidated appeals to the Board of Indian Appeals (Board) include two appeals filed in the name of the Picayune Rancheria of the Chukchansi Indians (Tribe),¹ and two appeals filed by individuals. All of the appeals challenge, in whole or in part, a February 11, 2014, decision (Decision) of the Pacific Regional Director (Regional Director), Bureau of Indian Affairs (BIA) to recognize on an interim basis, for purposes of entering into an Indian Self-Determination and Education Assistance Act (ISDA) contract with the Tribe, what she concluded was the last undisputed Tribal Council, a “2010 Council” as constituted following an undisputed 2010 tribal election and prior to a disputed 2011 election.

¹ 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, except as specifically addressed in this decision. Because two appellants filed their appeals in the name of the Tribe, and in order to avoid confusion, the Board refers to the Tribal appellants by the name of the respective Tribal Council claiming entitlement to recognition.

The Ayala Quorum Council, joined by the McDonald Council as its successor, contends that the Regional Director was required to recognize the Ayala Quorum Council—a Council as constituted in 2012 and controlled by a four-member faction led by Nancy Ayala—as the last undisputed Council. The Lewis-Reid Council, the product of a 2013 election held by the former Lewis and Reid factions in an attempt to resolve the dispute over the 2011 election, argues that it is entitled to recognition, but does not appeal the portion of the Regional Director’s decision to recognize the 2010 Council on an interim basis.

While this appeal was pending, Ayala, and possibly other members of her 2012 Ayala Quorum Council, mediated an agreement with members of the Lewis-Reid Council and the 2010 Council, for the purposes of administering any ISDA contract awarded to the Tribe and holding a tribal election intended to resolve the dispute. We conclude that this development effectively rendered moot the appeals by the Ayala Quorum Council and the Lewis-Reid Council. By their own admission, “regardless of” whether the ISDA contract (which they support) were to be awarded to the 2010 Council, the 2012 (Ayala Quorum) Council, or the Lewis-Reid Council, it would be administered through the unified efforts of the various Councils. Thus, we dismiss the appeals by the Ayala Quorum Council and the Lewis-Reid Council.

The Ayala Quorum Council was originally joined in its briefs on appeal by the McDonald Council (also referred to at one time as the Ayala-McDonald Council). When Ayala reconciled with the 2010 Council and the Lewis-Reid Council, the McDonald Council denounced the agreement and argued that it should be recognized by the Board as the lawful Tribal Council. We are not convinced that recognition of the McDonald Council is an issue that is properly within the scope of this appeal from the Regional Director’s decision. The only relief squarely demanded by the Ayala-McDonald Council in the proceedings before the Regional Director was that she was required to recognize the 2012 Council, an issue that has become moot. The Board’s scope of review is limited to reviewing the Regional Director’s decision, and we find no basis to vacate her decision on the grounds that she abused her discretion by failing to additionally consider whether to recognize the McDonald Council. The Ayala-McDonald Council itself suggested that it was at most permissible, but not required, for the Regional Director to consider its validity, and the issue is not one that the Board would consider in the first instance on appeal.

Two additional appeals from the Decision were filed by individuals. First, Luke Davis filed an appeal, purportedly on behalf of a group identifying itself as Citizens and Hardwick Members of the Tribe (Citizens), arguing that none of the competing Tribal Councils deserve recognition. Second, Patrick Hammond III (Hammond) appealed from the Decision on the grounds that the composition of the 2010 Council, as recognized by the Regional Director, should have included him as a member. We dismiss both of these appeals for lack of standing. Citizens has not shown itself to be more than a group of

individual tribal members, who are not entitled to appeal from a BIA decision recognizing a Tribal Council. And Hammond has not shown that he was pursuing tribal remedies following his removal from the 2010 Council, thus preserving any cognizable interest that might otherwise have formed the basis for challenging the Decision.

Background

The Tribal Council consists of seven members, who are to serve for 2-year staggered terms. In even-numbered years, three seats are normally up for election; in odd-numbered years, four seats are normally up for election. *See* Reid Council Notice of Appeal, June 14, 2013, at 4 (Administrative Record (AR) C73). A quorum consists of four members.

In December 2010, the Tribe held an election, the results of which were undisputed. Following the election, the Tribal Council consisted of the following members:

Reggie Lewis (unexpired term)
Chance Alberta (unexpired term)
Morris Reid (unexpired term)
Dora Jones (unexpired term)
Nancy Ayala (elected in 2010 election)
Jennifer Stanley (elected in 2010 election)
Patrick Hammond III (elected in 2010 election)

In June of 2011, the Tribal Council removed Hammond from the Council. *See* Hammond Opening Brief (Br.), Apr. 28, 2014, at 3 & Ex. (Final Order, Patrick Hammond – Notice of Removal Proceedings, June 27, 2011). Hammond contends in this appeal that the grounds for his removal had been examined and rejected by a previous Tribal Council, and that his removal was unlawful and violated the Indian Civil Rights Act (ICRA), 25 U.S.C. § 1301 *et seq.* Hammond Opening Br. at 4, 10. After removing Hammond, the Tribal Council appointed Nokomis Hernandez to fill the vacancy. The record does not show that Hammond, after the Tribal Council removed him, attempted to challenge his removal through tribal mechanisms or otherwise acted to dispute his removal, until filing his appeal with the Board from the Regional Director's decision.

In December 2011, the Tribe held an annual election to fill the four positions held by members whose terms were expiring (Lewis, Alberta, Reid, and Jones). The four candidates receiving the highest number of votes were Reid, Jones, Dixie Jackson, and Harold Hammond, Sr. Prior to the election, no one challenged Harold Hammond's qualifications to run for office, as allowed under tribal law. But following the election, Lewis and Alberta refused to vacate their seats, and instead sought to appeal the election

based on Harold Hammond's purported ineligibility.² Members of the Tribal Council who were aligned with Lewis and Alberta, which included Ayala, joined with them to expel Reid and Jones from the Council, and refused to seat any of the four newly elected individuals. Those four individuals were sworn into office by an individual identified as the Acting Chair of the Election Board. Thereafter, both the Lewis faction (Lewis Council) and the Reid faction (Reid Council, consisting of Reid, Jones, Jackson, and Harold Hammond) claimed to constitute the legitimate Tribal Council (or a quorum thereof). The Lewis Council, however, retained control of the Tribe's facilities and finances, and appointed individuals to fill the vacancies resulting from the purge of Reid faction candidates or members.

In March 2012, at a meeting held by the Lewis Council, the General Council³ of the Tribe voted to confirm the Lewis faction's composition of the Tribal Council.⁴ *See* Lewis Council Answer Br., Aug. 21, 2013, Ex. A (General Council Resolution 2012-GC-005) (AR C53). Also in March 2012, possibly in the same meeting, the Lewis Council apparently sponsored a special election, in which Lewis, Alberta, Karen Wynn, and Tracey Brechbuehl, were elected to the four seats with terms ending in December 2013, i.e., the four seats that were the subject of the 2011 election and claimed by the Reid faction. *See* Report of Tribal Election, Dec. 3, 2011, and Mar. 10, 2012 (AR C106). The Lewis Council took the position that this action by the Tribe's membership resolved any outstanding dispute over the 2011 election. Lewis Council Answer Br., Aug. 21, 2013, at 1, 5.

In December 2012, the Lewis Council conducted an election for the positions held by Ayala, Stanley, and Hernandez, who had been elected in 2010. *See* Report of Tribal Election, Dec. 1, 2012 (AR C104). Based on the Lewis Council's two elections held in 2012, the Tribal Council consisted of the following:

Reggie Lewis, Chairman (March 2012 special election)
Chance Alberta (March 2012 special election)
Tracey Brechbuehl (March 2012 special election)
Karen Wynn (March 2012 special election)
Nancy Ayala (December 2012 election)
Carl Bushman (December 2012 election)
Charles Sargosa (December 2012 election)

² Lewis and Alberta had both sought re-election but received fewer votes than the top four candidates.

³ The General Council consists of all tribal members 18 years of age and older.

⁴ Five hundred and eleven members were reported in attendance.

The Reid Council took the position that the Lewis Council was illegal and refused to accept the 2012 meetings and elections as valid. *See* Reid Council Statement of Reasons, July 15, 2013, at 9-10, 15-20 (AR C65). The Reid Council challenged BIA's alleged dealings with the Lewis Council.⁵ *See Picayune Rancheria of the Chukchansi Indians v. Pacific Regional Director*, 58 IBIA 259 (2014); *Picayune Rancheria of the Chukchansi Indians v. Pacific Regional Director*, 58 IBIA 255 (2014).

In January or February 2013, the Lewis faction splintered into separate "Lewis" and "Ayala" factions, and each sought to purge the other and their followers from the Tribal Council.⁶ At one point, Ayala claimed to have removed all members of the Council except herself, and to have replaced them by appointment, although she subsequently took the position that her actions were invalid. Meanwhile, the Lewis faction purported to suspend the Ayala faction members of the 2012 Council. The Lewis faction initiated a referendum within the Tribe to resolve the dispute, which purportedly confirmed the composition of the Council as follows:

Reggie Lewis, Acting Chairman (active member)
Chance Alberta, Acting Secretary/Treasurer (active member)
Carl "Buzz" Bushman, Member-at-Large (active member)
Irene Waltz, Member-at-Large (active member)⁷
Karen Wynn ("suspended")
Tracey Brechbuehl ("suspended")
Nancy Ayala ("suspended")

See Letter from Rosette to Regional Director, Apr. 19, 201[3], and exhibits (AR C110); Lewis Council Statement of Reasons, Nov. 4, 2013, at 1-2 (AR C39). The Lewis faction eventually purported to remove the Ayala faction members from the 2012 Council.

The Ayala faction members (Ayala, Sargosa, Brechbuehl, and Wynn), refusing to accept their purported suspension or removal, or the referendum, continued to claim that they held a quorum of the 2012 Tribal Council (effectively constituting an "Ayala Quorum

⁵ BIA took the position that whatever dealings it had with Lewis on ISDA contracting matters did not constitute a determination by BIA of the Tribe's leadership.

⁶ Charges against opponents typically were sedition, treason, and ethics violations. At the heart of the disputes appears to be access to and control, by the factions and their attorneys, of considerable sums of money generated by the Tribe's casino.

⁷ The referendum purported to confirm Sargosa's removal and replacement with Waltz.

Council”), and removed the Lewis faction members.⁸ *See* Ayala-McDonald Opening Br., Apr. 28, 2014, at 7. The Ayala Quorum Council then initiated an action in a tribal court, which had been established by the 2012 Council, to settle the dispute. *Id.* at 3, 7. The tribal court judge, appointed by the Ayala Quorum Council, ruled in favor of the Ayala Quorum Council, but neither the Lewis Council nor the Reid Council participated in the tribal court proceedings or accepted them as valid.⁹

By June of 2013, the Reid Council, Lewis Council, and Ayala Quorum Council each claimed to be, or to otherwise control through a quorum, the lawful Tribal Council.¹⁰ *See* Letter from Qaqundah to Superintendent, June 14, 2013, at 1 (AR C73); Reid Council Statement of Reasons, July 15, 2013, at 1 n.1 (AR C65); Letter from Rosette to Superintendent, Nov. 4, 2013, at 1 (AR C39). All three Councils submitted requests to the Superintendent to enter into ISDA contracts, on behalf of the Tribe, for fiscal years 2013-2015.¹¹ In three separate decisions, the Superintendent returned each of the three factions’ ISDA proposals without approval.

First, on May 16, 2013, the Superintendent rejected an ISDA proposal from the Reid Council. The Superintendent declined to recognize the Reid Council because, he concluded (without discussion), the December 2012 election had been “held consistent

⁸ In some instances, individuals who were aligned with one faction appear to realign with another faction. Thus, while the Board refers to “members” of the various factions, it appears that some individuals may have a fixed alignment with a particular faction within the Tribe, while other individuals’ alignments may be more fluid, as is the alignment between the various factions.

⁹ *See id.* at 8. The McDonald Council argues that the tribal court was created by the 2012 Council before it splintered into Lewis and Ayala factions, and that the Ayala Quorum Council “simply appointed” the judge on the already established court. Ayala-McDonald Council Reply Br., June 18, 2014, at 26. The 2010 Council argues that the tribal court judge appointed by the Ayala Quorum Council was a colleague (on another tribal court) of the attorney representing the Ayala Quorum Council, thus creating an appearance of impropriety. 2010 Council’s Reply Br., June 18, 2014, at 9-10 n.8.

¹⁰ Within the Reid and Lewis Councils, there were further changes through departures and replacements.

¹¹ In April 2013, in previous appeals by the Reid faction that were subsequently dismissed, the Board expressly granted BIA jurisdiction to consider ISDA proposals submitted by groups claiming to represent the Tribe. *See Picayune Rancheria v. Pacific Regional Director*, Docket No. IBIA 13-045 (Order Granting BIA Jurisdiction, Apr. 2, 2013); *see also id.* (Order Concerning BIA Jurisdiction Over [Fiscal Year] FY 2013 Contract Proposals, July 10, 2013).

with the Tribe's governing documents." Letter from Superintendent to Reid, May 16, 2013, at 1-2 (AR C80). According to the Superintendent, that resulted in the following composition of the Council:

Nancy Ayala, Chairperson
Reggie Lewis, Vice-Chairperson
Tracey Brechbuehl, Secretary
Karen Wynn, Treasurer
Chance Alberta, Member-at-Large
Charles Sargosa, Member-at-Large
Carl Buzz Bushman, Member-at-Large

The Superintendent did not distinguish between the three individuals elected in the December 2012 election (Ayala, Sargosa, and Bushman), and the other four individuals listed as members of the Council, and did not explain on what basis he had concluded that the other four were members.

The Reid Council, which claimed to still hold four of the seven seats on the Council based on the 2011 election (i.e., the four seats not open in the December 2012 election), appealed the Superintendent's decision to the Regional Director, arguing that the Superintendent's decision must be vacated and the matter remanded with instructions for him to address the validity of the 2011 election and of the Reid Council.¹² Reid Council Statement of Reasons, July 15, 2013, at 2.

Next, on September 4, 2013, the Superintendent returned, without approval, an ISDA proposal submitted by the Lewis Council, finding that the Reid Council's pending appeal before the Board had divested BIA of jurisdiction to take action on the proposal.¹³ In a separate decision, also dated September 4, 2013, the Superintendent also returned, without approval, an ISDA proposal submitted by the Ayala Quorum Council, on the same jurisdictional grounds. Both the Lewis Council and the Ayala Quorum Council appealed to the Regional Director from the respective decisions of the Superintendent.

On September 14, 2013, at a General Council meeting convened by the Lewis Council, the members present voted to confirm the Lewis Council as the Tribal Council.¹⁴

¹² Under BIA's appeal regulations, the Superintendent's decision never became effective. *See* 25 C.F.R. § 2.6.

¹³ *But see supra* note 11.

¹⁴ Two hundred and eighty-one members were reported present.

See Lewis Council Statement of Reasons, Nov. 4, 2013, at 5 & Ex. J (General Council Resolution 2013-01) (AR C39).

The Regional Director consolidated the three appeals and solicited briefing from the parties. Meanwhile, the Lewis and Reid factions reached an agreement to attempt to resolve the dispute. On January 2, 2014, the Lewis and Reid Councils jointly submitted a letter to the Regional Director, reporting that they had held an election in December 2013, in which Ayala and her followers had been invited to participate, which had resulted in a newly-constituted Tribal Council.¹⁵ Lewis[-Reid] Council Reply Br., May 30, 2014, at 15 (December 2013 election held cooperatively by the “former” Lewis and “former” Reid factions); Notice of Appeal of 2013 Elected Council (Lewis-Reid Council), Mar. 14, 2014, at 2 n.1 (same); 2013 Lewis-Reid Council Opening Br., Apr. 28, 2014, at 5 & n.1 (same). The Lewis and Reid Councils stated that their previous separate ISDA proposals were to be considered as a joint proposal from the Lewis-Reid Council, as constituted following their 2013 election.¹⁶ Letter from Rosette and Peebles to Regional Director, Jan. 2, 2014 (AR C14).¹⁷ The newly formed Lewis-Reid Council argued that on four separate occasions, the Tribe’s membership had taken definitive action to resolve the dispute: (1) the 2013 referendum; (2) a September 14, 2013, General Council Resolution; (3) the December 7, 2013, tribal election; and (4) a December 14, 2013, General Council meeting. *Id.* at 2. According to the Lewis-Reid Council, the Tribal Council after the December 2013 election consisted of the following:

¹⁵ Eight hundred and seventeen voters participated in the election sponsored by the Lewis and Reid factions. *See* Memorandum from Superintendent to Regional Director, Jan. 16, 2014 (AR C4). Lewis, Reid, and Ayala all agree that the Tribe has over 900 members. *See* Lewis-Reid Council Opening Br., Apr. 28, 2014, at 19; 2010 Council Answer Br., May 30, 2014, at 3; Supplemental Declaration of Nancy Ayala, Oct. 15, 2014, ¶ 21 (Ex. J to Regional Director’s Response in Support of Expedited Consideration, Dec. 19, 2014).

¹⁶ The Lewis-Reid Council 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).

¹⁷ Previously, the Rosette firm had represented the Lewis Council and the Peebles firm had represented the Reid Council. Following the 2013 Lewis-Reid election, the two firms held themselves out as jointly representing the 2013 Lewis-Reid Council, and disclaimed the existence of any continuing “Reid” or “Lewis” factions. Both firms are counsel of record in these proceedings for Appellant Lewis-Reid Council. The Peebles firm also represented the 2010 Council as a respondent in these proceedings, before apparently being replaced by the Rosette firm as counsel for the 2010 Council.

Reggie Lewis (elected in December 2013 Lewis-Reid election)¹⁸
Morris Reid (elected in December 2013 Lewis-Reid election)
Chance Alberta (elected in December 2013 Lewis-Reid election)
Dixie Jackson (elected in December 2013 Lewis-Reid election)
Carl Bushman
David Castillo¹⁹
Melvin Espe²⁰

The Ayala Quorum Council, in its brief to the Regional Director, argued that in order to carry out its obligations under ISDA, BIA was “required to recognize the last Tribal Council of the Tribe elected at the Tribe’s last undisputed Tribal Council election, the December 1, 2012 election. The Tribal Council elected in December 2012, was the Ayala Quorum Council.” Letter from Marston to Regional Director, Jan. 10, 2014, at 14 (AR C6); *id.* at 2 (“the Tribal Council led by Nancy Ayala has to be recognized until the Tribe’s leadership dispute is resolved by the Tribe”). The Ayala Quorum Council also argued that “to the extent” the Regional Director considered the results of elections held in 2013, the only authorized, properly called, election was its own December 2013 election, resulting in the Tribal Council led by Nancy Ayala.²¹

The Regional Director found that the dispute within the Tribe dated back to the 2011 election, noting that each faction had held elections at various times that appeared to have been conducted in accordance with the Tribe’s Constitution and several election ordinances apparently adopted or amended by the competing Councils. In identifying the members of the Council just prior to the disputed 2011 election, the Regional Director identified Nokomis Hernandez, noting, without further explanation, that “[t]he record

¹⁸ According to the 2010 Council, each of the four positions up for election in the Lewis-Reid 2013 election was for an open seat for which the term was expiring from the 2011 election. 2010 Council Answer Br., May 30, 2014, at 9.

¹⁹ Castillo apparently was appointed in March 2013 by the Lewis Council during the dispute with the Ayala faction.

²⁰ Espe apparently was appointed in April 2013 by the Lewis Council during the dispute with the Ayala faction.

²¹ One hundred and ninety-eight voters registered and 122 cast ballots in the Ayala Quorum Council’s election. *See* Memorandum from Superintendent, Jan 22, 2014 (AR C3). The Ayala Quorum Council-sponsored election apparently resulted in a Council consisting of Nancy Ayala, Charles Sargosa, A. Ramirez, Donna Featherstone, Tex McDonald, Vernon King, and Lynda Appling (Ayala-McDonald Council). Those not elected in the December 2013 election apparently had either been elected in a previous election or were appointed.

reflects that Nokomis Hernandez was appointed by the Tribal Council to replace Patrick Hammond, III.” Decision at 3 (unnumbered) n.3. After recounting events within the Tribe between 2011 and 2013, the Regional Director noted that the Lewis and Reid Councils had reconciled their differences and had submitted a joint response to the Regional Director seeking to “renew[] . . . as a single contract application” the two separate ISDA proposals previously submitted. *Id.* at 5 (unnumbered).

The Regional Director then noted that BIA had received two reports, one from the Lewis-Reid faction, and another from the Ayala faction, on competing elections held by those two factions in December 2013. The Regional Director observed that the two competing elections had not resolved the tribal dispute. *Id.*

The Regional Director then turned to a discussion of the law applicable to BIA involvement in tribal disputes. The Regional Director noted 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.*” Decision at 5 (unnumbered) (quoting *United Keetoowah Band of Cherokee Indians v. Muskogee Area Director*, 22 IBIA 75, 80 (1992)) (Regional Director’s emphasis). Similarly, the Regional Director noted that BIA “has authority to review tribal procedures” when necessary, and also noted that a valid tribal election would moot questions concerning prior tribal leadership. *Id.* In reviewing the competing claims, the Regional Director found that it “has not been possible” to determine which faction’s actions were consistent with Tribal law, stating that “[t]here is no provision in the Tribe’s Constitution or [F]ederal law that provides BIA with authority to determine which of the opposing faction’s interpretation of the Tribe’s law is correct,” and that the record “does not reflect” whether the competing 2013 elections had been conducted in accordance with tribal governing documents. *Id.* at 6 (unnumbered). “As such,” the Regional Director stated, she was affirming the Superintendent’s decision to return ISDA proposals from all three factions and she vacated the Superintendent’s decision to recognize the 2012 Council. *Id.*

Finding that there was a need for BIA to make a recognition decision for purposes of ISDA contracting with the Tribe, the Regional Director decided that BIA would conduct business, on an interim basis, with “the last uncontested Tribal Council[] elected December 2010.” *Id.* In identifying the members of that Council, the Regional Director included Hernandez, not Patrick Hammond. *Id.*

The Ayala Quorum Council and the Lewis-Reid Council appealed to the Board, each arguing that it was entitled to have been recognized by the Regional Director. The Lewis-Reid Council expressly did not appeal the portion of the Decision to recognize the

2010 Council on an interim basis. The McDonald Council, claiming to be the successor to the Ayala Quorum Council, subsequently joined in the Ayala Quorum Council's briefs, arguing that the Regional Director was "obligated" to recognize the 2012 Council.²² Ayala-McDonald Opening Br. at 24; *see also* Ayala Quorum Council Notice of Appeal, Feb. 13, 2014, at 2 (requesting "an order recognizing the Ayala Quorum Council"). As noted earlier, Ayala and Lewis subsequently reconciled their differences, thus altering the majority on what the Ayala Quorum Council argued was the "last undisputed" Council, the 2012 Council, such that the 2012 Council no longer was in conflict with the 2010 Council and the Lewis-Reid Council. *See* Regional Director's Response, Dec. 19, 2014, Ex. J (Supp. Declaration of Nancy Ayala, Oct. 23, 2014, ¶ 17).

In addition to the two Tribal appellants, Citizens also filed an appeal, arguing that neither of the competing Councils was legitimate. Citizens apparently consists of several dozen tribal members who contend that they are the only legitimate members of the Tribe, and during the course of the appeal, it began identifying several of its members as the lawful Council members. Hammond appealed the Decision on the grounds that if the Regional Director was going to recognize the 2010 Council as the last undisputed Council, she should have included him, not Hernandez, as a member, because his removal from the Council was unlawful.

Based in part on Ayala's realignment and the cooperation among the 2010, 2012, and Lewis-Reid Councils, the Board placed the Decision into effect, recognizing that the intervening development might be relevant to resolution of one or more of the appeals. *See* Order Making Decision Effective, Feb. 9, 2015; *see also* 25 C.F.R. § 2.6 and 43 C.F.R. § 4.314.²³

²² Although the Ayala Quorum Council and McDonald Council were represented by the same counsel, and filed briefs as joint appellants, by the time the Ayala Quorum Council filed its notice of appeal, arguing that BIA was required to recognize it, Ayala had been suspended from the McDonald Council, from which she was later removed. *See* Notice of Appeal, Feb. 13, 2014 (seeking order recognizing the Ayala Quorum Council); McDonald Council Response, Dec. 22, 2014, at 12 n.7 (Ayala suspended from McDonald Council on January 17, 2014). Eventually the only member of the Ayala Quorum Council who was also on the McDonald Council was Charles Sargosa (whom the Lewis Council claimed to have removed from the 2012 Council).

²³ Prior to the changes of position within the Tribe, the Board had denied a motion to place the Regional Director's decision into effect. *See* Order Denying Motion to Place Regional Director's Decision into Immediate Effect, Apr. 15, 2014.

Standard of Review

The Board reviews a BIA decision that involves an exercise of discretion to determine whether BIA's decision comports with the law, is supported by the record, and is adequately explained. *Quapaw Tribal Remediation Authority v. Acting Eastern Oklahoma Regional Director*, 61 IBIA 55, 61 (2015); *Van Mechelen v. Northwest Regional Director*, 61 IBIA 125, 128 (2015). In reviewing a discretionary decision, we will not substitute our judgment for BIA's. *Van Mechelen*, 61 IBIA at 128. An appellant bears the burden of demonstrating that a regional director did not properly exercise her discretion. *Id.* The Board reviews legal issues, and the sufficiency of evidence to support a decision, *de novo*. *Quapaw Tribal Remediation Authority*, 61 IBIA at 61.

A BIA decision to recognize certain individuals as leaders of a tribe, for Federal purposes, during the pendency of a tribal leadership dispute, may implicate questions of both Federal and tribal law. But unless both Federal and tribal law clearly dictate a particular outcome, we will afford BIA latitude to exercise discretion in determining with whom it will deal in carrying on the government-to-government relationship with the Tribe.

An appellant also has the burden to demonstrate that it has standing to bring an appeal. *Voices for Rural Living v. Acting Pacific Regional Director*, 49 IBIA 222, 233 (2009); *Skagit County v. Northwest Regional Director*, 43 IBIA 62, 70 (2006).

Discussion

We begin by addressing the two appeals brought in the name of the Tribe, concluding that both appeals are moot, based on the fact that Ayala and a re-aligned majority of the 2012 Council entered into a mediated agreement with the 2010 and the Lewis-Reid Councils (as well as the disputed 2011 Lewis Council). The McDonald Council does not dispute the contention that Ayala's re-alignment altered control of the 2012 Council, leading to an agreement with the 2010 and Lewis-Reid Councils, but argues that the Board should recognize it as the successor to the 2012 Council. We are not convinced that the McDonald Council properly preserved this argument in the proceedings below, in which it argued that BIA was *required* to recognize the 2012 Council, as constituted following the December 2012 election and led by Ayala, as the last undisputed Council, an issue that is now moot. At best, in the proceedings below, the Ayala-McDonald Council offered the Regional Director the option of addressing the merits of the competing December 2013 elections, and we will not hold that she abused her discretion in declining to do so, simply because Ayala and McDonald have since parted ways. With respect to the appeals by Citizens and Hammond, we conclude that neither of those appellants has standing.

I. Ayala Quorum Council (IBIA 14-065) and Lewis-Reid Council (IBIA 14-079)
Appeals

Mootness occurs when nothing turns on the outcome of an appeal. *Poe v. Pacific Regional Director*, 43 IBIA 105, 111 (2006); *Pueblo of Tesuque v. Acting Southwest Regional Director*, 40 IBIA 273, 274 (2005). The Board follows the doctrine of mootness as a matter of administrative economy. See *Bighorse v. Southern Plains Regional Director*, 59 IBIA 1, 13 (2014). In the context of a tribal government dispute, and an interim recognition decision by BIA, the doctrine may carry additional force in light of the strong policy against Federal interference in tribal affairs. A BIA interim recognition decision is intended to determine with whom BIA will interact for government-to-government purposes until the dispute is resolved or until developments within the tribe warrant a new BIA recognition decision, interim or otherwise.²⁴ BIA's decision is not an "adjudication" that has some independent precedential effect on tribal processes or mechanisms intended to resolve a dispute. See *Poe*, 43 IBIA at 113. In determining whether a BIA recognition decision has become moot, we will look at the specific claims raised by the parties in relation to that decision.

In the present case, while these appeals were pending, Ayala reconciled with Lewis, and the Lewis-Reid Council, supported by Ayala's declaration, represented to the Board that it would make no difference whether BIA recognized the 2010 Council, the 2012 Council, or the Lewis-Reid Council, because all were working together under a "Unification Council" umbrella. See 2010 and 2013 Tribal Councils' Supp. Br., Nov. 12, 2014, at 6, 15-17 & Ex. (Declaration of Nancy Ayala, Nov. 10, 2014, ¶¶ 7-8). Under the circumstances, we fail to see how anything—as relevant to BIA's dealings with the Tribe—would now turn on the outcome of a determination whether the Regional Director erred in recognizing the 2010 Council instead of the Lewis-Reid Council or the 2012 Council.²⁵

²⁴ BIA's recognition of a last undisputed tribal council may be a permissible choice by BIA, pending resolution of a dispute by a tribe, but we have not held that such recognition is required as a matter of law. Such a rule would only encourage gridlock and the perpetuation of a dispute by the faction that controls a last undisputed council.

²⁵ Even if the Board were to agree with arguments made by the Tribal Appellants that the Regional Director erred in suggesting that she lacked authority to interpret tribal law (though elsewhere she acknowledged having such authority), it would not follow that the Board would "declare" which Council BIA may or should recognize. Instead, we would remand the matter for further consideration.

II. The McDonald Council

The McDonald Council initially joined the Ayala Quorum Council's arguments that the Regional Director's decision should be set aside because she was required, as a matter of law, to recognize the 2012 Council as the last undisputed Tribal Council. After Ayala reconciled with others on the 2012 Council, which then reached an agreement with the 2010 and Lewis-Reid Councils, the McDonald Council sought to discredit those efforts and argued that the Board should recognize it as the lawful Council.

But in the proceedings below, the (then) Ayala-McDonald Council clearly and unequivocally argued that the Regional Director was *required* to recognize the 2012 Council as the last undisputed Council, on an interim basis, until the dispute was resolved. The Ayala-McDonald Council did not contend that the Regional Director was required to recognize it as the successor in interest to the 2012 Council, at most suggesting that if she were to consider the competing 2013 tribal elections, she should recognize the results of the election held by the Ayala Quorum Council and not the election held by the Lewis and Reid factions. The Regional Director did not address the validity of either of the 2013 elections, except to note that the competing elections had not resolved the dispute. Her decision *not* to decide that issue, which arose during the pendency of the appeal from the Superintendent's decisions, was a permissible choice in the context of the arguments presented by the Ayala-McDonald Council. Thus, even assuming that a challenge to the Regional Director's failure to address the legitimacy of the Ayala Quorum Council's 2013 election was properly preserved and is within the scope of this appeal, we find no basis to hold that the Regional Director abused her discretion in not doing so.

In any event, the record is sufficient to support the Regional Director's decision to vacate the Superintendent's decision to recognize the 2012 Council. Regardless of the Regional Director's reasoning, or inconsistencies in her reasoning, the Superintendent's decision itself was conclusory in nature and wholly lacking in explanation. At the time the Superintendent issued his decision, the Reid faction claimed to control the four Council seats that were not up for election in 2012, a claim wholly ignored by the Superintendent in seemingly suggesting that the 2012 election has resolved the dispute. And even leaving aside the Reid faction's claims, the 2012 Council itself appears to have been short-lived, splitting into Ayala and Lewis factions, each ousting the other and purporting to appoint or to elect replacements.

Because we conclude that recognition of the McDonald Council is not an issue that is properly within the scope of this appeal, we dismiss the McDonald Council's appeal to the extent it was not rendered moot by Ayala's intervening reconciliation with Lewis. Even assuming the issue is within the scope of this appeal, we would affirm the Decision in relevant part against a claim that the Regional Director should have recognized the McDonald Council as constituted following that faction's 2013 election.

III. Citizens Appeal (IBIA 14-071)

Citizens contends that the other factions have “disgraced the political integrity of the citizens” of the Tribe. Citizens Statement of Reasons, Mar. 30, 2014, ¶ 3. Citizens asks that all Federal contracting be stopped until the internal dispute is resolved. Citizens Notice of Appeal, Mar. 10, 2014, at 1. Citizens also asserts that “[i]f the [ISDA] Contract isn’t awarded to the true political entity, our tribe will always be divided into different factions.” Citizens Statement of Reasons, Mar. 30, 2014, ¶ 25.

Citizens did not participate in the proceedings below, nor did it submit its own ISDA proposal to BIA, and Citizens has not shown that it is more than a collection of tribal members who believe themselves to have a greater claim to legitimacy as tribal citizens than the Tribe’s other members. Such a claim, however, does not provide a basis for Citizens to have standing to appeal from the Regional Director’s tribal governmental recognition decision. Individual tribal members lack standing to appeal from BIA decisions to recognize a Tribe’s leadership.²⁶ See *Steward v. Pacific Regional Director*, 61 IBIA 196, 203-05 (2015), and cases cited therein. And to the extent—as appears to be the case—that Citizens purported to evolve during this appeal into selecting its own Tribal Council, for which it seeks recognition by the Board, the possible legitimacy or composition of that Council is not a matter that was presented to the Regional Director, and thus it is outside the scope of this appeal from the Regional Director’s decision.

Thus, we dismiss Citizen’s appeal for lack of standing and as outside the scope of the Regional Director’s decision and this appeal.

IV. Hammond Appeal (IBIA 14-073)

Hammond seeks an order from the Board upholding the Regional Director’s decision to recognize the 2010 Council, but modifying that decision to add him as a member of the Council, arguing that his removal from the Council in 2011 was unlawful, and if the Regional Director chose to invoke recognition of a last undisputed Council, it must include Hammond. See Hammond Opening Br. at 15.

²⁶ Citizens appears to be a group of individuals descended from Maryann Wyatt Ramirez, one of the three original distributees when the Federal government attempted to terminate the Picayune Rancheria. Citizens claims that there are only 46 legitimate members of the Tribe. It is not clear how Citizens claims that its members were injured by the Regional Director’s decision to recognize the 2010 Council for government-to-government purposes, except for a generalized injury (if any) they would share with all tribal members.

We dismiss this appeal for lack of standing. In the absence of some showing that Hammond's removal from the Tribal Council in 2011 remained the subject of a live dispute within the Tribe, we are not convinced that Hammond preserved any cognizable interest that could have been affected when the Regional Director, several years later, failed to identify Hammond as a member of the "last undisputed" Council, or that her decision was the cause of Hammond's injury. To be sure, the Regional Director's decision was less than precise in characterizing the 2010 "last undisputed" Council as having been "elected" in 2010, since one member she recognized as on that Council was not elected in 2010. But it is clear from her decision, and her notation that Hammond had been replaced by Hernandez, that she understood the composition of the "2010 Council," at the time the disputed 2011 election took place, as having been undisputed at that time. And Hammond has not produced any evidence to show that a live controversy over his removal remained. The Regional Director's decision may have prompted Hammond to attempt to revive a claim that he had been unlawfully removed. But we are not convinced that the Regional Director's decision adversely affected Hammond because he had no pending claim within the Tribe to be restored to a Council position. Thus, we dismiss his appeal for lack of standing.

Conclusion

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Board dismisses these appeals.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

//original signed
Thomas A. Blaser
Administrative Judge