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October 24, 1974

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The Honorable Morris Thompson  
Commissioner  
Bureau of Indian Affairs  
U. S. Department of the Interior  
Room 6315  
18th and C Streets, N. W.  
Washington, D. C. 20240

BIA, Branch of Acknowledgment  
and Research

Re: Jamul Indians

Dear Commissioner Thompson:

I understand that your office now has under active consideration the question of whether the Diegueno Indians of the Jamul village in San Diego County, California, are Federally-recognized.

This Indian band has resided in the vicinity of Jamul, California, since 1852 and before. They have maintained a cohesive identifiable community with a political structure down through the years. Their tribal affairs are currently handled by elected officers. They have preserved their native Diegueno language and dialect and significant aspects of their native culture. I am sure that these factual aspects of this matter can be confirmed to you by the Bureau of Indian Affairs Riverside Agency.

On behalf of the Association on American Indian Affairs I have furnished your office with documentation which clearly establishes that the Jamul band has been recognized by the Congress of the United States. The purpose of this letter is to analyze that documentation and to explain why we have reached the conclusion that the Jamul Indian community is Federally-recognized.

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In reaching the conclusion that the Jamul Indians have already been recognized by the Congress, we rely on two statutes, the Mission Indian Relief Act, the Act of January 12, 1891, 26 Stat. 712, and the California Indian jurisdictional act, the Act of May 18, 1928, 45 Stat. 602.

1. Mission Indian Relief Act. In 1891, responding to a number of reports and investigations which had revealed the extent of the destitution of the Indian communities in California and the degree to which they were being forced by non-Indians from lands which they had occupied for many generations, the Congress enacted a law providing for the establishment of reservations for their benefit, the Mission Indian Relief Act.

This law established a board of commissioners and provided that it would be the duty of the board to select a reservation for each band or village of Mission Indians residing within the State of California sufficient to meet their just requirements. The President was authorized to approve these reservations and the Secretary of the Interior was authorized to issue a patent for each reservation providing that the United States held the land for the benefit of the band or village to which the patent was issued. The Act also provided for the allotment of these reservations in severalty when the Indians should, in the opinion of the Secretary of the Interior, be so advanced in civilization as to be capable of owning and managing land in severalty. The Act also provided for the defense by the Attorney General of rights secured to the Indians in grants from the Mexican Government, by an 1850 act of the California legislature, or as might be necessary "to the full protection of the legal or equitable rights of any Indian or tribe of Indians in any of such lands." The Act provided for the compensation of the Commissioners from Federal funds and authorized the Secretary of the Interior to grant, subject to certain conditions, rights of way to non-Indians in the Indian lands prior to the issuance of trust patents and required, subsequent to the issuance of such patents, that the Indian beneficial owners, as well as the Secretary, consent to rights of way.

On its face the Act is clearly an exercise of the constitutional power to enact legislation for the protection

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of Indians who are wards of the United States or are (to use contemporary terminology) Federally-related. It is equally clear on the face of the statute that the intended beneficiaries of this legislation were all the Indians in California, including the Diegueno Indians in the vicinity of San Diego.

The documentation in your files relating to the background of this Act supports this conclusion. For example, in his June 30, 1875 report to the Commissioner of Indian Affairs, the Special Indian Agent, D. A. Dryden, describes some five thousand Indians in the San Diego, California, area as "the dependent and hitherto neglected wards of the Government...." Annual Report of the Commissioner of Indian Affairs, 1875, p. 223.

The instructions to the board of commissioners emphasized that "...under the second section of the act it is your duty to select a reservation for each band or village of Mission Indians...." Instructions for Guidance of Commissioners to Treat with Mission Indians, February 13, 1891, p. 4.

The only remaining question is whether or not the Diegueno Indians at Jamul are descendants of Indians who were among the intended beneficiaries of the Mission Indian Relief Act. You have in your files an affidavit of Florence M. Shipak, a professional anthropologist, dated June 30, 1972. As will be discussed below, this affidavit has been accepted by the Office of the Solicitor, U. S. Department of the Interior, as the basis for its ruling that the Jamul Indians are eligible for enrollment to share in the distribution of the Indians of California judgment fund pursuant to the Act of September 21, 1968, 82 Stat. 860.

In this affidavit Mrs. Shipak explains the historical background of the Diegueno Indians of Jamul as follows:

"The people of Jamul are descendants of Indians who have lived in the San Diego Mission Valley and around the shores of San Diego Bay. Their ancestors shifted seasonally between the bay and the area which is referred to as Jamul Village.

The people of Jamul Village have traditionally been proud and independent. They were one of the last strongholds of opposition to the Mission system, and until just recently they refused to have anything to do with the Bureau of Indian Affairs and the reservation system. Consequently, the two sources most frequently

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used in researching the histories of Mission Indians -- church records and Bureau of Indian Affairs records -- are non-existent in this case. Although one Father LaPointe built a chapel in Jamul and began converting, baptizing and marrying Jamul Indians starting in the year 1901, the church burned down with all records in 1919. Although it is possible to collect scattered baptismal and other official records for some members of the group, no coherent or consistent chronological account can be reconstructed from these documents. To complicate matters further, many of the Indians have changed their original Indian names to Spanish names.

Consequently, the basic historical records of the Jamul people consist of the collective memories and recollections of their elders.

I became interested in Jamul Village as a source of informants for information related to use of the coastal area by Diegueno people.

My primary sources of historical material were Isabel Thing, whose history is recounted in a separate affidavit attached hereto, and several other elderly men and women including Isabel Rosales (Karen Quihas), John Bob Rosales, Delfina Quero, all of whom were well versed in the history and culture of the Dieguenos and whose information was internally consistent and generally corroborated by other reliable sources.

These accounts were corroborated in many instances by the accounts of elderly white ranchers who had employed Jamul people from time to time. In reconstructing my history of these people, I also checked with elderly residents of other reservations in the area, including residents of Capitan Grande Reservation and Campo Reservation, many of whom had relatives who were members of the Jamul Band. I also checked with such church sources as are available.

In 1964 at the time of the offer of settlement in the claims case and the meetings held to vote on its acceptance, the Jamul Band came to me as a group and requested assistance in establishing their California Indian ancestry. On the basis of my previous knowledge, and without the direct participation of the persons involved, I constructed family trees for only those

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persons whom I believed, on the basis of anthropological evidence, to be descendents of members of the Jamul Band who were alive on or before June 1, 1852. I am prepared to testify under oath that these family trees are accurate to the best of my knowledge, based upon general community reputation, and are satisfactory in my opinion as an anthropologist to establish each applicant's relationship to a member of the Jamul Band living on or before June 1, 1852.

After careful consideration and rejection of several applicants who had not established their California Indian ancestry to my satisfaction, I composed a list, a copy of which is attached hereto, and submitted it to the Bureau of Indian Affairs as a list of those persons known to me to be descendents of members of the Jamul Band alive on or before June 1, 1852.

On the basis of my continuing investigations I am prepared as an anthropologist to certify that the persons whose names I've shown on the attached list, with the exceptions of Ambrosio Thing the elder (who has filed documents stating that he is a Mexican citizen and has returned to Mexico) and Rose Boland Mesa (since deceased, but approved as a member of the LaPosta Band), are descendents of California Indians living at Jamul and/or Mission Valley on or before June 1, 1852.

I swear under penalty of perjury that the foregoing is true and correct."

As Mrs. Shipek points out, the Diegueno Indians of Jamul resisted intrusions in their affairs both prior to American sovereignty and subsequently down to the recent past. This may well explain why Jamul is not frequently identified by name in official correspondence or documents and may indeed account for the statement in the Bureau's letter to me of June 3, 1974, that: "Our records show that the Jamul Indians have never been federally recognized."

However, as you are aware, the Congress has plenary power in these matters and Federal recognition depends on what the Congress has done, not on the attitude of this or that Indian community toward the United States at one time or another.

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A careful review of the documentation in your files on the background and implementation of the Mission Indian Relief Act, together with Mrs. Shipek's summary history of the Jamul band and the language of the statute itself, makes it quite clear that among the intended beneficiaries of the Act were included all of the Diegueno Indians in the San Diego vicinity, including those located on private non-Indian land grants.

As early as 1873, Federal officials recognized that the Diegueno Indians in San Diego County were composed of small, widely scattered villages. In that year Special Agent J. G. Ames reported to the Commissioner of Indian Affairs on a visit to the San Diego area as follows:

"Returning to Los Angeles we proceeded thence to San Diego for the purpose of examining into the condition of Indians residing in the southern part of San Diego County. Having heard that there were quite a number in the vicinity of Julian, a mining town situated some seventy miles in the interior, we visited that locality. Julian is a resort to which many Indians flock for the purpose of procuring liquor, or for purposes still more reprehensible. No Indian village, however, is located there, nor could I learn of more than two or three rancherias along the southern border of the county. It was impracticable to hold any conference with them from their being so much scattered. Their condition very closely resembles that of the other Dieguenes above referred to in Mr. Sleigh's report. Quite a number of this tribe are always to be found in the neighborhood of San Diego, and always in a demoralized state. The facilities which towns afford for vicious and debasing indulgences prove to no class more disastrous than to the Indians." Annual Report of the Commissioner of Indian Affairs, 1873, p. 35.

By 1875, Special Agent Dryden had developed more complete information on the Diegueno Indians:

"We visited the principal Indian villages and settlements, from the borders of the desert in the eastern part of San Bernadino County to San Diego. I held conferences with the leading chiefs and captains of Morongo, Petrero, San Gorgono, Temecala, Pala, Rincon, San Pasqual, Santa Isabel, &c.

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I may first remark, in general, that I find them a much more numerous, civilized and industrious people than I had supposed; properly provided for their future is hopeful...Among all the dependent wards of the Government there are none so much deserving her speedy and fostering care...

...three important questions must be considered. First, the physical, moral and home interest of about five thousand Indians, the dependent and hitherto neglected wards of the Government, second, the land interests of grantholders, upon whose lands many of the Indians are located -- the interests of settlers who are located on public lands long time held in possession by these Indians and claimed by them as their own. These interests are all-important, and, unfortunately, at present in serious conflict. The Indians, by virtue of long possession inherited from their ancestors, very naturally feel that their rights are being invaded and their lands wrested from them. Grant-holders regard the Indians as troublesome incumbrances on their lands, and are anxious to have them removed..." Annual Report of the Commissioner of Indian Affairs, 1875, pp. 223-224.

Dryden suggests the establishment of a general reservation for all the Indian groups in the area:

"But, from all the facts in the case, in my judgment this is wholly impracticable...the chief difficulty in the way of a general reservation is that the Indians themselves are universally opposed to such a disposition. I could get but one expression from them on this point -- decided opposition. They are made up of the remnants of different tribes, speaking different languages, and do not want to live together. They are very strong in their claim and their attachment to their old homes. They could be put on a reservation only by force....I venture to recommend...certain townships, including the principal Indian settlements, be selected and set apart for exclusive Indian occupation; the Government to hold the lands, the Indians simply to occupy and be protected in their homes and all their rights as wards of the Government. There are so many of these settlements or occupations scattered all over these counties, that it would not be at all practicable to put them in possession of all the lands which they at present hold. Besides being thus left scattered about, their condition would be in no way bettered, nor

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could anything be done for their future improvement. But by giving possession on lands, including the larger and principal populations, these more scattered and straggling bands, left to the tender mercies of the settlers and the grant-holders, would soon be compelled to come within their own proper bounds to find homes at all..."

Dryden explains at length the desirability of concentrating the Indians in a few principal reservations and repeats the point that: "The smaller scattered and straggling bands will be compelled to come onto their own lands."

On May 9, 1890, Indian Agent Horatio Rust transmitted to the Commissioner of Indian Affairs a list of the names of each village of Mission Indians, the approximate number of Indians in each village, and the tribe to which the village belonged, and their reservation if any. You have a copy of page 2 of this list in your files. With reference to the Jamul Indians, the following should be noted. The Mission villages identified on the list include a significant number of villages which are not on "reservations" but on "private land." While Jamul is not identified by name, a Diegueno village with a population of 99 is listed as "near San Diego" and is identified as being located on private land. Mrs. Shipek, based upon her extensive research into Diegueno history, has concluded that this reference is to the Jamul Diegueno community. See enclosed letter, dated June 25, 1974.

Finally, in 1891 Congress acted to protect the California Indians as Dryden had recommended 16 years earlier. As discussed above, the Act and the instructions to the commissioners make crystal clear that all Diegueno Indian communities, including those located on non-Indian grant lands, were among the intended beneficiaries of the Act.

That the commissioners implemented this aspect of their statutory mandate is shown by their report, dated December 7, 1871, as well as by a subsequent explanatory letter from Charles C. Painter, Secretary to the Commission, dated January 18, 1892.

What appears from the Smiley Commission Report is that the Commission deliberately enlarged certain reservations (Capitan Grande, Agua Caliente, and Morongo) so that sufficient land would be available there not only for the villages initially



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settled there but also for other groups of Indians then located on private land from which their eventual eviction might be a possibility. The Commission demonstrated its view that these Indian villages on private lands were wards of the Government entitled to Federal protection by making such a land provision for them, as well as by recommending that Government attorneys protect their rights in case an attempt to evict them from private land was made. Smiley Commission Report, pp. 22, 23, 66, 67, 72. Specifically, the Commission states on page 72 that it has made provision in the reservations recommended in the Report for the Indians identified in a list furnished to them by the Indian Department, which is apparently the Rust list.

Finally, in his January 18, 1892 letter, Mr. Painter, one of the Commissioners and Secretary to the Commission, explains the size of the Capitan Grande Reservation, as follows:

"It was the expectation of the Commissioners that Indians now living at several other points would, in time, remove to this reservation and a surplus of land above the needs of those already there was retained for them."

However, as Dryden and, more recently, Mrs. Shipek have noted, the Diegueno Indians have a strong attachment to their traditional village sites. Consequently, the Diegueno Indians of Jamul have never moved to Capitan Grande or any of the other reservations but have maintained their village at the traditional site at Jamul. The land grant surrounding Jamul has remained in private ownership and has been for many years operated as a ranch on a large scale. The Indians at Jamul were never evicted by the owners and found employment in the ranching operation. In 1912 the owners of the grant donated a small tract at Jamul to the Roman Catholic Church for use by the Indians as a cemetery. Originally the Jamul Indians used about ten acres, but according to Mrs. Shipek, their occupation is now restricted to the two acre cemetery plot which was fenced in about thirty years ago.

While the Bureau of Indian Affairs has never apparently paid much attention to the Diegueno Indians at Jamul, we have found a reference to Jamul in the 1929 Annual Report of the Mission Indian Agent, C. L. Ellis, which states on page 6:

"One of these fiesta grounds is a 10-acre cemetery tract on a much used county highway, entirely surround [sic] by a land grant from which it was purchased for Indian use."

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As usual, Jamul is not identified by name but Mrs. Shipek is convinced from the description that the reference must be to Jamul. See enclosed letter, dated June 25, 1974. A copy of the pertinent page of this report is in your files.

I conclude from all of this documentation that the Jamul community of Diegueno Indians are descended from a group of Diegueno Indians who were living in the vicinity of Jamul on or before June 1, 1852, and on the date of the enactment of the Mission Indian Relief Act and that they were among the California Indians for whom the Congress intended to make provision in that Act.

2. The Indians of California Jurisdictional Act. In the Act of May 18, 1928, 45 Stat. 602, the Congress authorized the Attorney General to bring suit in the Court of Claims on behalf of the Indians of California. Section 1 of the Act defined Indians as "...all Indians who were residing in the State of California on June 1, 1852, and their descendants now living in said State."

Pursuant to the Act of September 21, 1968, 82 Stat. 860, the Jamul Indians have been determined to be Indians of California as the term is defined in the 1928 Act by the Department of the Interior and have been enrolled on the roll to be used in making per capita payments from the Indians of California judgment under the 1968 Act. See letter, dated December 11, 1972, of the Associate Solicitor, Indian Affairs.

3. Summary and Conclusions. It is an accepted principle of Federal Indian law that either the legislative or executive departments of the Federal Government may extend Federal recognition to an Indian tribe. In this instance the Jamul Band has been twice recognized by the Congress, while the Interior Department has extended recognition in the course of implementing the legislation. While the act authorizing the Indians of California suit in the Court of Claims may well involve somewhat different considerations than the question of whether a tribe has Federal recognition for the purpose of receiving Federal services, the Mission Relief Act is directly in point.

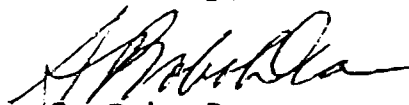
Indeed, the large number of recognized Indian communities in California whose Federal status is unchallenged derive their Federal status from the same act. An Indian community for which the Congress expressed the intention that a reservation

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should be established and for whom, in fact, reservation land was set aside (although jointly with other Indians), has received full Federal recognition from the Congress even though the community never in fact settled on the intended reservation. What the Congress has clearly said is that these Indians are (as the expression was in 1891) "wards of the Government", that the Federal Government has a special responsibility toward them, to provide programs for their benefit and to defend their rights. While the Jamul Band has been long denied these benefits of Federal recognition, there is no doubt that they have been entitled to receive them since 1891 at the latest.

I will be happy to discuss this matter with your staff.

Sincerely,



S. Bobo Dean

Enclosure

cc: Mr. William Byler  
Mr. Robert Farring  
Mrs. Florence Shipek  
Mrs. Rosalie Robertson  
Ms. Darlene A. Tatlock