

*autonomous as meaning the “exercise of political influence or authority independent of the control of any other Indian governing entity. From the Department’s perspective, at any time there was a large concentration of Juaneno tribal members in and around the Mission, tribal political influence or authority, no matter how informal, was an inherent part of the Indian community. That is why certain categories of strong evidence for community, as indicated at 25 CFR 83.7(b)(2), such as when 50 percent or more of the tribal membership is concentrated in one geographic area, also provides evidence, in and of itself, for criterion 83.7(c), political influence or authority.*

Once secularization began in 1834, the evidence given for the Mission Indians changes in substance. From 1834 to 1840, the population fell from 500 to less than 100 with an accompanying collapse in crop production. Petitioner #84b speculates that these people abandoned the Mission to find work or to resettle in the countryside. Unlike the previous period, no evidence of overt cultural continuity is supplied. However, there is an outstanding example of political unity and action in 1839 when the Mission Juaneno formally complained about their administrator to the Governor, demanded his removal and finally insisted on organizing the Mission into a pueblo. A subsequent visit by an agent to SJC to assess the Juaneno’s views on land allotment was met with an assembly of approximately 100 with substantial opposition. This too indicates political organization within the Band. In the summer of 1841, the administrator reported a major crop failure and the abandonment of the Mission. The petitioner speculates that the Juanenos returned to countryside villages but came back for the meeting with the agent two months later. While the continued existence of nearby

villages is probable, the petitioner does not supply firm primary or secondary source evidence to further this argument of the cultural and political coherence of the Juaneno community between the Mission and the outlying settlements. Much is left for us to guess at.

*Discussion: The Department interprets community as meaning more than just a single geographical area. It defines community in terms of the interaction and social relationships between group members. One of the categories of "high evidence" under 25 CFR 83.7(b)(2) is a demonstration that "more than 50 percent of the membership resides in a geographical area exclusively or almost exclusively composed of members of the group, and the balance of the group maintains consistent interaction with some members of the community" (25 CFR 83.7(b)(2)(i)). Though not well defined by the petitioners, there was likely an extended period in the 19<sup>th</sup> century in which more than 50 percent of the group membership resided in or near SJC. However, the petitioners have not adequately documented the interaction and relationships between SJC residents and the broader Juaneno community. If the Department finds that the high evidence standard of more than 50 percent residency has been met for any period, than this also would provide sufficient evidence for criterion 83.7(c), political influence or authority; for that same period under the carryover provisions of 25 CFR 83.7(c)(3). If the petitioner does not meet the high evidence standard for the carryover provisions, over 50 percent residency is still strong evidence of community for whatever length of time it existed.*

Once the Americans take over in 1848, source material on the Juaneno becomes quite scarce. Most of petitioner #84b's argument for the second

half of the 19th century depends on two sources: information given in an 1846 roll of Mission residents and conclusions drawn from this roll in regard to marriage and residency patterns, and the 1928 Federal roll and conclusions drawn from patterns in it. This section requires close study of the genealogies of current tribal members. Unfortunately, we are unable to evaluate the family history data because it is withheld from the public and protected by the Department because of privacy considerations.

The petitioner grants that stresses including disease, displacement and Anglo-American land acquisition and population growth resulted in some Juaneno migration to the south, where the Luisenos resided. Historian Lisabeth Haas is a key source for petitioner #84b in the narrative of these years. She states that "San Juan remained an important town for Juanenos... and by the latter part of the nineteenth century individuals and families often moved back and forth between these villages and San Juan for work, residence, family events, and festivals." No primary sources are cited to support this assertion. Rather, the petitioner relies on oral histories that appear to focus on the 20th century (no transcripts are provided).

*Discussion: The petitioners' best case scenario is for the Department to find an inherent continuity between the Mission period and the late 19th century-when marriage and residency patterns derived from the 1928 Federal roll provide high evidence of community. Otherwise, the period 1846 to 1910 is a weakness for the petitioners if they must rely on overt evidence of community between 1846 and the early 20th century (when oral histories strengthen their argument).*

The early 20th century brings a new set of evidentiary sources for the Juaneno: oral histories of tribal members, field notes of anthropologist John Harrington and a special Federal census. Oral histories provide evidence of community gatherings such as weddings and funerals, work cooperatives and female domestic networks. Juaneno elders also recollected that a special slang of Spanish was being spoken at SJC that drew from both Mexican Spanish and *Acjachemem*. Traditional games and Juaneno Catholic religious celebrations also took place.

*Discussion: In combination with evidence of continued intermarriage patterns and residential clustering (see below), the oral history evidence may be sufficient to meet the community criterion for the period 1910-1933. However, the petitioner's have not made a case that any of community characteristics described demonstrate high evidence. For example, they have not claimed that the slang Spanish was a distinct cultural pattern that would meet 83.7(b)(2)(iii), or that the Mission church was a "distinct community institution, encompassing most of the members" (83.7(b)(2)(iv). Neither have they claimed that the work cooperatives or female domestic networks were economic subsistence activities that might constitute high evidence of political influence or authority under 83.7(c)(2)iv).*

In his notes, Father O'Sullivan, a priest at the SJC mission from 1910 to 1933, described interviews with Juanenos that included a range of topics including traditional religious practices, medicine and ceremonies. The petitioner does not include evidence that these practices were continued into the 20 th century or that the informants viewed them as contemporary rather than as legend or colorful past customs. Petitioner #84b depends heavily on

oral histories and interviews that are not provided to us. The petitioner admits that the Juaneno Band began to slowly disperse during these years as the region grew in population and economic opportunity.

Petitioner #84b uses the 1928 Federal roll extensively, both for the early 20th century and to fill in the gaps for the 19th century. The petitioner states that the 1928 roll (gathered between 1928 and 1933) lists 477 Juanenos and 171 heads of households. Of 154 marriages, 44, or 29 percent (including special cases) were in-group marriages (endogamy). Another 7 percent of unions were with other Indians. The petitioner breaks down the endogamy rates further by using residence patterns. At SJC, in-group marriages constituted 46%, or 26 of the 57 marriages. The intermarriage rate within the tribal community at Santa Ana was much lower (3 out of 28). The in-group rate in the rural areas outside of Santa Ana was higher (7 of 18.)

*Discussion: These intermarriage statistics provide evidence of community, but obviously do not reach the 50 percent standard for 83.7(b)(2)(ii).*

Residential statistics are used as well: 66 of 171 heads of household on the 1928 roll lived in SJC. If one draws in Santa Ana, El Toro and nearby rural communities, about 72 percent of the sample lived in these areas.

*Discussion: The residency pattern drawn from the 1928 roll provides evidence of community. The petitioner has not made a case for high evidence under 83.7(b)(2)(i) by demonstrating that more than 50 percent of*

*the membership resided within a geographical area that was exclusively or almost exclusively Juaneno.*

Using the 1928 roll, the petitioner also evaluates the residence and marriage rates of the previous “parental” generation. In all residence areas 74 of 169 marriages were to other Juanenos; within SJC, the rate was 36 of 66. This generation had a very high percentage of residency in SJC- 91 percent gave SJC as the city in which the applicant’s parents were married.

*Discussion: This is critical evidence for the petitioners since it fills in a substantial gap in evidence for community and political authority in the 19<sup>th</sup> century and gives them a better opportunity to argue for generational continuity between the periods of strong primary evidence- the Mission period and early to mid 20th century. Petitioner #84b has not precisely defined the span of years encompassing the “parental generation” of the 1928 heads of households, but speculates that they “centered on about 1875.” The Department will specifically calculate the span of years in which there is high evidence of intermarriage and/or residency. If the petitioner’s statistics are accurate, the Juanenos will be found to have demonstrated high evidence for criteria 83.7(b), community, and 83.7(c), political influence or authority, for whatever period in the late 19th and perhaps early 20th century the Department specifies based on the 1928 data.*

The argument for political authority in the first decades of the 20<sup>th</sup> century relies on oral histories from tribal members documenting work collectives of vaqueros and sheep-shearers, tribal involvement in the Mission Indian Federation (MIF) and other community activities. As noted

in the analysis of evidence for criterion 83.7(c), this evidence has several deficiencies.

Since the endogamy rates demonstrated in 1928 do not reach the regulations 50 percent threshold, the petitioners needed to fortify their arguments with additional evidence. It is possible, but not likely, that the Department may find the undated recollections provided in the oral interviews can do this.

*Discussion: The petitioners lack dated primary and secondary source evidence from the years of the 1928 roll until the Clarence Lobo era begins in 1947. Petitioner #84b attempts to explain this away by discussing a shift in economic, residential and cultural patterns due to the Second World War, but no evidence except for one citation for an oral interview (Espinoza) is presented. This omission is a significant gap in the petitioners' evidence for community and for political influence or authority.*

Petitioner #84b orients its argument for criteria 83.7(b) and 83.7(c) from 1947 to the 1970s around Chief Clarence Lobo and his leadership within the Band and his advocacy for the Band. The evidence for his political influence is analyzed under criterion 83.7(c) below.

Much of the final section of the petitioner's addendum focuses on the controversies of the Raymond Belardes period. Petitioner #84b argues that the opposition to his election as a tribal leader is evidence of tribal community and intense political involvement. This evidence is also analyzed in the section that follows.

Petitioner #84b claims a number of recent cultural and ceremonial activities, including language study of Acjachemem, an Elder's Circle, the basket-making circle and the revival of an Indian game, Peon. Moreover, the petitioner states that attendance at tribal events and political meetings is strong.

*Discussion: Evidence for wide tribal participation in these activities is lacking from the petitions, although significant attendance at the summer reunion is demonstrated.*

#### **Summary of Evidence for Criterion 83.7(b)**

There are several weaknesses for criterion 83.7(b) in the petitions of the two bands of Juaneno Mission Indians. The end of the Mission era and loss of the documentary record provided by the Catholic Church no doubt robbed the petitioners of the kind of direct observations on their culture, economics and day-to-day life that the Department would like to analyze. Furthermore, most of the Anglo-American travelers cited by the petitioners during the remainder of the 19th century were outsiders who were not privy to the internal lives of the Juanenos in SJC. Aside from the Band's confrontation with the administrator around 1840, little direct evidence has been provided on internal social, economic or political interaction.

The petitioner asserts a commonality in the economic activities of the Band's members at SJC without material evidence until the oral interviews establish the existence of work co-operatives in the 20th century and possibly the late 19th century. While it is probable that substantial numbers



of Juanenos remained outside of the mission and SJC throughout the 19th century, virtually no evidence is provided of strong connections- social, political or otherwise- between the Juanenos at SJC and those remaining outside of the town. Thus, the period between 1840 and 1880 must be considered a major weakness for both criteria 83.7(b) and 83.7(c) in terms of overt evidence. The petitioner relies on reading the 1928 roll backward to the previous generation in order to carry its case for the late 19th century. With the figures of residency and intermarriage rates provided for the “parental” generation, the petitioner should have sufficient high evidence to meet both criteria 83.7(b) and 83.7(c) for the late 19th century. If flaws are uncovered in the petitioner’s statistics, however, there is no supplementary material to bolster its case.

It is possible that the Department may find that the high evidence for community and political influence for the late 19th century did not occur in a vacuum and that it therefore also helps to provide evidence for some part of the preceding eras.

The petitioners’ case for the 20th century also has significant gaps. Undated recollections from oral interviews make up the backbone of evidence through the first couple of decades- the strongest are the Juaneno work co-operatives and the memories of social interaction. The endogamy rates drawn from the 1928 roll are insufficient to meet the criteria alone, but their coupling with the interviews may be adequate enough to get the petitioners through the 1920s and 1930s. After the 1930s, however, the record grows cold.

Petitioner #84b argues that World War II is a key dividing point between the rural, more traditional tribe and an economically integrated and politically aware entity, but it offers little evidence for this assessment. Indeed, virtually no material is produced until the ascendance of Chief Lobo in 1947. The petitioner's argument for the years between 1947 and the 1970s relies heavily on Lobo's activism. However, very little proof of tribal participation or interest in these activities is provided. The same can be argued for the modern period of the groups' history- the 1970s through the present day. Though petitioner #84b discusses the first split of the Band and the political maneuverings behind it, it is not clear that most of the Band's members are active participants or observers. There are a few examples of strong attendance at key meetings (approximately 200 attendees), but even this is of less importance once one considers the claimed current membership of the Band of 2000. Without proving political authority and participation from the Second World War to the current day, the Band will not meet criteria 83(b) or 83(c).

It is likely that factionalism will hurt the petitioners' chances of meeting criteria 83.7(b) and 83.7(c) in recent times. If it follows the Eastern Pequot precedent, the Department will find that the factional split of the historical tribe in 1993 prevented the petitioners from being able to demonstrate social and political continuity "from historical times until the present," as required by the Acknowledgment regulations. As previously noted, the Department has to date declined to acknowledge at least seven groups that have been the subject of a tribal split in modern times.

**Criterion 83.7(c), Political Influence or Authority**

This criterion requires evidence that a petitioner has maintained political influence or authority over its members as an autonomous tribal entity since first sustained contact with non-Indians. The basic purpose of this requirement is to assure that a petitioning group has exercised political leadership historically. Because a tribe is a separate political body, it cannot be considered as such without showing that it exercises political influence. Since the purpose of the Department's acknowledgment process is to "acknowledge" a government-to-government relationship between the United State and a tribal entity, a petitioner must demonstrate that it has sustained a governing structure and processes at some significant level, no matter how basic or informal. The precedent of prior acknowledgment decisions also dictates that a "bilateral political relationship" must be shown to have existed historically between the tribal leadership and its membership. This means that the tribal group must demonstrate that it has had leaders recognized by the tribal members who are their followers, and who also influence the members or followers in significant ways. Evidence that the tribal group has made significant political decisions and maintained a consensus among its membership has likewise been persuasive in prior cases.

The Department has found political authority or influence in tribes that demonstrate an internal process for decision-making that effectively resolves internal problems (see, for example, the Grand Traverse Band

(1980) and Snoqualmie (1999) decisions). Further evidence of political influence has been the allocation of group resources, enforcement of group behavior, and the making of decisions that substantially affect tribal members (see, for example, the Jamestown Clallam (1981), Narragansett (1984), and Mohegan (1994) decisions).

As previously indicated, the evaluation standard for criterion 83.7(c), in common with that for criterion 83.7(b), allows for certain periods during which little or no documentation may be available.

The Acknowledgment regulations specify five categories of evidence that may be used in combination to meet the political influence criterion. They also provide that one of four kinds of so-called “high” evidence may be used by itself to demonstrate sufficient evidence of political influence or authority at a given point in time. In addition, a provision allows that any of the five kinds of high evidence of community for criterion 83.7(b) may also be used to meet criterion 83.7(c) at the same point in time. This means that the evidence for these criteria is conclusive at that time, even if there is no other evidence for criteria 83.7(b) and 83.7(c).

### **Summary of Evidence for Criterion 83.7(c)**

The petitioners have provided little overt evidence of political influence or authority for the 18th or 19th centuries. However, the high evidence of intermarriage and residential clustering reflected in the 1928 roll data for the “parental” generation should meet the carryover provisions of 25 CFR 83.7(c)(3) for demonstrating political influence or authority for the late 19th century and perhaps a portion of the early 20th century. The

Department's Proposed Findings will precisely specify the span of years in which this evidence can carry the weight of proof.

As noted in regard to the criterion 83.7(b) evidence, it is possible that the Department may find that the high evidence for intermarriage and residency for the late 19th century did not occur in a void and that it therefore also helps to provide evidence for some part of the preceding years.

The argument for political authority in the first decades of the 20<sup>th</sup> century relies on oral histories from tribal members documenting work collectives of vaqueros and sheep-shearers, tribal involvement in the Mission Indian Federation (MIF) and other community activities. This evidence has several deficiencies. Petitioner #84b offers several examples of notable Juanenos who were considered leaders, but offers few examples of overt political authority. Olivares, Aguilar, Doram and Charles are identified as leaders of the work collectives- perhaps the best evidence provided. The MIF involvement is likely to be considered "pan-Indian activity." In several past cases the Department has generally denied that involvement and leadership in groups comprised of members from several tribal groups (pan-Indian groups) provides evidence of political influence or authority over a specific group. Furthermore, the petitioners do not offer examples of leadership by individuals for the larger Juaneno tribal body. Most of the remaining examples are those of "informal social interaction," though without any dates or periods of time attached.

Petitioner #84b orients its argument for criteria 83.7(b) and 83.7(c) from 1947 to the 1970s around Chief Clarence Lobo and his leadership within the Band and his advocacy for the Band. Much of the narrative hinges on Lobo's activism concerning the Band's Indian Claims Commission (ICC) claims. However, the petitioner offers no evidence of substantial tribal participation or support in the ICC lawsuit until 1964. That year, an out-of-court cash settlement was proposed to quit all claims, and scores of meetings were held around the state. The petitioner states that Lobo opposed the settlement and that the Band was divided but the settlement offer was approved by a large margin. No further information on these meetings or internal tribal politics regarding the settlement discussions is provided.

Furthermore, Lobo's protests at the Cleveland National Forest are not shown as widely supported (or opposed) within the Band. One newspaper article mentions that several members of the Band joined him at the campground, but only two members of his immediate family are identified by name. Fifteen Juaneno men demonstrated their solidarity with Lobo at a local bank a few days later. The newspaper article cited as evidence showing tribal support of the protest on Memorial Day does not specify his supporters were Juanenos, it just states that they were Indians. Insufficient evidence has been provided to support the petitioner's claim that these activities demonstrate either a functioning Juaneno community or political influence or authority. The evidence for Clarence Lobo's leadership fails to demonstrate the existence of a bilateral political relationship between he and a substantial portion of the Juaneno membership

During the 1970s, petitioner #84b argues that tribal leadership expanded markedly. Chief Lobo's health and participation were declining, and though the Band did not appoint a successor out of respect for Lobo, others grew more active in tribal affairs. A group of SJC Juaneno women began a basket-making circle in order to revive traditional tribal basketry. Moreover, several of these women and their husbands created the Capistrano Indian Council (CIC). The CIC was intended to enrich Juaneno culture, Indian culture in general, and to help the Band obtain educational funds for the children. No minutes or other documents from either of these organizations have been provided, so it is unknown whether the CIC was a primarily Juaneno organization or whether it was supported by the Band. The petitioner also discusses Juaneno participation in conflicts over Indian remains, artifacts and sacred sites, but again, it does not supply any evidence to show extensive tribal knowledge or participation in these matters.

Much of the final section of the petitioner's addendum focuses on the controversies of the Raymond Belardes period. The petitioner argues that the opposition to his election as a tribal leader is evidence of tribal community and intense political involvement. Little solid documentation is provided of widespread participation in these disagreements. Several CIC members were initially opposed to his election as spokesman, but no numbers are given. The CIC and the Tribal Council appear to be at odds during these years, but the petitioner declines to explain this split further. The petitioner claims good attendance at monthly open Council meetings and at general meetings but often does not provide documentation. Further conflict took place during the 1990s, as the Band struggled over the legitimacy of its Tribal Council and the powers set out in the tribal

constitution. With the exception of a May 1994 meeting, no evidence of widespread tribal interest and participation in these internal conflicts is provided. Again, evidence is lacking of a bilateral relationship between group leaders and any substantial portion of group members that were followers of their leadership.

The present Bands claim a number of cultural and ceremonial activities, including language study of Acjachemem, an Elder's Circle, the basket-making circle and the revival of an Indian game, Peon. Moreover, the petitioner states that attendance at tribal events and political meetings is strong. However, evidence for wide tribal participation in these activities is lacking from the petition. Significant attendance at the summer reunion is demonstrated.

Without proving political influence or authority, widespread participation, or the existence of a bilateral political relationship from World War II to the present day, the Juaneno petitioner will not meet criterion 83(c).

As noted previously, it is likely that the splintering of Juaneno leadership will hurt the petitioners' chances of meeting criterion 83.7(c) in recent times. The chances are good that the Department will find that the factional split of the historical tribe in 1993 prevented the petitioners from being able to demonstrate social and political continuity "from historical times until the present." The vast majority of groups that have been the subject of a tribal split in modern times have not fared well in the Acknowledgment process.



**Criterion 83.7(d) Governing Document**

This criterion requires that a petitioner provide a copy of its governing document, including its membership criteria. In the absence of such a document, the petitioner must provide a written statement describing its membership criteria and current governing procedures. The purpose of this requirement is to provide the Department with a framework within which it can evaluate a group's political processes and membership. The governing document or written statement requested is key to evaluating the petitioner's membership under criterion 83.7(e), inasmuch as the Department analyzes a group's membership to determine whether its members meet the group's own specified membership criteria. No acknowledgment petitioner has ever failed to meet this criterion, since it requires only that a governing document or explanatory statement be provided.

**Criterion 83.7(e) Descent from a Historical Tribe**

This criterion requires genealogical evidence that a petitioner's membership descends from the historical Indian tribe (or tribes in the case where one or more merged to form a single entity) from which the petitioner claims linkage. The criterion also specifies five kinds of evidence that can be used to document descent, including "State, Federal, or other official records" that identify ancestors as being "descendants of a historical tribe." The obvious purpose of this requirement is to prevent the acknowledgment of an Indian group that claims tribal ancestry, succession, and continuity solely on the basis of self-identification or other unsubstantiated evidence.

The criterion requires that a petitioner submit a detailed current membership list as well as each available former list of members. It also requires the submission of a substantial body of genealogical evidence, including primary documents such as birth, marriage, and death records, that demonstrates precisely how current members descend from individuals that were listed as being members of the tribe in some reliable historical record.

Acknowledgment petitioners are encouraged to develop a base roll. This is a historical list of group members from which the majority of present group members descend. This base roll may be an existing historical list or it may be developed from a variety of other historical documents, such as census records. The date of the base roll is dependent on the availability of the most comprehensive historical data. The Department has accepted base rolls compiled from census data as late as 1920, but most base rolls are dated much earlier than that.

The Department's longtime minimum standard for the percentage of group members that must demonstrate descent from a historical tribe was 80 percent. However, in the controversial Little Shell Chippewa Proposed Finding of 2000, it applied a lesser standard. In that decision, the petitioner was found to meet criterion 83.7(e) even though only 62 percent of its membership, at best, had documented Chippewa ancestry. This Proposed Finding is still pending a Final Determination. As has happened in other recent cases, it is likely that the final decision will reestablish the Department's previous standards, which Assistant Secretary – Indian Affairs Kevin Gover routinely tried to circumvent during this tenure with the Clinton Administration. At least fifteen petitioners have been found to have

rates of 93 percent or higher. Ten of these had rates of 98 percent or more. At least three petitioners, including Narragansett, had rates of 100 percent. Four others, including Mohegan, were found in the final evaluation to have rates of 99 percent.

*Discussion: The petitioners' ability to meet criterion 83.7(e) cannot be evaluated for this analysis because the most critical parts of the genealogical evidence have been withheld from public disclosure. The petitioners' have good enumerations in 1846 and 1928 from which to establish a base roll of the historical tribe, and use of the 1928 roll should be acceptable to the Department. The evidence will only be problematic if the Department finds that 20 percent or more of the current Band members have not demonstrated that they descend from members of the historical Juaneno Band.*

**Criterion 83.7(f), No Substantial Membership in Federally Acknowledged Tribes**

This criterion specifies that the membership of a petitioning tribal group cannot be principally composed of members of tribes that are already federally acknowledged, except under very limited conditions. The purpose of this requirement is to prevent factions or other portions of an acknowledged tribe from using the acknowledgment regulations to gain Federal recognition as a separate tribal entity. Only three acknowledgment petitioners, Kaweah Indian Nation (1985), United Lumbee Nation (1985), and Yuchi Tribal Organization (2000), have ever failed to meet this criterion.

*Discussion: The Juaneno petitioners should not have a problem meeting this criterion.*

**Criterion 83.7(g), Federal Relationship Not Previously Terminated**

This criterion provides that tribal groups that petition for Federal acknowledgment cannot have previously had a government-to-government relationship with the United States expressly terminated or forbidden by Congressional legislation. The purpose of this requirement is to prevent tribal groups that have been legislatively terminated from using the Federal acknowledgment process to restore a Federal relationship, since only Congress has the power to restore terminated tribes. Only one acknowledgment petitioner, the Tchinouk of Oregon (1986), has ever failed to meet this criterion.

*Discussion: The Juaneno petitioners should be found to meet criterion 83.7(g) because neither the groups nor their individual members have ever been the subject of legislation terminating or forbidding a Federal relationship. The California Rancheria Termination Act of August 18, 1958 (72 Stat. 619) did not specify the Juaneno Band or any land base with which its members may have been associated.*

## **Other Issues**

### **Integration into a Mexican-American Community**

Many California Indians have stated that they willingly and knowingly integrated with a Mexican American community in order to survive in the early days of California history. It has been asked whether this willing integration demonstrates an abandonment of tribalism and tribal governance? In regard to the issue of Federal acknowledgment or recognition, integration into Mexican American communities would demonstrate an abandonment of tribalism and tribal governance if the Indian descendants did not continue to maintain political and social distinctions from the majority community or identify as Indians. Integration may have been a realistic survival strategy for many Native Californians, but it does not provide good evidence for keeping the essential characteristics of a tribe on a “substantially continuous basis,” which is the fundamental requirement for Federal acknowledgment.

### **The Department’s Consideration of Financial Backers**

- Will the Office of Acknowledgement consider the influence of gaming investors on the groups?

It has been asked if the OFA considers the influence that gaming investors have on petitioning groups. The OFA is well aware of the influence financial backers with gaming interests have had on petitioners. This phenomenon has served to increase political pressure on the

Department generally, because backers have had the means to retain lobbyists that have tried to influence the decision-making process. It cannot be said that the Department has been completely immune to these influences in the past; some positive Proposed Findings issued by the Assistant Secretary during the Clinton Administration broke precedent by giving well-funded petitioners the benefit of many doubts with new interpretations of the regulations. Ultimately, however, none of these petitioners were acknowledged because (1) they were challenged by interested parties and (2) the OFA. What they will consider most problematic is if it is obvious that gaming interests are calling the shots rather than tribal leaders. The OFA is not inclined to give slack because investors are exacerbating the faction fights. Its view is that it is a tribe's weakness if it cannot resolve internal disputes. The bottom line is that the influence of backers has more often hurt petitioners than helped them, although I don't know how groups are expected to finance the detailed research required to successfully document a petition.

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## **About the Author**

Michael L. Lawson has more than 22 years experience with the Department of the Interior's Federal Acknowledgment process. For ten years he was a historian with the Bureau of Indian Affairs' Branch of Acknowledgment and Research (BAR, which is now the Office of Federal Acknowledgment or OFA, within the office of the Assistant Secretary – Indian Affairs). In that job he helped evaluate dozens of Acknowledgment petitions. In 1993, he left his position as the Senior Historian with the BAR to become a private consultant. He is presently a Senior Associate with Morgan, Angel & Associates, L.L.C., a public policy consulting firm in Washington, D.C.

Since leaving Government service, Dr. Lawson has provided consultation and research services to numerous tribal groups and interested parties participating in the Federal Acknowledgment process, proposed legislation for Federal recognition from Congress, or the land-into-trust application process. One of his most successful efforts in this regard was serving from 1998 to 2005 as a key member of a research team assembled by the law firm of Perkins Coie. This team's efforts on behalf of three towns in Connecticut succeeded in convincing the Interior Board of Indian Appeals (IBIA) and the Assistant Secretary – Indian Affairs (AS-IA) to vacate and overturn a Final Determination to acknowledge two Eastern Pequot acknowledgment petitioners. As a result of his experience, and because he helped revise the Federal Acknowledgment regulations (25 CFR

83) when he worked for the BAR, Dr. Lawson is well versed regarding the regulatory procedures, requirements, and interpretations.


Dr. Lawson is also a recognized scholar in the area of Native American history. He earned a Doctor of Philosophy (Ph.D.) degree in American History at The University of New Mexico, with an emphasis on Federal Indian policy and tribal histories. Prior to joining the BAR staff, he was a historian with the BIA's Aberdeen Area Office (now the Great Plains Regional Office), the Smithsonian Institution, and the National Park Service. He has received several honors for his scholarly writing, including the Phi Alpha Theta International Book Award, the Billington Award of the Western History Association, and the Danielson Award of Westerners International. Dr. Lawson lectures periodically at various colleges, including New York University and College of William and Mary.

Reports authored by Dr. Lawson have provided the factual basis for Congressional legislation establishing tribal recovery trust funds totaling over \$380 million for five Sioux tribes in North and South Dakota and Nebraska in compensation for reservation infrastructure lost to Federal dam projects. The basic data for much of this work was drawn from his book, *Dammed Indians: The Pick-Sloan Plan and the Missouri River Sioux*, last published in 1994 by the University of Oklahoma Press. He is more recently the author of *Winning the Battle, Losing the War: Native Americans and the Little Bighorn*, to be published in 2007 by Chelsea House Publishers of New York.



## CERTIFICATE OF AUTHORSHIP

I certify that I am the primary author of this Briefing Report. I also acknowledge that I excerpted portions of the evaluation of the Juaneno petitioners from a draft report prepared at my request by Boris A. Sanders (M.A.), my research associate.

  
Michael L. Lawson, Ph.D.

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