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COMEBACK WATCH: Picayune Chukchansi tribe erases mountain of debt, shares leadership lessons

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The Picayune Rancheria of Chukchansi Indians restructured its debt related to the Chukchansi Gold Resort & Casino, effectively reducing its debt by 70 percent. (Courtesy photo)

OAKHURST, Calif. — Long before the pandemic — for much of the past decade, in fact — the Picayune Rancheria of Chukchansi Indians in California has been in serious financial trouble. By September 2020, less than nine months ago, the tribe owed \$350 million on a loan, and a major bank was aggressively suing to get its money back. As well, the tribe was concurrently battling another casino-related management case for \$21 million. Then COVID-19 forced the tribe to close the doors of its main moneymaker, the Chukchansi Gold Resort & Casino, for a portion of the year.

The tribe has earned an enduring negative reputation stemming from internal, highly publicized, leadership disputes earlier in the 2000s, as well as from tribal citizen disenrollment issues involving divisions of gaming per capita payments. Another widely reported reputational hit came in 2014, when the National Indian Gaming Commission forced the tribe to close its casino after determining it was “operating the gaming facility in a manner that threatened public health and safety,” and hadn’t shared required financial information from 2012 and 2013 with the federal gaming oversight body.

All the dirty details made local, state and even national headlines.

Joe Valandra, former chief of staff of the National Indian Gaming Commission during part of the George W. Bush administration, personally recalls some of those bleak days all too well.

“I was actually there, at the casino at that time. Someone had called me up to discuss the situation, and there were armed people at the casino,” he said. “I didn’t stay. It wasn’t a place that I felt safe in.”

A tribal official said that the tribal government had essentially shut down at the time, driven by internal discord and concerns over tribal identity and disenrollment. The “really bad” situation culminated in a fracturing of the tribe, even violence and intimidation.

Picayune has also taken a leading tribal position against off-reservation gaming (siding with non-Indian entities at times), whereby some tribes try to legally locate their gaming enterprises in more lucrative markets outside of their federally-recognized homelands after obtaining federal and state permission. It’s a contentious issue in Indian Country: Some tribes favor it, while some oppose, and others are indifferent. What’s clear is that Picayune has made some enemies by being in the strongly opposed camp.

However, a series of leadership changes, winning legal arguments, and a unique and sweeping loan restructuring agreement that shaved 70 percent off the tribe’s debt by April 15 of this year have all aided it in becoming what some experts suggest might be the tribal financial comeback story of the century (so far).

And new ventures are on the way: The tribe recently opened a franchise with the Sonic restaurant chain, and it’s building a cannabis dispensary that’s scheduled to open later in 2021. A chunk of coronavirus relief funding from the federal government also came in last year with more on the way this year. (The tribe says it cannot release exact allocations, as it has a strict confidentiality policy regarding financial details). With part of that money, the tribe is planning long-term infrastructure projects including potentially a new health clinic, tribal officials say.

The current leadership hopes perceptions of the tribe are slowly improving, and some even think the tribe’s worst days may hold lessons for other tribes that find themselves in similarly precarious situations.

But there were many dark days before the light — and it still sometimes gets cloudy.



Chairwoman Claudia Gonzales directs staff meeting at the Picayune Rancheria of Chukchansi Indians Tribal Office in Oakhurst, Calif. (Courtesy photo)

‘Heavy burden’

Wells Fargo had been suing the tribe since July 2019, alleging in New York state court that the tribe had violated the terms of a \$254 million lending agreement made by the bank and others to secure the tribe’s Chukchansi Gold Resort & Casino in 2012. The bank said in court documents that the tribe had been stockpiling cash while not repaying the loan and was concurrently repaying other lenders before it repaid the bank. It specifically argued that the tribe had pursued a “sham refinancing scheme” and that the bank had suffered “irreparable harm” from the tribe’s “breaches of their agreements.”

By last fall, because of accrued interest, the tribe owed nearly \$350 million in outstanding debt.

“There was a point where interest was compounding at a rate where there was a question whether the debt could ever be paid off,” said Claudia Gonzales, chairwoman of the tribe. “The litigation that was filed against the tribe threatened to cut off tribal distributions from the casino to the tribe, which would mean that services to members including programs for children and elders would not be funded.”

Before the Wells Fargo lawsuit, the Osceola Blackwood Ivory Gaming Group LLC (OBIG), a gaming management firm based in Florida, sued the tribe for \$21 million in 2017, saying it had provided services to help manage and reopen the tribe’s casino and that the tribe owed money for those services.

Both lawsuits were just one component of a darkness surrounding Picayune since the grand opening of its casino in 2003. That moment was supposed to change the lives of tribal members for the better, but soon the tribe became infamous for disenrollment issues centered on who should receive per capita payments from casino profits. The situation led to nasty leadership power struggles largely over money, but partially over tribal identity and who should be able to call themselves a citizen of the tribe. (Current per capita payments to individual members are said by people in the tribe to be just over \$300 per month, with elders receiving an approximate additional \$600 per month. The tribe would not confirm these numbers, citing its financial confidentiality policy.)

The infighting became so bad that the tribe was ultimately forced by a federal judge in 2014 to shut down its casino after two rival intra-tribal factions had a physical altercation involving the casino's financial documents. The National Indian Gaming Commission soon stepped in and kept the casino closed for public safety concerns and violations of financial disclosure rules. Intense competition from nearby California-based tribes for gaming revenue compounded all of these negativities.

The casino reopened in 2016 after a 14-month closure, at which point new tribal leadership agreed to conditions set forth by the National Indian Gaming Commission to resolve the tribe's violations of the Indian Gaming Regulatory Act. The tribe reportedly promised to pay \$20 million if the agreement was broken. The fine was reportedly limited to \$500,000 if the tribe abided by the terms, which it has to date. The tribe says it remains in good standing with the NIGC today.

The pandemic hit in 2020 with Picayune still in massive debt and in the middle of costly litigation. The tribe's casino was forced to shut down for public health reasons from March 20 to June 1 last year, with the tribe's council voting to continue employee health benefits throughout the closure. Per capita payments to tribal citizens were cut. People were not happy.

The tribe soon argued in court that as a result of this new money crunch, it could no longer afford to fight the Wells Fargo case.

Chairwoman Gonzales, who previously worked as a project manager for Bed Bath & Beyond and as a bookkeeper for a small local business, said at this point that she felt "a heavy burden."

Addressing intra-tribal conflict

The chairwoman and the tribe's current council — as she always makes sure to include — had been through struggles before and still face quandaries surrounding transparency and ethics. (In the past six months, two council members have been removed and replaced because of ethics violations.)

But even critics of the council say today's situation is nothing like when the casino was shuttered in 2014. After that, according to multiple tribal sources, the tribe faced a real reckoning. Opposing factions agreed to put their differences aside to hold what they called a "clean-slate election" in October 2015. Gonzales was elected to the tribal council during that election, then was appointed by the council to serve as chairwoman. Since then, she has once been forced to relinquish the leader title, to former council member Jennifer Ruiz, but Gonzales stayed on the council and reclaimed the top seat after Ruiz lost re-election.

From the beginning, Gonzales had a lot to deal with. She shepherded the 2016 reopening of the casino, but she said she knew that the tribe was far from being whole with all the debt obligations agreed to by past leadership.

Plus, she and her mother were intent on correcting what they viewed as past injustices related to former tribal leadership unfairly disenrolling members and decision-making that encouraged increasingly more disenrollment. This has made her unpopular with at least one faction of the tribe that wants membership limited, but she has persisted.

Gonzales says she is making it a goal to unify competing ideologies within the tribe by trying to protect the rights of tribal citizens and by promoting their common interests.

“Our tribe has had membership problems over the years in part due to ambiguities in our tribal constitution,” she said. “The tribal council reinstated membership rights for a large group of individuals last year. I believe that the equal rights of all tribal members must be protected, and I will continue to fight for that.”

The chairwoman said that she was “bound to confidentiality” regarding the specific re-enrollment numbers, and said she couldn’t share those details without tribal council authorization. But she added “equal membership rights are very important. For the tribe to move forward, we need to be inclusive and protect tribal membership rights.”

Gonzales noted that she’s up for re-election in October, and some of these issues are bound to be on the minds of voters. Winning again is not a given for her, so it is a sensitive time.

Cathy Cory, who along with her four children (one of whom was a minor at the time) was disenrolled from the tribe in 2006, is appreciative of the work Gonzales has done so far on the contentious disenrollment issue, especially compared to previous leaders who kept removing more and more members.

“She is a very strong woman, and has been able to stand in the face of much adversity within the tribe to bring things forward and hold her clear position on no further disenrollment at Picayune, and in growing the tribe,” Cory said. “For that, she deserves much credit.

“She is not in an easy place, either as a female in Indian Country leadership in general, and specifically in her position as tribal chair at Picayune, which has the dubious distinction of being constantly in disarray.”

Cory estimates that the tribe under the current leadership has brought back approximately 150 to 200 citizens who were disenrolled immediately before the major tribal infighting of 2014 that preceded the casino closure. But tribal citizens disenrolled in 1999 and 2006-2007 have not been allowed to re-enroll, she said, and she would like the current council to take that up.

A well-known advocate against tribal disenrollment, Cory said that at least 600 people who have been disenrolled from Picayune, including her family, are still barred from being re-enrolled. However, she hears that approximately 85 more people were re-enrolled in the past year.

The tribe’s official position is that it does not publicly release its total current enrollment, which is an example of the leadership transparency questions that concern people like Cory.

“It is extremely frustrating, yet I will never give up the fight to bring the disenrolled home at Picayune and every other tribe who has committed this injustice against their own people,” Cory said. “It has taken its toll, and the pain weighs daily.”



The Picayune Rancheria of Chukchansi Indians recently held a grand opening for a new Sonic restaurant, one of several new business ventures the tribe is undertaking. (Courtesy photo)

Legal victories, debt settlement

While the tribe has more work ahead to heal its deep internal scars, it has made more concrete headway on the litigation front.

In April 2020, with the threat of the pandemic looming, the California Court of Appeals for the Fifth Appellate District ruled in favor of Picayune in Florida gaming management firm OBIG’s \$21 million lawsuit. The ruling stated that the National Indian Gaming Commission had not approved the tribe’s contract with OBIG, and therefore the tribe had not waived its sovereign immunity, protecting it from such a lawsuit.

“Under the plain language of the document, then, the Agreement has not become binding, the effective date has not been set, and thus no waiver of sovereign immunity specifically dependent upon the start of the Agreement has become effective,” the court stated in its ruling.

Brendan Ludwick, general counsel for the tribe since 2019, celebrated the win against OBIG, saying it was a “great team effort” by lawyers working for the tribe, but he knew that a much more costly problem still lay ahead with the Wells Fargo case. Because of the large amount of money

owed to the bank and what he called “onerous terms” that led to the tribe’s ultimate default in May 2020, they were negotiating from a difficult position.

The tribe, Ludwick explained, had entered into an expensive loan in 2015 to provide capital to reopen the casino. By late 2018, the tribe was facing a tremendous debt load, so it reached out to its lenders to discuss a negotiated debt restructuring. To create negotiating leverage, the tribe refinanced the reopening loan with its own reserves to put itself into a senior position with the bondholders. That move was a case of pure tribal sovereignty in action.

“The tribe leveraged its sovereign status by forming a new finance company to acquire senior rights under the bond indenture,” Ludwick said, adding that he doesn’t believe the strategy would have been as advisable in a non-Indian commercial context.

“In our case, there was a defensive legal argument that the tribe as a government had a sovereign right to create a new finance company separate from the tribe’s Chukchansi Economic Development Authority, and the indenture did not clearly prohibit the tribe from acquiring the senior debt,” Ludwick said.

He also noted that the tribe had leverage in the negotiations because the Indian Gaming Regulatory Act preempted certain remedies, such as seizing collateral or taking control of the business, that might otherwise have been available to the lender.

After the tribe’s move to form the finance company, Wells Fargo — the trustee for the bondholders — then filed its lawsuit against the tribe, which threatened to cut off tribal distributions from the casino to the tribal government.

While defending against this litigation, the tribe’s council continued to work with its lenders to try to come to a new agreement. By early 2020, they had secured “a mutually beneficial deal to restructure the debt on the table,” Ludwick said, but that’s precisely when COVID-19 struck, forcing the casino to shut down again.

Ironically, the pandemic and the obvious financial hardship it was causing the tribe may have helped its case, Ludwick said. After the pandemic hit, Wells Fargo negotiated terms with the tribe that Ludwick believes may have been focused on getting at least some money from the deal as the tribal enterprise faced major uncertainty over its ability to survive its debt load and the effects of the pandemic.

“We were able to get very favorable terms that I think were intended to have us work toward a closure, but it resulted in the tribe being able to pay down a ton of debt quickly just through the negotiated terms,” Ludwick said. “Somehow, under Claudia’s and the tribal council’s leadership, we were able to piece it together and ended up getting some remarkably favorable terms in the debt restructure, really because of the uncertainty of whether the business would be viable upon reopening because of the pandemic and its unknown impacts on the economy.”

‘Remarkable accomplishment’

Ludwick said that the casino performed very well after reopening in June 2020, and the tribe soon paid down approximately \$100 million in debt in addition to the previously negotiated debt reduction. The June reopening was a major venture, with the tribe taking steps to open quickly, something that other commercial and tribal facilities were slower to do. The casino put up safety barriers to protect customers and staff and systemized cleaning and sanitization of the facility.

They were back in business before many of their competitors and drew many visitors during that time, according to the tribe and people outside the tribe.

“The tribal council deserves all the credit for navigating the tribe through these financial and public health crises to emerge with a much stronger tribal economy,” Ludwick said. “They ultimately were able to shave about \$200 million off the debt, which was about a 70-percent reduction in the tribe’s debt, down from about \$350 million with accrued interest.”

Valandra, the former National Indian Gaming Commission leader who recalled sitting in the casino with armed people nearby during the tribe’s darkest days, called the restructuring “truly a remarkable accomplishment,” and he noted that he doesn’t have any skin in the game.

“This is great for them from a business operating standpoint, to really have their debt much more manageable,” he said. “They don’t have to feel like they’re under the gun.

“From my view, the current council there has really done everything they can for the benefit of the tribe. I commend them for that.”

Valandra added that the tribe’s sovereign status does appear to have given it a degree of advantage in this deal, but the pandemic component added complexity that wasn’t necessarily bound to play out in the tribe’s favor.

“One of the differences that tribes have from normal debtors is that their enterprises provide the monies for the operations of their governments,” he said. “It isn’t just a business-profit motive.”

Only a few recent tribal examples compare to what Picayune was able to accomplish in the restructuring. The Dry Creek Rancheria in California restructured its casino debt by approximately 65 percent in 2016 after a big revenue drop due to competitive factors, and the Pueblo of Pojoaque in New Mexico, whose Buffalo Thunder Casino opened the week that Lehman Brothers crashed, achieved a 50-percent debt reduction in December 2014. The Tunica-Biloxi Tribe and the Mohegan Tribes also recently announced that as a result of a five-year partnership between the tribes, Tunica-Biloxi was able to reduce its gaming-related debt by over two-thirds and recently refinanced its outstanding debt on “very favorable terms.” According to a June 10 joint announcement from the tribes, Tunica-Biloxi is positioned to be debt-free in seven years.

In total, Picayune’s negotiated reduction, from \$350 million to \$223 million was about 35 percent, but Ludwick said the deal was sweetened because of the low new debt cost at 7.5 percent and prepayment provisions, which got the tribe to a 70-percent net reduction at closing.

“This took a huge haircut,” Ludwick said. “The debt restructure story is pretty incredible from my perspective.”

When Ludwick began working for the tribe, tribal leaders were staring down the very real possibility that the tribe would lose most or even all of its distributions from the casino. Now, the tribe is left with a very small percentage of debt compared to its previous highs. As well, new business opportunities, including the Sonic restaurant deal and the cannabis dispensary, are already taking root.

“I feel like we’ve been blessed,” Chairwoman Gonzales said. “I think it’s a great opportunity for the tribe to continue on to new ideas. Honestly, I still can’t believe that we’ve done it.”

Off-reservation battles ongoing

Even with the debt reduction and its new economic development, the tribe still has some pressing gaming-related concerns, namely an ongoing attempt by the North Fork Rancheria of Mono Indians of California to legally establish an off-reservation casino in Madera County. The location is near Picayune Rancheria of Chukchansi Indians' lands, which the Picayune tribe believes could substantially cut into its earnings.

“For many years, the tribe has opposed an attempt by another tribe to develop an off-reservation casino within Picayune’s aboriginal territory,” Ludwick said, adding that tribal leaders are working with the Biden administration to review previous federal agency decisions that the tribe believes “failed to consider the detrimental impact” that off-reservation gaming poses to Picayune.

It already appears like that’s going to be an uphill battle, with Department of the Interior Secretary Deb Haaland recently asking the U.S. Supreme Court to deny two California card rooms’ petitions challenging a Ninth Circuit court ruling that affirmed Interior’s 2011 approval of North Fork’s off-reservation casino, which is expected to start construction next month.

But Picayune tribal leaders believe that a recent decision by the California Court of Appeals for the Fifth Appellate District bolsters their arguments, and they say they are talking to the Biden administration about it.

On May 13, the appellate court raised questions surrounding North Fork’s off-reservation casino by ruling that California state citizens had the right in 2014 to vote to reject former Gov. Jerry Brown’s agreement with Interior’s decision to allow 305 acres of land to be taken into trust for a North Fork casino in Madera County.

Ludwick reads the ruling as meaning that North Fork is “not eligible to conduct gaming on that site under the Indian Gaming Regulatory Act’s two-part determination.”

This section of IGRA says that gaming like North Fork proposes to do can occur on its off-reservation trust land “if the Interior secretary, after consultation with appropriate state and local officials, and officials of nearby tribes, determines that a gaming establishment on newly-acquired land will be in the best interest of the tribe and its members, and not detrimental to the surrounding community,” according to the testimony of former Acting Deputy Assistant Secretary – Indian Affairs George Skibine before the U.S. Senate Committee on Indian Affairs in 2006. “The governor of the state in which the gaming activities are to occur must concur with the secretary’s determination,” he added.

Gonzales said she appreciated the appellate court’s decision, although it’s clear she knows North Fork is more than likely to continue its fight, both in court and by looking for support from the Biden administration. While acknowledging support for “the right of all tribes to participate in gaming for economic development” within their reservations, Gonzales says that her tribe will continue to oppose North Fork’s off-reservation casino project in Madera County “because that location is located within our aboriginal homeland.”

For Picayune, the stakes are high. In an op-ed published by a variety of news outlets in May 2016, Gonzales said that the North Fork casino was projected to siphon off 33 percent of her tribe’s casino revenue.

A sovereign example for others

Despite lingering questions about what will happen with the North Fork development, Picayune is now more than ever — because of the debt restructuring — in a position of looking forward, continuing to strengthen its sovereignty and businesses while developing programs to help children, families and elders.

Cory would very much like to be able to celebrate the successes, but not until all unfairly disenrolled members have been re-enrolled. Ironically, members who have been disenrolled actually find some reason for hope in the debt restructure deal specifically, noting that per capita payments to members will probably be larger once the total debt is paid down. The thought goes that if that possibility happens, maybe it would give enough political cover to Picayune leaders in the future to allow past disenrolled citizens to come home.

“There’s a fine line between doing the right thing at Picayune and doing the things that need to be done, as opposed to placating some of the people that are in the voting bloc needed to win,” she said.

Cory promises to continue to petition current leadership to help everyone come back in the fold, saying she is “hoping, praying, and working toward some sort of healing coming in the future.” She’d also like to see major Indian organizations, like the National Congress of American Indians, pay more than what she feels has been “lip service” to the issue.

For one, Gonzales, the tribe’s chairwoman, says that the tribe’s dark past and its proven resilience can “absolutely” serve as an example to other tribes, especially ones that are experiencing difficult times because of the coronavirus pandemic.

“To be honest, Picayune has been through some really big ups and downs, and we managed to be able to, at the end of the day, do what we needed to succeed,” she said. “I hope others can follow us.”

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EDITOR’S NOTE: This story has been updated from its original version.