



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

APR 08 2011

Mr. Larry J. Ortega, Sr.
601 South Brand Boulevard, Suite 102
San Fernando, California 91340

Dear Mr. Ortega:

The Office of Federal Acknowledgment (OFA), within the Office of the Assistant Secretary – Indian Affairs of the Department of the Interior (Department), has completed a second technical assistance (TA) review of the petition for Federal acknowledgment as an Indian tribe for a group known as the “Fernandeño Tataviam Band of Mission Indians” (Petitioner #158). The acknowledgment regulations, 25 CFR Part 83, provide for this second review under section 83.10(b) and (c), if requested by the petitioner. The petitioner made this request by letter on August 26, 2010.

OFA provided an initial TA review letter dated March 3, 1997, for materials received on January 16, 1996. This second TA review letter describes obvious deficiencies or significant omissions for materials received on November 9, 2009. The petitioner will need to submit the original paper copy of the governing body’s electronic version of the November 20, 2008, certification of this submission for the Department to process this petition any further, as original signatures are required. Enclosed is a preliminary inventory of the material.

Because the goal of the acknowledgment process is to determine if a petitioner has existed historically as an Indian tribe based on the evidence meeting all seven mandatory criteria, the TA review seeks to ensure that technical problems do not adversely affect a case. After reading this review, the petitioner will need to submit some additional documentation, described below, and inform OFA it is ready for active consideration.

Preliminary Analysis of Unambiguous Previous Federal Acknowledgment under 25 CFR 83.8

In a letter dated July 21, 2005, the petitioner made a number of assertions that the “United States Government has had continuous dealing with the Fernandeño Tataviam Tribe from 1852 until the present day period.” The letter further asserted, “The Tribe is the descendant of, and political successor to, signatories of the June 10, 1851, Fort Tejon Treaty and can identify Fernandeño ancestors as signatories to the Treaty.” Finally, the letter noted that the “U.S. Government appropriated funds for the maintenance of the Indian groups at the Fort Tejon, Sebastian Reservation including the Fernandeño Tataviam.” The Department fully addressed these assertions regarding unambiguous previous Federal acknowledgment in a letter dated

November 14, 2005. The Department concluded the petitioner did not demonstrate the claim of previous unambiguous Federal acknowledgment using the 1851 Treaty of Tejon Pass.

The petitioner's November 9, 2009, response to the TA letter includes an argument that the petitioner had unambiguous previous Federal acknowledgment until 1904. Due to these claims, the petitioner requests the Department evaluate its petition under the mandatory criteria as modified by section 83.8 of the regulations. The Department's preliminary conclusion is that the petitioner does not demonstrate its claim to previous Federal acknowledgment. Therefore, the Department intends to evaluate the petitioner under all seven criteria in section 83.7 without modification by section 83.8.

If "substantial evidence" demonstrates the petitioner had "unambiguous" previous Federal acknowledgment as an Indian tribe, then the Department reviews the requirements of the acknowledgment criteria in section 83.7 as modified by the provisions of section 83.8(d). When a petitioner claims to have been previously acknowledged, the evidence in the record is reviewed to determine whether it is sufficient to meet the requirements of "previous Federal acknowledgment" as defined in the regulations (§83.1). The Department makes this review solely for the purposes of this regulatory process. The intent of this evaluation is to determine only the petitioner's eligibility for evaluation under the reduced evidentiary burden of section 83.8(d) of the regulations. Three of the seven acknowledgment criteria—criteria 83.7(a), (b), and (c)—are modified by section 83.8(d) for petitioners with unambiguous previous Federal acknowledgment.

The first test of unambiguous previous Federal acknowledgment is to determine whether the petitioner meets both parts of the regulatory definition of "previous Federal acknowledgment." The Federal Government had to take action regarding the group that was "clearly premised on identification of a tribal political entity," and that action had to indicate "clearly the recognition of a relationship between that entity and the United States" (§83.1). Both the text of section 83.8 and the explanatory comments in the preamble to the regulations state that previous acknowledgment must be "unambiguous" (§83.8 and 59 FR 9283). The second aspect of the test of unambiguous previous Federal acknowledgment is to determine whether the petitioner evolved from the previously acknowledged Indian tribe.

The petitioner bases its claim for previous Federal acknowledgment on two documents: a letter in 1892 by a special attorney to the U.S. Attorney General and a publication in 1904 of recollections of a former U.S. Indian agent for the Mission Indians. The 1892 letter was merely a recommendation to the Department. The petitioner has submitted no evidence that either the Department or the Attorney General acted to implement that recommendation. The 1904 recollections concerned an individual Indian and presented vague claims of aid offered to that individual, not to members of an Indian group. The petitioner has submitted no evidence of the Indian agent's actions as agent. These two examples do not provide evidence that meets the regulatory definition of action by the Federal Government that indicated clearly the recognition of a Federal relationship with a tribal political entity.

The 1892 letter relied on by the petitioner was written by Frank D. Lewis to the Commissioner of Indian Affairs. In this letter, Lewis did not include any position title for himself as a Federal

employee. In an earlier letter, however, he identified himself as Special Assistant U.S. Attorney for Mission Indians, and his letterhead indicated that he was a private attorney in Los Angeles. Congress authorized the Attorney General to employ a special attorney for the Mission Indians of southern California in 1890 (26 Stat. 357). Based on the documents submitted by the petitioner, it is unclear whether Lewis was that special attorney or an assistant to that special attorney, and whether his work was under the supervision of the Commissioner of Indian Affairs or the Attorney General.

Lewis stated in his letter that his “attention was called” to the condition of “a company of Indians” living on the edge of the San Fernando land grant. He did not indicate that the Indian Office had called his attention to this land issue or responded to any letter or instructions from the Commissioner. Lewis stated that he learned about the group by his own examination and investigation, rather than from information supplied by the Indian Office, which appears to reveal that the Department did not have an existing relationship with such a group at that time. If the Indian Office had an existing relationship with a group, Lewis would likely have referred to the group by name, but he did not. Contrary to the implication of the petitioner’s account, this correspondence does not refer to a group of “Fernandeños.” In addition, the petitioner claims that the “chief” of the group had paid taxes on the land at issue until 1884, which indicates that the United States had not held the land in trust for the group. Thus, the available evidence does not reveal a preexisting Federal relationship in 1892.

In his letter, Lewis recommended that the Department institute legal proceedings for the cancellation of a land patent issued in 1873. The letter cover shows that the Indian Office referred Lewis’s letter to the General Land Office. The Commissioner of the General Land Office indicated in his response that his office had previously investigated the land claim at issue, at the request of private citizens, and had informed Lewis it “could not do anything in the matter.” The Commissioner also attached an earlier letter in which the Secretary of the Interior had declined to act on behalf of those citizens to pursue a suit such as recommended by Lewis. The petitioner includes no evidence that the Department ever filed the proposed lawsuit recommended by Lewis, or that the Department had dealings with an Indian group after Lewis’s report. Thus, the available evidence does not show that the Department had an existing relationship with such a group or established a Federal relationship with such a group because of Lewis’s letter.

The 1904 recollections of Indian Agent H.N. Rust relied on by the petitioner appeared in the journal *Out West*. The fragment of this article submitted by the petitioner was an account about Rogério Rocha. Although Rust referred to Rocha as “almost the last of the Mission Indians of San Fernando,” this article was about an individual, not a group. Most of the story Rust told occurred before his appointment as agent in 1889, and Rust gave the impression that, while he was agent Rocha, lived alone. The unspecified assistance he recalled having provided Rocha came from \$200 per year provided “for the sick and indigent of 3000 Indians,” a reference to all Mission Indians rather than to any specific band of them. Contrary to the petitioner’s assertion, Rust did not identify “the Fernandeños as a group.” Rust referred to having “assisted Rogério” and having called “his case” to the attention of later agents, one of whom sent “him” a few rations. This slim evidence about one individual does not demonstrate any Federal relationship with a Fernandeano entity.

The petitioner has not demonstrated that it had unambiguous previous Federal acknowledgment. It has not shown that the Federal Government took action that indicated clearly its recognition of a Federal relationship with a tribal political entity. The evidence presented by the petitioner is liable to another interpretation than the one presented by the petitioner, and thus is ambiguous rather than “unambiguous” on the issue of previous Federal acknowledgment. The petitioner’s reliance on one document for 1904, and one document for 1892, does not constitute “substantial” evidence, as required by the regulations. The petitioner has presented no direct evidence of actions by the Office of Indian Affairs or Department on behalf of any Indian group, whether in response to Lewis’s report, by Rust while in office as Indian agent, or by any other agent in 1904. Thus, the argument advanced and the evidence cited by the petitioner are insufficient to demonstrate that the petitioner had unambiguous previous Federal acknowledgment in 1904, or at any other time.

The conclusions of this TA review relating to previous Federal acknowledgment are preliminary, based on an evaluation of the arguments presented and evidence cited by the petitioner, and are subject to reconsideration during active consideration for the proposed finding based on new evidence. The petitioner has the option of responding to this TA review by submitting substantial evidence to demonstrate points this review concludes the evidence in the record has not demonstrated. However, to qualify for evaluation under section 83.8, the petitioner’s burden is not simply to advance an interpretation of previous Federal acknowledgment based on certain evidence, but to show that the body of available evidence is not liable to another interpretation and is therefore “unambiguous.”

The bulk of the petitioner’s presentation for previous Federal acknowledgment attempts to demonstrate that the petitioner is the same group as the “company of Indians” mentioned by Lewis in 1892. Because the petitioner has not presented substantial evidence of unambiguous previous Federal acknowledgment of a tribal political entity in 1892 or 1904, it is not necessary here to evaluate an argument that the petitioner is the same entity as a previously acknowledged entity. However, this presentation by the petitioner about the continuity of a group is relevant to a claim of its continuous existence as a distinct community with political influence over its members, and the Department will evaluate these materials for the purposes of criteria 83.7(b) and 83.7(c) during active consideration for the proposed finding.

General Comments

This TA review shows the evidence submitted is adequate to evaluate criteria 83.7 (a), (b), (c), (d), (e), (f), and (g). The petitioner, however, will need to submit the original paper copy of the governing body’s electronic version of the November 20, 2008, certification of this submission for the Department to process this petition any further. The petitioner will also need to submit the original paper copy of the governing body’s electronic version of the June 9, 2009, certification of the group’s August 12, 2008, membership list.

Criterion 83.7 (a): External Identification of the Group as an American Indian Entity on a Substantially Continuous Basis since 1900

This criterion requires evidence of external identification of a petitioning group as an American Indian entity since 1900. It aims to exclude from acknowledgment those entities that external observers have identified as being Indian only in recent times or whose Indian identity depends solely on self identification. Criterion 83.7(a) describes six sources that may demonstrate external observers have identified an Indian entity, including identification by the Federal Government, state and local governments, scholars or other writers, newspapers and books, recognized Indian tribes, or other Indian organizations. A petitioning group may include evidence from one or a combination of these sources, as well as other evidence of external identification. In Petitioner #158's case, the materials submitted are adequate to make an evaluation under this criterion.

Criterion 83.7(b): A Predominant Portion of the Petitioning Group Comprises a Distinct Community and Has Existed as a Community from Historical Times until the Present

Criterion 83.7(b) requires a petitioner to show it has been a social community since historical times. The materials submitted by Petitioner #158 are adequate to evaluate the petition under this criterion.

Criterion 83.7(c): The Petitioner Has Maintained Political Influence or Authority over its Members as an Autonomous Entity from Historical Times until the Present

This criterion requires a demonstration that a petitioning group exercises political influence over its membership now, and has done so in the past. This means there were, and still are, leaders with followers whom they influence, and who influence them in significant ways. This criterion does not require a formal structure with a chief and council. It does call for information concerning who led the group and how they exercised leadership, or about the informal processes by which the group made decisions and influenced its members. The material submitted by Petitioner #158 is adequate to evaluate the petition under this criterion.

Criterion 83.7(d): Governing Document

This criterion requires a petitioner to submit a copy of its present governing document including its membership criteria. Absent a written document, a petitioning group must provide a statement fully describing its membership criteria and current governing procedures. The materials submitted by Petitioner #158 are adequate to make an evaluation of the group under this criterion.

Criterion 83.7(e): Current Membership List and Descent from a Historical Indian Tribe or Historical Indian Tribes that Combined and Functioned as a Single Autonomous Political Entity

The criterion requires a demonstration that the members of a petitioning group descend from a historical Indian tribe, or from historical Indian tribes that combined and functioned as a single autonomous political entity. The petitioning group has submitted an electronic version of its current membership list with the names of 266 members, in Adobe Acrobat format, accompanied by an electronic version of the governing body's certification, dated August 12, 2008. It will

need to submit an original copy of the certification of the August 2008 membership list. The genealogical materials submitted by the petitioner are adequate to evaluate the petition under this criterion.

Criterion 83.7(f): Members of the Petitioning Group May Not Be Enrolled in Any Recognized Indian Tribe

This criterion prohibits the Department from acknowledging groups composed principally of members of federally recognized Indian tribes. The petitioner has submitted a statement that its membership is not part of any recognized Indian tribe.

Criterion 83.7(g): Neither the Petitioner nor its Members Are the Subject of Congressional Legislation that Has Expressly Terminated or Forbidden the Federal Relationship

Neither the petitioner nor its members appear, from the materials submitted, to be part of a group that is the subject of congressional legislation expressly terminating or forbidding a Federal relationship. The petitioner has included a formal statement to that effect in the petition materials.

Summary

This letter describes obvious deficiencies and/or significant omissions in the submitted material that Petitioner #158 needs to address before OFA places its petition on the "Ready Waiting for Active Consideration List." This TA review shows the evidence submitted is adequate to evaluate criteria 83.7 (a), (b), (c), (d), (e), (f), and (g). The petitioner, however, will need to submit the original paper copy of the governing body's electronic version of the November 20, 2008, certification of this submission for the Department to process this petition any further. The petitioner will also need to submit the original paper copy of the governing body's electronic version of the June 9, 2009, certification of the group's August 12, 2008, membership list.

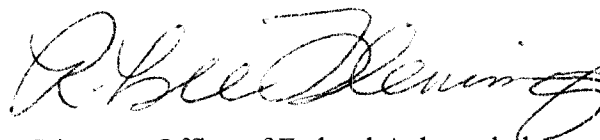
The Department has not made a decision concerning the petitioning group. This TA review is neither a preliminary determination of the petition, nor a conclusion that the petition will result in a negative or positive decision. In addition, the group should not assume the Department has made positive conclusions about portions of the petition not discussed in this letter.

When submitting the original certifications requested above, Petitioner #158 should request in writing that the Department proceed with the active consideration of the documented petition using the materials already submitted. The petitioning group has one month from the receipt of this TA letter to submit the certifications.

Upon receipt of these certifications, OFA will do one of the following: evaluate the petition and issue an expedited finding under 83.10(e) of the acknowledgment regulations; or place the petition on the list of petitioners waiting for active consideration if the group indicates its petition is ready.

If the petitioning group has any questions, please feel free to contact the Office of Federal Acknowledgment, Office of the Assistant Secretary – Indian Affairs, Department of the Interior, 1951 Constitution Street, N.W., MS-34B-SIB, Washington, D.C. 20240, or call (202) 513-7650.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Bruce Deering". The signature is fluid and cursive, with a large, stylized initial "R".

Director, Office of Federal Acknowledgment

Enclosures: Preliminary Inventory of Petition

cc: Governor of California
Attorney General of California
Petitioner #163